

Article 23. Marine & Water-Dependent Facilities

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23-1 PURPOSE AND APPLICABILITY OF MARINE FACILITIES REGULATIONS

A. Purpose

1. The purpose of this Article is to provide regulations for the orderly development of the waterfront areas of the County.
2. Except as specifically provided in this Article, an owner of waterfront property may not be deprived of any right, privilege, or enjoyment of such ownership (as access to or use of a waterway) legally exercised prior to April 21, 1981. The provisions of this Article do not transfer the title or ownership of any waterway or interest in a waterway.

B. Applicability

1. The provisions of this Article are applicable to, and govern, the construction of all marine facilities within Calvert County.
2. This Article is in addition to existing federal and state regulations governing the same matters and is not intended to preempt other valid laws. The more restrictive regulations control.

23-2 LOCATION OF ESTABLISHED HARBOR LINES AND SHORELINES

A. Location of Established Harbor Lines and Shorelines and Encroachments on the Harbor Line

1. The location of harbor lines and shorelines established herein are as shown on Maps C- 19, 20, 21-A, 25, 26; D-26; E-30; F-30, 31, 32; G-32, 33, 34; H-32, 33, 34; I-35; J-35, 36, 37, 38; K-38, 39; L-39, 40, 41, 42; M-39, 40, 41, 42, entitled "County Harbor Lines", which is Appendix A of the Official County Zoning Map.
2. Amendments to the established harbor lines, as shown on the above-referenced maps, may only be made through the map amendment process.
3. Harbor lines cannot be amended through the variance process, however encroachments on the harbor line may be approved through the variance process by the Board of Appeals.
 - a. Harbor Lines may only be encroached when the harbor line in conjunction with water depth prevents docking within the useable waterway area.
 - b. In no case shall the harbor line be encroached to allow a pier or any other marine on more than 25% of the width of the subject waterway.
 - c. In no case shall the encroachment of a harbor line impede use of the main navigable channel of a waterway.
 - d. When considering the limitation to a maximum of 25% the width of the waterway and the prohibition on impeding the main navigable channel the most restrictive shall apply.
 - e. All applications shall be subject to approval by Environmental staff and the Zoning Officer prior to proceeding with the variance process. The applicant shall be required to provide bathometric data and a cross section or sections of the body of water where the pier is proposed. If staff finds that the application if approved, would impede the main navigable channel, they shall deny the application.

f. The harbor line may only be encroached if a plat is prepared by a registered engineer, landscape architect or registered land surveyor, indicating the purpose of the plat and depicting the encroached harbor line and associated setback, along with the appropriate recording forms. The plat shall be recorded in the land records of Calvert County with signatures of all the owners of the lots or parcels affected by the change and the Secretary to the Planning Commission.

g. The variance shall not alter the mapped harbor line. It shall allow for an encroachment on the harbor line up to the approved amount. The plat shall clearly depict both the approved encroachment and the mapped harbor line.

i. If the approved encroachment on the harbor line is extended up to the United States Army Corps of Engineers Harbor Line, under no circumstances may the area which was protected be utilized for dockage or other marine related purposes. Compensation will already have been provided by extending the usable waterway area.

h. Affected property owners shall include everyone upstream unless determined otherwise by the Zoning Officer with consultation from Environmental staff.

B. Amendments to Harbor Line in the Solomons Town Center

1. In the undeveloped portions of Back Creek, the harbor line may be extended from the adopted Harbor Line Map up to the Corps of Engineers Harbor Line only to the extent necessary to recapture the number of slips actually lost due to the protection of identified submerged aquatic vegetation.

2. If the harbor line is extended up to the United States Army Corps of Engineers Harbor Line, under no circumstances may the area which was protected be utilized for dockage or other marine related purposes. Compensation will already have been provided by extending the usable waterway area.

23-3 LOCATION OF UNMAPPED HARBOR LINES

The Department of Planning & Zoning and the Department of Public Works will determine the harbor line for any tributary, or portion thereof, which is not mapped, at the time of subdivision or application for a pier permit.

