

**FREDERICK COUNTY GOVERNMENT
DIVISION OF COMMUNITY DEVELOPMENT**

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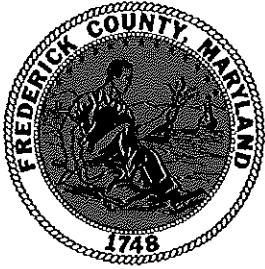
Commissioners

Blaine R. Young
President

C. Paul Smith
Vice President

Billy Shreve
David P. Gray
Kirby Delauter

Lori L. Depies, CPA
County Manager



EXECUTIVE SUMMARY

STAFF REPORT TOPIC: Waterbody Buffer Draft Zoning Ordinance Text Amendment

ISSUE: Staff has created the Waterbody Buffer Draft Zoning Ordinance Text Amendment to address concerns with existing regulations as generally outlined in the Business Friendly Improvement Area (BFIA) list. Staff requests direction whether further research, initiation of a text amendment, or no action should be taken on the options contained in the Waterbody Buffer Draft Zoning Ordinance Text Amendment?

BACKGROUND: Several initiatives have been identified over the last several years to provide an avenue for citizen input regarding development regulations and processes. It should be noted that many amendments were identified through the BFIA process and are not specific action recommendations from Staff. Background information on previous amendments can be found on the Zoning Ordinance Rewrite webpage which includes links to text amendment public process documents (including public hearing and adopted ordinances). These documents can be accessed through the following link: <http://www.frederickcountymd.gov/index.aspx?nid=3342>.

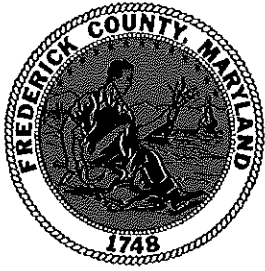
The current proposed Waterbody Buffer Draft Zoning Ordinance Text Amendment has been crafted to address the concerns as outlined in the BFIA list regarding existing waterbody buffer regulations.

The existing waterbody buffer regulations were crafted with the intent of implementing environmental and cultural resource policies and recommendations contained in various watershed studies and the Countywide Comprehensive Plan. These policies recognize the significance of natural resources within the County and attempt to minimize damage to County streams and rivers caused by runoff from nearby lands and to better protect properties from flooding events. As development occurs across the County and open spaces and natural areas are reduced, these existing buffers become crucial in minimizing damage to existing streams. It is with these factors in mind that Staff has reviewed the existing regulations and prepared two options for Board consideration to address concerns as identified in the BFIA. Staff has incorporated comments from the Land Use Council of the Frederick County Building Industry Association into the draft text amendments.

The first option maintains the existing provisions based on the public process, research and extensive review undertaken to adopt the existing regulations. The second option would amend the existing regulations to provide increased flexibility and reduced complexity in administering the regulations. The option to amend the regulations would simplify the implementation of the regulations by both Staff and the public while also retaining some level of environmental benefits to County streams and rivers and therefore County citizens.

RECOMMENDATION: Staff requests direction whether further research, initiation of a text amendment, or no action should be taken on the options contained in the Waterbody Buffer Draft Zoning Ordinance Text Amendment.

FUNDING INFORMATION: N/A



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TO: Board of County Commissioners
FROM: Eric Soter, Division Director; Tim Goodfellow, Principal Planner
DATE: August 23, 2013
SUBJECT: Waterbody Buffer Draft Zoning Ordinance Text Amendment

ISSUE

The Board of County Commissioners (BOCC) has received requests for review of specific sections of the zoning ordinance for possible revision. Staff has initiated a phased approach in updating the zoning ordinance in an attempt to address these concerns. As part of that process efforts have been undertaken to address items within the Board's Business Friendly Improvement Areas (BFIA) list. Staff has created the Waterbody Buffer Draft Zoning Ordinance Text Amendment to address concerns with existing regulations as generally outlined in the BFIA. Staff requests direction whether further research, initiation of a text amendment, or no action should be taken on the items contained in the Waterbody Buffer Draft Zoning Ordinance Text Amendment?

