

# Comparison of the 2023 Draft Zoning Ordinance Articles 20 and 21 with the Current Zoning Ordinance (Adopted 2006)

Draft Zoning Ordinance	Current Zoning Ordinance
Article 20 (Forest Conservation) Article 21 (Natural Resources)	Article 8 (Sections 8-2.04, 8-2.05, 8-2.06, 8-2.08, and 8-3)

## Article 20 (Forest Conservation)

- The May 2023 draft of the Forest Conservation article will need to be re-written in order to bring it in line with changes to Maryland’s Forest Conservation Act required by the passage of SB526/HB723 in the 2023 Maryland Legislative Session
- The Maryland Department of Natural Resources has been tasked with interpreting this legislation and developing guidance for counties on how to implement these changes
  - This guidance was originally planned to be made available before the end of 2023, but as of today, has not yet been made available
- Because this article will need to be significantly re-written in order to bring it in line with changes to the Forest Conservation Act, a full comparison of this draft article with the current Zoning Ordinance is impractical at this time

## Article 21 (Natural Resources)

- **Section 21-1.A (Purpose)**
  - This section has been revised in the draft Zoning Ordinance and now states, *“The purpose of the Natural Resource Protection Area (NRPA) is to serve as a buffer that will minimize disturbance to sensitive environmental features from future development. The intent of the NRPA is to protect water quality and quantity in streams, water courses, and wetlands; protect steep slopes and minimize erosion and siltation; protect native and non-invasive vegetation; and to protect persons and property from environmental hazards such as erosion, siltation, and floodwaters.”*
    - This replaces the following from the current Zoning Ordinance, *“These areas are created to protect environmental features which may be adversely affected by normal development of permitted and special*

*exception uses in the underlying District. Boundaries are to be approved by the Department of Planning & Zoning and the Planning Commission during the subdivision, site plan, and building permit processes.*

- **Section 21-1.C (Application of the NRPA-1 and NRPA-2)**
  - This section has been added to the draft Zoning Ordinance
  
- **Section 21-1.C.3 (Environmental Features Included in NRPA-1)**
  - This section has been added to the draft Zoning Ordinance
  - Under the draft Zoning Ordinance, the requirements of the NRPA-1 would apply to parcels, lots, outlots, residue, and open space created during the subdivision process after the adoption of the updated Zoning Ordinance outside of Town Centers (with an exception if the lot was created through the combination of smaller lots or parcels which existed prior to the adoption of the updated Ordinance)
    - On parcels where the NRPA-1 would apply, a minimum 100 foot buffer from both sides of perennial and intermittent streams would be required
      - Under the current regulations, the minimum buffer from perennial and intermitted streams is 50 feet
    - On parcels where the NRPA-1 would apply, in the case of contiguous steep slopes of 25% or greater, the stream buffer shall be expanded to the top of the slope plus 20 feet
      - Under the current regulations, the stream buffer is expanded four feet for every one percent of slope or to the top of contiguous steep slopes of 25% or greater, whichever is nearer to the stream
    - On parcels where the NRPA-1 would apply, in the case of highly erodible soils (with a slope greater than 15% or those soils with a K value greater than 0.35 and with slopes greater than 5%), the buffer shall be expanded to the landward edge of the highly erodible soil or 150 feet, whichever is less. If the area of the 100-year floodplain is greater than the buffer or expanded buffer as described in this section, than this area shall be included within the NRPA-1.
      - Under the current regulations, for lots created after 05/01/2006 (except in the Employment Center and Town Center Districts) no structure, grading or clearing is permitted on SrE and ErE soils within 100 feet of a perennial or intermittent stream.
        - Note: SrE and ErE soils is outdated terminology, but essentially equivalent to highly erodible soils
    - On parcels where the NRPA-1 would apply a minimum 100 foot buffer from wetlands is required