23-4 WATERFRONT USES

A. Permitted Uses

The following marine facilities are permitted in the usable waterway area provided that the use is consistent with the zoning of the adjacent land:

1. Piers
2. Bulkheads
3. Private Boat launch ramps for the use of the lot or parcel owner only
4. Mooring piles
5. Mooring and anchorages
6. Floats
7. Vessel service areas & equipment
8. Accessory uses approved by the Zoning Officer after referral to the Planning Commission

B. Boathouse - Allowed with Conditions

A boathouse may be approved in the usable waterway, subject to the following conditions:

1. No submerged aquatic vegetation (SAVs) is located at the site of the proposed boathouse as field verified in May through June

2. No sides (walls extending below the rafters) are permitted
3. The property is an approved commercial marina
4. A permit from the Maryland Department of the Environment is obtained

C. Prohibited Uses

The following uses are prohibited:

1. Residential structures and commercial structures other than vessel service areas on piers, floating piers, or pilings over a waterway
2. Abandoned or sunken craft
3. Private boat ramps used as community or commercial boat launching ramps
4. Covered piers or roofed structures over piers

D. Pre-Existing Uses

1. Any marine facility lawfully existing on or before May 1, 2006 may continue to be used even though such marine facility or use does not conform to the current use or dimensional regulations.
2. Any alteration of an existing nonconforming marine facility or use is subject to the provisions of Article 32, except that the setbacks of this Article apply.

E. Permits Required for Waterfront Uses

1. Building Permit: A County building permit is required to construct, modify, enlarge, rebuild, or repair any marine facility.
2. Grading Permit: A grading permit is required for any placement of dredge spoils, filling, or other activity which would result in impacts any waterway bottom, shoreline modification, or critical area buffer.
3. State and federal permits, approvals or authorization applicable to construction, modification, enlargement, reconstruction, repair, etc. of marine facilities shall be obtained and submitted to the Division of Inspections and Permits as a prerequisite to issuance of a County building permit.

23-5 USABLE WATERWAY AREA

The usable waterway area is the area enclosed by the harbor line, shoreline, and lateral lines. It is defined and regulated to prevent one property owner from infringing upon the rights of another.

A. Lateral Lines

The lateral lines separate adjacent usable waterway areas and are determined by bisecting the angles formed by the shoreline at property corners. The following procedures shall be followed to determine the location of lateral lines:

1. Prepare a scale drawing plot plan showing the applicant's property and all adjacent waterfront properties within a 200-foot radius of the shoreline owned by the applicant (See Figure 23-1).
2. On the scale drawing, add the shorelines and harbor lines as shown on the appropriate Zoning Map for Harbor Lines.
3. Intersect all property lines with the shoreline (Points A, B, C, D, E, F, on Figure 23-1).
4. From the applicant's property line-shoreline intersections (Point D, E, on Figure 23-1) intersect a 200-foot radius with the shoreline (Points 1 and 2 on Figure 23-1).
5. From the applicant's property, connect all property line-shoreline points, ending at points 1 and 2 with straight lines (D to C, C to B, B to 1, E to 2 on Figure 23-1).

6. Bisect the angle formed by these straight lines and extend the lines bisecting the angle from the shoreline to the harbor line. These are the lateral lines (B-G, C-H, D-I, E-J on Figure 23-1).
7. If a marine facility is proposed within 50 feet of a lateral line, the plot plan shall be prepared by a registered engineer, landscape architect or registered land surveyor.

B. Determination of Usable Waterway Area

The usable waterway shall be determined for all properties having a pair of lateral lines as shown on the applicant's drawing. For an acceptable usable waterway area, the following conditions (See Figure 23-1) shall be met:

1. If any pair of lateral lines extended to the harbor line results in a distance of 25 feet or more on the harbor line (Lines G-H, H-I, I-J) these lines and the harbor and shorelines define the usable waterway area for the applicant.
2. If any pair of lateral lines extended to the harbor line results in a harbor line segment (G-H, H-I, I-J, Figure 23-1) of less than 25 feet, the lateral lines are unacceptable and shall be modified in accordance with Section 23-5.C below.
3. If any pair of extended lateral lines intersect before reaching the harbor line, the lateral lines are unacceptable and shall be modified in accordance with item Section 23-5.C below.