BACKGROUND

Several initiatives have been identified over the last several years to provide an avenue for citizen input regarding development regulations and processes. As part of this effort, Staff began a phased update to the zoning ordinance. The proposed text amendment has been crafted to address concerns, as outlined in the BFIA list regarding existing stream buffer regulations.

It should be noted that the potential amendments to the zoning ordinance have been compiled through public input, BOCC and Staff discussion over the last several months. Many amendments were identified through the BFIA process and are not specific action recommendations from Staff.

RECOMMENDATION

Staff requests direction whether further research, initiation of a text amendment, or no action should be taken on the options contained in the Waterbody Buffer Draft Zoning Ordinance Text Amendment?

ATTACHMENTS

Business Friendly Improvement Areas go to: www.frederickcountymd.gov/planning
Exhibit 1 – Waterbody Buffer Draft Zoning Ordinance Text Amendment

OVERVIEW

The overview section below provides a text amendment issue summary including background information and potential amendments to the zoning ordinance as provided in Exhibit 1 – Waterbody Buffer Draft Zoning Ordinance Text Amendment.

New waterbody buffer standards were adopted into the Zoning Ordinance in 2008 in Article IX Environmental Regulations, Division 4. Waterbody Buffer Requirements, Section 1-19-9.400 Waterbody Buffer Requirements. These existing waterbody buffer requirements apply to an application for subdivision or resubdivision of a parcel, lot, or tract of land submitted on or after August 15, 2008. To provide consistency, those applications for subdivision or resubdivision filed but not formally approved at the time of adoption, are also subject to the regulations.

However, it should be noted that development on existing parcels and lots of record as of August 15, 2008 are exempt from the waterbody buffer requirements in this section of the zoning ordinance. The ordinance also specifically states that the waterbody buffer requirements in section 1-19-9.400 shall not apply to existing structures. In addition, the requirements do not apply to addition plats, correction plats, outlot plats, revisions to previously approved subdivision plats that do not change the number of lots, extensions or reapprovals of previously approved subdivision plats that have not expired, and submission of final plats for recordation provided that the final plat is consistent with the approved preliminary subdivision plat. It was the intent that the waterbody buffer regulations would apply to new development through subdivision and resubdivision moving forward from the time of adoption.

It should also be noted that since being adopted in 2008, there have been no subdivision projects where the waterbody buffer requirements resulted in a reduction of lot yield, or where any significant redesign was required to accommodate the stream setback.

The process to adopt the waterbody buffer requirements in section 1-19-9.400 resulted from an approximately year long process that included many public meetings, public hearings, and several adjustments to the text based on review and input from the Board of County Commissioners and the public. The requirements were crafted and adopted with the intent of implementing environmental and cultural resource policies contained in the Countywide Comprehensive Plan. These policies recognize the benefit of, and intend to provide protection to, sensitive natural resource areas within the County.

Specifically, buffers act to protect a waterbody by filtering damaging pollutants, such as sediment, nitrogen, and phosphorous, that runoff from nearby lands. As development occurs across the County and open spaces and natural areas are reduced, these existing buffers become crucial in minimizing damage to existing streams.

Maintaining undisturbed landscape conditions adjacent to sensitive waterways enhances property values, promotes better physical design and flood protection, and offers water quality benefits. Riparian, or stream-side, areas are important components of the landscape because they are transitional areas between the terrestrial (uplands) and the aquatic environment and contain unique soil types and higher plant and animal species diversity. Surface runoff, shallow groundwater flows, and subsurface flows interact and pass through riparian areas and influence the quality and quantity of water in streams, rivers and lakes.

It is with these factors in mind that Staff has reviewed the existing regulations and prepared two options for Board consideration to address concerns as identified in the BFIA. Comments from the Land Use Council of the Frederick County Building Industry Association were incorporated into the draft amendments.

The first option maintains the existing provisions based on the public process undertaken to adopt the existing regulations. The other option would amend the existing regulations to provide increased flexibility and reduce complexity. The option to amend the existing text would simplify the regulations for implementation by both Staff and the public, while retaining a certain level of environmental benefits to County streams and rivers and therefore County citizens.