- Under the current regulations, the minimum buffer from non-tidal wetlands is 50 feet
  - On parcels where the NRPA-1 would apply, in the case of contiguous steep slopes of 25% or greater, the wetland buffer shall be expanded to the top of the slope plus 20 feet. In the case of highly erodible soils (with a slope greater than 15% or those soils with a K value greater than 0.35 and with slopes greater than 5%), the buffer shall be expanded to the landward edge of the highly erodible soil or 150 feet, whichever is less.
    - There are no equivalent requirements under the current regulations specific to non-tidal wetlands
  - On parcels where the NRPA-1 would apply, any land area exceeding 5,000 square feet with a slope in excess of 25% and a buffer of 20 feet from the edge of the steep slope would be included within the NRPA
    - There are no equivalent requirements under current regulations in regard to steep slopes non-contiguous with streams
- **Section 21-1.C.4 (Environmental Features Included in NRPA-2)**
  - This section has been added to the draft Zoning Ordinance
  - Under the draft Zoning Ordinance, the requirements of the NRPA-2 would apply to parcels, lots, outlots, residue, and open space created prior to the adoption of the updated Zoning Ordinance outside of town centers and to all parcels within town centers.
    - However, the NRPA-2 may be applied on lots created following the adoption of the updated Zoning Ordinance if the lot was created through the combination of smaller lots or parcels which existed prior to the adoption of the updated Zoning Ordinance.
  - The delineation of the NRPA-2 is intended to be close to how these protected areas would be delineated under current regulations, with a few minor revisions
    - On parcels where the NRPA-2 would apply, the stream buffer in the case of contiguous steep slopes of 25% or greater would be expanded to the top of the slope, or to 100 feet, whichever is less.
      - Under the current regulations, the stream buffer is expanded four feet for every one percent of slope or to the top of contiguous steep slopes of 25% or greater, whichever is nearer to the stream.
    - On parcels where the NRPA-2 would apply, except within Town Centers and the Employment Center District, if the lot or parcel was created between 05/01/2006 and the adoption of the updated Ordinance, the stream buffer would be expanded for contiguous highly erodible soils (with a slope greater than 15% or those soils with a K value greater than 0.35 and with slopes greater than 5%) to the landward edge of the highly erodible soils, or to 100 feet, whichever is less.





- **Section 21-1.E (Permitted Uses)**

- This section has been added to the draft Zoning Ordinance
- The following provisions have been added to the draft Zoning Ordinance:
  - *“Agriculture shall be permitted, provided an approved and enforced Soil Conservation Plan and accepted soil conservation practices of the soil conservation district are approved and implemented along watercourses. A minimum 25 foot wide buffer with woody vegetation along the edge of farmland bordering streams and wetlands is required to reduce surface runoff and associated pollutants from entering waterways.”*
  - *“Forestry operations shall be required to meet the conservation requirements of Section 21-1.H below and shall be in compliance with an approved Timber Harvest Plan.”*

- **Section 21-1.F (Permitted Activities and Development)**

- This section has been added to the draft Zoning Ordinance
- In the draft Zoning Ordinance, new stormwater management devices would not be permitted in areas designated as Natural Resource Protection Areas (non-permanent disturbance of the NRPA for emergency fixes of existing stormwater management devices would be permitted)
  - In the current Zoning Ordinance, when stormwater management cannot be located outside of the stream buffer, stormwater management devices may be placed in the buffer with approval of the Planning Commission for site plans and subdivisions and approval by the Zoning Officer in all other cases.
- The following provisions addressing utility transmission facilities in the NRPA have been revised in the draft Zoning Ordinance and now state, *“Utility transmission facilities may be permitted after it is established that there are no alternatives, as determined by Department of Planning & Zoning. The developer shall be required to provide a written justification. If the affected area is designated a “conservation area” on a record plat or requires the grading of steep slopes or highly erodible soils, then the disturbance and construction shall require approval of the Planning Commission.”*
  - This replaces the following from the current Zoning Ordinance, *“Utilities are allowed to cross streams when located within an existing right-of-way easement with approved local, state and federal permits.”*
- The following provisions addressing road and driveway crossings in the NRPA have been revised in the draft Zoning Ordinance and now state, *“Road and driveway crossings may be permitted after it is established, and the Department of Planning & Zoning agrees, that all options have been exhausted and there are no alternatives, or when stream or wetland crossings are necessary to comply with town center master plans. The developer shall be required to provide a*

*written justification. The number of road and driveway crossings shall be minimized. If a road or driveway crossing is necessary, it shall cross a stream at a 90-degree angle whenever possible. If the affected area is designated a "conservation area" on a record plat or requires the grading of steep slopes or highly erodible soils, then the disturbance and construction shall require approval of the Planning Commission. If the Planning Commission approves, slopes may be graded out to less than 25% for construction of roads to provide access to lots."*