C. Amendments to Lateral Lines

When lateral lines are amended in accordance with the following requirements, the amended lateral line(s), the harbor line and the shoreline shall define the usable waterway area for the property.

1. Where a conflict occurs as outlined in Section 23-5.B above, the lateral lines shall be modified as shown on Figure 23-2. A line is moved toward the shoreline and parallel to line D-E, (Figure 23-2) until a 25-foot clearance is obtained (Line N-O, Figure 23-2).
2. Two additional lateral lines N-P and O-Q will be drawn perpendicular to line N-O from points N and O to the harbor line. The lines D-N-P, E-O-Q are the new lateral lines for the applicant's parcel and the adjoining properties.
3. For all amended lateral lines, construction will be limited to the area enclosed by the shoreline, the lateral lines (D-N, O-E) and the imaginary clearance line N-O (Figure 23-2). This procedure will insure adequate clearances for adjacent piers.
4. When a lateral line restricts the amount of useable waterway area, the lateral line may be amended if a plat is prepared by a registered engineer, landscape architect or registered land surveyor, indicating the purpose of the plat and depicting the amended lateral line(s), along with the appropriate recording forms. The plat shall be recorded in the land records of Calvert County with signatures of all the owners of the lots or parcels affected by the change and the Secretary to the Planning Commission.

FIGURE 23-1 - DETERMINATION OF LATERAL LINES

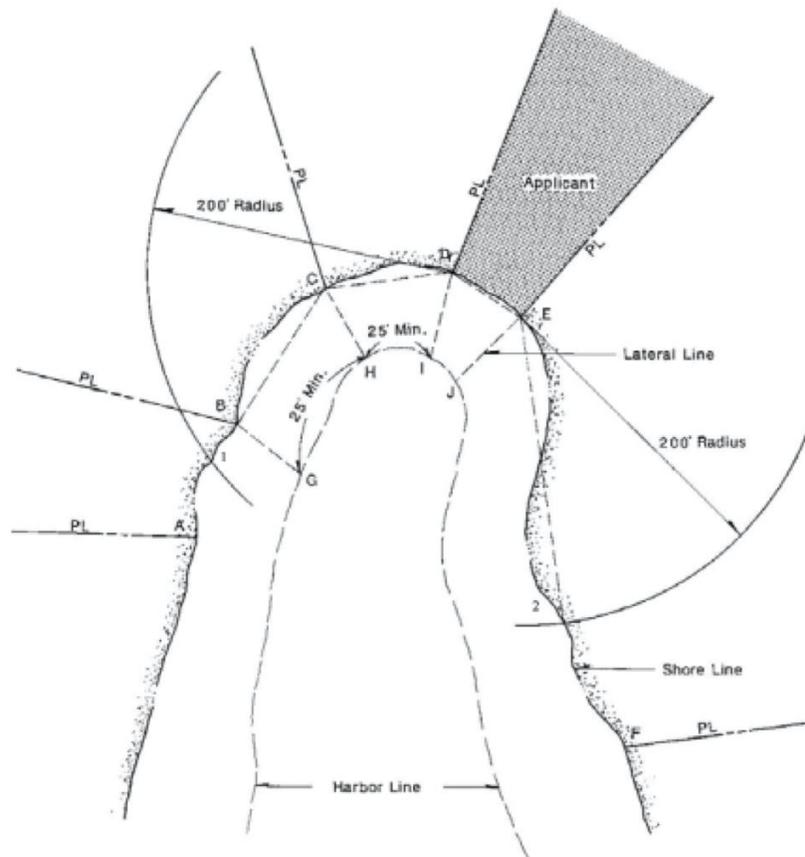
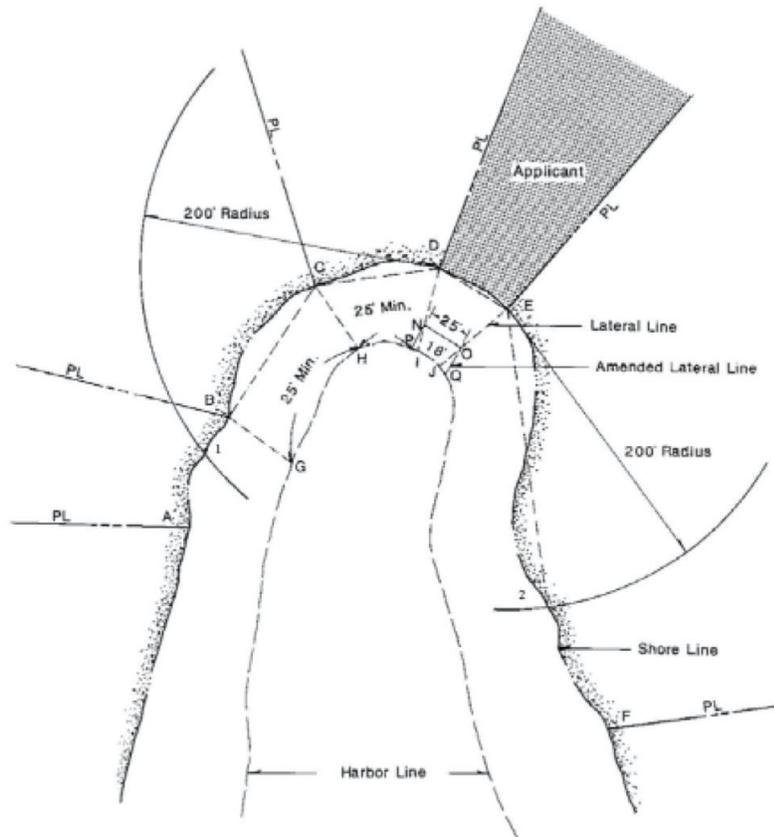