Option 1 – Maintain Existing

Based on the extensive public process undertaken to consider, draft, and then ultimately adopt the existing waterbody buffer requirements, it is certainly an option for the BOCC to maintain the existing provisions. Many subdivision applications have been reviewed and approved based on the existing provisions with no reduction of lot yield, or redesign of the subdivision required to accommodate the stream setback.

Option 2 – Stream Buffer Modification

Option 2 would amend the existing regulations to provide increased flexibility and reduced complexity.

The current stream protection ordinance contains 3 tiers of setback distances based on the degree and extent of gradient or slope within a defined stream valley. The existing setback distances are generally a minimum of 100' (slopes less than 15%), a minimum of 150' for areas of moderate slopes (15% to <25%), and a minimum of 175' for areas of steep slopes (25% or greater). This variable-width stream buffer is site specific, examining landscape qualities and characteristics, and tailoring the stream protection to each unique development area.

The existing regulations were created to include a variable width component depending on how steep the ground is within that area of study adjacent to the stream. A variable width considers the fact that a buffer area should reflect the varied components of the landscape within the stream or river corridor in that specific area. Each buffer area is different and should consider issues such as steep slopes which should remain intact to prevent soil erosion which can deliver sediment to the stream. Excess sediment in a stream smothers habitat for fish and aquatic insects, disrupts flow regimes and leads to additional stream bank erosion.

Option 2 retains the overall structure of the ordinance and continues to account for site specific characteristics, but reduces the overall width of the stream valley study area, and also reduces the required setback for moderate and steep slopes. This proposed modification also adds an allowance for the placement of recreational amenities inside the buffer.

In this option the minimum required setback for moderate slopes has been reduced from 150' to 125', the minimum required setback for steep slopes has been reduced from 175' to 150'. In addition the required 175' cross-section on each side of the waterbody (that is used as the study area to determine the gradient of the slope) has been reduced to 150'.

These modifications will reduce the overall area of consideration for calculation purposes and will also reduce the resulting required minimum setback for moderate and steep slopes. However, the modifications will retain the structure of the existing regulations which reflect a calculation that is based on site specific characteristics which respect features and topographical changes on each property.

As reflected in Exhibit 1 – Waterbody Buffer Draft Zoning Ordinance Text Amendment, the following amendments would be needed to accomplish the changes as proposed in Option 2:

ARTICLE IX: ENVIRONMENTAL REGULATIONS
DIVISION 4. WATERBODY BUFFER REQUIREMENTS
§ 1-19-9.400. WATERBODY BUFFER REQUIREMENTS:

This existing section of the zoning ordinance would be amended to accomplish the changes as discussed above.

- Subsections (C)(1) and (C)(3) reflect the reduction of the overall stream evaluation area from 175' to 150' and reduces the waterbody buffer for moderate slopes from 150' to 125'
- Subsection (C)(4) is proposed for deletion which would remove a specific requirement for the setback to extend to the crest of a moderate slope.
- Subsection (C)(5) reflects the reduced overall study area and is proposed for amendment to reduce the waterbody buffer requirement for steep slopes from 175' to 150'.
- Subsection (C)(6) is proposed for deletion which would remove a specific requirement for an increased setback within the Linganore Watershed Protection Area.
- Subsection (C)(7) is proposed for amendment to remove a specific requirement for the setback to extend to the crest of the steep slope.

Text has also been added to this section to permit the placement of minor recreational amenities within the waterbody buffer. The addition of this text adds flexibility and increases the options for placement of minor recreational amenities at the time of development. This text was added to Subsection (D).

As reflected in Exhibit 1, the amendments would apply to subdivision and resubdivisions receiving approval after effective date of the ordinance. Unless resubdivision occurs, existing approvals and waterbody buffers will be maintained for all subdivisions that were subject to the August 2008 ordinance. Many subdivision plats have been recorded subject to the existing provisions and therefore would remain subject to the waterbody buffer requirements that were established based on the circumstances and regulations in place at that time. In addition, a retroactive application of less restrictive standards, if approved by the BOCC, would require all subdivision plats to be re-recorded to implement the less restrictive requirements.

STAFF RECOMMENDATION

Staff requests that the BOCC provide direction whether further research, initiation of a text amendment, or no action should be taken on the options contained in the Waterbody Buffer Draft Zoning Ordinance Text Amendment?