- This replaces the following from the current Zoning Ordinance, *"When land is otherwise inaccessible or when stream crossings are necessary to comply with town center master plans, stream crossings may be approved by the Planning Commission for site plans and subdivisions and approved by the Zoning Officer in all other cases"* (Sec. 8-2.06.B.2), *"If the Planning Commission or its designee approves that the slopes can be graded out to less than 25 percent for construction of roads to provide access to lots"* (Sec. 8-2.04.D.3; Conditions for lots created after the effective date of this Ordinance (05/01/06), and *"If the affected area is designated "conservation area" on a record plat, then the disturbance and construction shall require approval by the Planning Commission"* (Sec. 8-2.04.C.5).
- In the draft Zoning Ordinance, mitigation plantings are required for removal of vegetation for permitted activities and development in the NRPA on a 1:1 basis.
  - In the current Zoning Ordinance, mitigation plantings are required for removal of vegetation for permitted activities and development within the stream and wetland buffers, but required mitigation plantings are on a 2:1 basis.
- **Section 21-1.H (Conservation Requirements)**
  - This section has been added to the draft Zoning Ordinance
  - The following provisions have been added to the draft Zoning Ordinance:
    - *"All permitted uses, activities, and development shall minimize soil disturbance during development and shall reduce soil erosion and sedimentation."*
    - *"Clearing or removal of natural ground cover and vegetation in preparation for development of permitted uses and permitted activities and development shall be minimized."*
    - *"Disturbance of sensitive environmental areas, including significant or special natural features and significant wildlife habitats shall comply with the recommendations of the Department of Planning & Zoning and the Maryland Department of Natural Resources as applicable."*
- **Section 21-1.I (Fences)**

- This section has been added to the draft Zoning Ordinance
- The following provision has been added to the draft Zoning Ordinance, *“Fences shall not be permitted within the NRPA. Temporary fencing required to delineate areas not to be disturbed for a permitted development activity are allowed but shall be removed by the developer following completion of construction and post site stabilization.”*
- **Section 21-1.J (Variances)**
  - This section has been added to the draft Zoning Ordinance
  - In the draft Zoning Ordinance, variances are not permitted from the regulations of Article 21 within the NRPA-1
    - In the current Zoning Ordinance, variances are permitted within stream and wetland buffers
  - The following has been added to the draft Zoning Ordinance, *“At environmental planning staff recommendation, the Zoning Officer or its designee is authorized to grant administrative variances for disturbance to steep slopes for the purposes of slope stabilization in the NRPA-2. The applicant must demonstrate that erosive conditions exist, and the proposed stabilization method minimizes land disturbance and clearing of existing vegetation. Slope stabilization activities include the prevention of soil movement by any of the various vegetative and/or structural means. Stabilization can include minimal grading; retaining walls; erosion control mats, blankets and fiber logs; or, other environmentally sensitive practices. It shall not include the use of accessory structures including but not limited to patios, terraces or gazebos.”*
  - In the draft Zoning Ordinance, if a variance is granted, mitigation is required by planting on the site at a rate of 1:1 per square foot of disturbance
    - In the current Zoning Ordinance, variances within stream and wetland buffers outside of the Critical Area require mitigation plantings at a rate of 2:1 per square foot of disturbance
- **Section 21-2 (Development on Lots or Parcels Without Approved Stormwater Management Plans)**
  - The following provision has been revised and now states, *“Lot coverage shall be limited to no more than 15 percent of the lot or parcel if the lot or parcel is one-half acre or greater in size. If the lot or parcel is less than one-half acre, lot coverage shall be limited to no more than 25 percent of the lot or parcel or 5,445 square feet, whichever is greater.”*
    - This replaces the following from the current Zoning Ordinance, *“Impervious surfaces shall be limited to no more than 15 percent of the lot if the lot contains more than one-half acre. If the lot contains less than*

*one-half acre, impervious surfaces shall be limited to no more than 25 percent of the lot or 5,445 square feet, whichever is greater.”*

- **Section 21-3 (Enforcement and Mitigation)**
  - Only minor non-substantive revisions were made to this section to ensure consistency with draft Article 33 (Enforcement)