FIGURE 23-2 - DETERMINATION OF LATERAL LINES



D. Setbacks

1. Harbor Line Setbacks

Any piers, "T" heads, "L" heads, mooring piles, mooring or anchorages shall be set back at least ten feet from the harbor line to assure that no moored vessel or permanent or temporary obstruction extends beyond the harbor lines.

2. Fuel Dock Setback

Docks used to provide a fueling station for vessels shall be set back a minimum distance of 20 feet from the harbor line. A clear space of 200 feet by 20 feet be provided for parallel berthing at "T" or "L" head fuel docks.

3. Lateral Line Setback

No marine facility, permanent or temporary, may be located within 25 feet of a lateral line. No vessel may be moored so as to cause an obstruction within ten feet of a lateral line.

4. Adjacent Property Owners Agreement

The lateral line setback may be reduced if a plat is prepared by a registered engineer, landscape architect or registered land surveyor, indicating the purpose of the plat and depicting the reduced lateral line setbacks, along with the appropriate recording forms. The plat shall be recorded in the land records of Calvert County with signatures of all the owners of the lots or parcels affected by the change and the Secretary to the Planning Commission.

5. Board of Appeals

If the adjacent property owner will not agree to modify the lateral line setbacks, an application for a variance may be made to the Board of Appeals.

23-6 PIERS

All piers shall be of the open pile design. Filled piers are not permitted. The provisions of this section apply to all applications for subdivision of land and applications for pier permits. The mutual use of piers or mooring piles by adjacent property owners is permitted and encouraged whenever possible.

A. Private Piers

1. Subject to the provisions of this Article, one private pier is permitted as an accessory structure to a single-family dwelling on a buildable lot or parcel on any waterfront lot or parcel for the use of the lot or parcel owner or his/her tenant only. Exception: If an undeveloped lot or parcel with a riparian right is in contiguous ownership with a lot or parcel that has a single-family dwelling but lacks a riparian right, a pier may be built on the lot or parcel with a riparian right, provided it meets applicable setback requirements (lateral line & harbor line).
2. Requirements for private piers:
 - a. No more than four slips are allowed in the useable waterway area of any waterfront parcel or lot of record.
 - b. If the lot or parcel lies within a subdivision created after April 21, 1981 (date of original legislation on community piers) which contains a community pier, no private piers are permitted.
3. All construction shall comply fully with the requirements for determination of usable waterway as per Section 23-5.B. For new lots created after April 21, 1981, no private piers shall be permitted where the waterfront lot width is reduced to less than that required by the district, unless the reduction is approved by the Board of Appeals.
4. No part of the pier or slips shall be covered or enclosed.

B. Community Piers and Other Related Non-Commercial Boat Docking and Storage Facilities

A community pier for a subdivision replaces the private piers ordinarily permitted for waterfront land owners, thereby protecting the sensitive aquatic environment, saving the waterfront from a proliferation of piers, and preserving the aesthetics of the waterfront. The provisions of this section are in addition to the provisions of Section 23-7 below.

1. The developer shall indicate a desire to provide a community pier for the proposed subdivision and include a proposed site for the community pier on the preliminary plan.
2. Community piers are expressly for the use of the lot owners or their tenants within the subdivision having the community pier and shall not be used or rented by any person other than a bona-fide buildable lot owner or tenant of said subdivision. Allocation of these allowable slips shall be at the discretion of the developer or the subdivision lot owners association responsible for the community pier. A covenant shall be placed on the plat prohibiting piers on individual lots.
3. No more than one community pier shall be permitted per subdivision. Individual sections or phases shall not be counted as separate subdivisions.
4. Community piers shall be at least 200 feet (in a straight line distance, not shoreline) away from an adjacent subdivision's community pier.
5. A waterfront site shall be provided for the subdivision's community pier. The waterfront site may be utilized towards satisfying the recreation and open space requirements of Article 25 of this Ordinance, upon recommendation by the Director of Parks & Recreation. However, in no case can the area used for parking be used to satisfy the recreation and open space requirements.
6. The waterfront site provided for the community pier shall be of sufficient size to provide for placement of the community pier, an access road or drive, a turn-around area, and at least one parking space for every three slips provided. The parking area, the access road or drive, and the turn-around area shall be stabilized.
7. At the time of subdivision approval, the Department of Planning & Zoning, with the recommendation of the Department of Public Works, will determine the type of stabilization to be used on the parking area, turn-around, and access drive or road. In the subdivision, the proximity of the pier to the homes may eliminate the need for the parking spaces if walkways allow adequate access.

8. A parking area is required where a boat ramp is provided. A minimum of 4 parking spaces shall be provided, each space shall measure at least 12 feet by 30 feet.

9. New or expanded community marinas, piers, and other non-commercial boat docking and storage facilities may be permitted in the Critical Area Buffer, subject to MC District rezoning standards (Section 30-13.F of this Ordinance), and Section 23-6.B.9 below provided that:

a. The owner or operator of the pier or facility does not offer food, fuel, or other goods and services for sale in the buffer or on the community pier; and as applicable, complies with the requirements of COMAR 26.24.04.03.

b. The pier or facility is community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision.

c. The pier or facility is associated with residential development approved by the County as consistent with all State and County requirements.

d. Disturbance to the Critical Area Buffer shall be the minimum necessary to provide a single point of access to the pier or facility.

e. If community piers, slips, or moorings are provided as part of a new residential project, private piers are prohibited in that residential project.

10. The number of slips permitted at a pier or facility is the lesser of a, b, or c below:

a. One slip for each 50 feet of shoreline in a residential project in the Intensely Developed and Limited Development Areas and one slip for each 300 feet of shoreline in a residential project in the Resource Conservation Area.

b. A density of slips to platted lots or dwellings within a residential project in the Critical Area according to the Table 23-1: Number of Permitted Slips:

Table 23-1: Number of Permitted Slips	
Platted Lots or Dwellings in the Critical Area	Slips and Moorings
Up to 15	One for each lot
23-40	15 slips or 75% of platted lots or dwellings, whichever is greater
41-100	30 slips or 50% of platted lots or dwellings, whichever is greater
101-300	50 slips or 25% of platted lots or dwellings, whichever is greater
Over 300	75 slips or 15%, of platted lots or dwellings whichever is greater

c. A maximum of two slips may be provided for each waterfront lot. The maximum number of slips permitted cannot exceed the number of private slips which would otherwise be allowed if the community pier provision were not used, based on the minimum lot width provisions of the district.

C. Commercial Piers, Marinas, and Other Water-Dependent Maritime Facilities and Activities

1. All commercial marine facilities shall have plans and details of proposed construction certified by a licensed engineer for County Engineer approval.

2. All marine facilities shall conform to the requirements of NFPA-303, Fire Protection Standard for Marinas and Boatyards of the Maryland Fire Prevention Code. Fire protection devices shall have the approval of the Fire Marshal having jurisdiction.

3. All commercial marine facilities shall provide sanitary facilities in accordance with the applicable federal, state, and local requirements.

4. New or expanded commercial marinas and related commercial maritime facilities or activities may be permitted in the Critical Area Buffer within Intensely Developed Areas and Limited Development Areas subject to the requirements of Section 23-7.
5. The redevelopment or expansion of a commercial marina or other related commercial maritime facility or activity may be permitted in the Critical Area Buffer of a Resource Conservation Area subject to the requirements of Section 23-7 below and Article 18 of this Ordinance.
6. New marinas or related maritime facilities or activities are not permitted in the Critical Area Buffer within Resource Conservation Areas, except as provided in Section 23-7.
7. New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.
8. New or expanded marinas and related facilities or activities shall meet the MC District rezoning standards (Section 30-13.F of this Ordinance).

23-7 WATER-DEPENDENT FACILITIES

A. Regulation of Water-Dependent Facilities and Activities

1. In accordance with Natural Resources Article, §8-1808.3, Annotated Code of Maryland, if applicable, and COMAR 27.01.09, development in the Critical Area Buffer shall be limited to the minimum lot coverage necessary to accommodate each water-dependent facility or activity.
2. Except as otherwise provided in this section, a water-dependent facility or activity may be permitted in the Critical Area Buffer of an Intensely Developed and Limited Development Areas provided that:
 - a. The facility or activity is water-dependent.
 - b. The facility or activity meets a recognized private right or public need.
 - c. Adverse impacts on water quality, and fish, wildlife, and plant habitat are first avoided or, if unavoidable, minimized.
 - d. Non-water-dependent facilities associated with the water-dependent facility or activity shall be located outside the Critical Area Buffer. Examples of non-water dependent facilities include but are not limited to parking, non-fueling related storage, and retail facilities.
3. Except as otherwise provided in this regulation, a water dependent facility or activity may not be permitted in those portions of the Critical Area Buffer which occur in Resource Conservation Areas.
4. The placement of dredged material in the buffer or a portion of the Critical Area that has been designated as a habitat protection area may not be permitted, except as necessary for:
 - a. A beneficial use approved by the Board of Public Works or the Maryland Department of the Environment, such as:
 - i. Backfill for a shoreline stabilization measure;
 - ii. Use in a nonstructural shoreline stabilization measure, including a living shoreline;
 - iii. Beach nourishment;
 - iv. Restoration of an island;
 - v. The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat; or
 - vi. Any other approved beneficial use.
 - b. Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988.

5. The Department of Planning & Zoning shall review application to ensure:
 - a. The avoidance, or, in the alternative, the minimization of impacts to fish, wildlife, or plant habitat; and
 - b. Mitigation at a ratio of 2:1 based on the square footage of the area of the canopy coverage removed.

B. Industrial and Port-Related Water-Dependent Facilities and Activities

New, expanded, or redeveloped industrial or port-related facilities or activities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas designated as Special Buffer Management Areas by the County and approved by the Critical Area Commission. Such facilities or activities are subject to the requirements set forth in COMAR 27.01.03.05, Section 23-7.A above, and MC District rezoning standards (Section 30-13.F of this Ordinance).

C. Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities

1. The provisions of this section are in addition to the provisions of Section 23-7.A above.
2. The Department of Planning & Zoning may approve the location of a public beach or other public water-oriented recreation or education area or activity in the Critical Area Buffer of an Intensely Developed Area, Limited Development Area, or Resource Conservation Area if:
 - a. Adequate sanitary facilities exist.
 - b. Sanitary and service facilities are, to the extent possible, located outside the Critical Area Buffer.
 - c. A permeable surface is used to the extent practicable, if no degradation of groundwater would likely result.
 - d. Areas for passive recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Critical Area Buffer within Resource Conservation Areas, if service facilities for these uses are located outside of the Critical Area Buffer.
 - e. Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.
3. The Department of Planning & Zoning may approve a public passive outdoor recreation or education area, such as for hiking, hunting, trapping, or nature study, in the Critical Area Buffer of a Limited Development Area or a Resource Conservation Area if sanitary and service facilities to support these uses are located outside the buffer.

D. Research Areas or Activities

Water-dependent research facilities or activities operated by state, federal, or local agencies, or educational institutions, may be permitted in the Critical Area Buffer, if non-water-dependent structures or facilities associated with these projects are, to the extent possible, located outside of the Critical Area Buffer and comply with the requirements of Section 23-7.A above.

E. Aquaculture and Fishery Facilities and Activities; Water Quality Restoration

The Department of Planning & Zoning may approve the location of the following facilities and activities in the Critical Area Buffer subject to the requirements of Section 23-7.A above:

1. A shore-based facility or activity necessary for a commercial aquaculture operation.
2. A commercial water-dependent fishery facility or activity, including structure for crab shedding, a fish off-loading dock, and shellfish culture operation.
3. A facility or activity that supports water quality restoration in the Chesapeake Bay or their watersheds.

23-8 SHORE EROSION PROTECTION WORKS

- A.** Nonstructural shoreline stabilization measures, including beach nourishment, marsh creation, and other measures that encourage the preservation of the natural environment, shall be used to control erosion, except in the following areas:
1. Areas permitted for structural control measures by MDE based on the areas identified by Maryland Department of the Environment (MDE) in coordination with the Maryland Geological Survey and shown on maps approved by MDE as appropriate for structural Shoreline stabilization measures.
 2. Areas permitted for structural control measures where the applicant has obtained a waiver from MDE by demonstrating that nonstructural shoreline stabilization measures are not feasible for the site.
- B.** If MDE approves a structural erosion control measure, the following is the order of preference. The County will consider the method approved by MDE in the State Permit.
1. Shoreline revetments
 2. Breakwaters
 3. Groins or jetties
 4. Other methods approved by MDE
- C.** Development criteria is as follows:
1. Prior to submittal of the shore erosion control plans to MDE, the applicant shall submit the plans, MDE required studies, photographs, and findings relative to shore erosion control applications, and associated Buffer Management Plan or Habitat Protection Plan to the County for review and preliminary approval of the Buffer Management or Habitat Protection Plan.
 2. No shore erosion control structures are allowed in Level 1 Cliff Areas and are only allowed in Level 2 Cliff Areas for existing structures.
 3. Submit a joint federal-state permit application to MDE with County approved Buffer Management or Habitat Protection Plan.
 4. Apply to the County for grading and building permits, and include the following information:
 - a. Approved state/federal permit with associated site drawings, and state required studies, photographs, and finding relative to the erosion control project.
 - b. Comments from the Critical Area Commission, DNR Natural Heritage Division, and U.S. Fish and Wildlife Service.
 - c. The final Buffer Management or Habitat Protection Plan.
 - d. A list of all changes made to the original plans submitted to the Department of Planning & Zoning for initial review of the Buffer Management or Habitat Protection Plan.
 5. Minimizes grading and other disturbance on the adjacent riparian area.
 6. Minimizes impacts to adjoining properties.
 7. Minimizes the impact on the littoral movement of sand.
 8. Bonding or payment of fees in lieu based on required mitigation shall be accomplished prior to issuing of any County permits.
- D.** Structural erosion measures are not permitted in areas where significant erosion has not occurred.
- E.** If significant alteration in the characteristics of a shoreline occurs, the measure that best fits the change shall be used for sites in that area.