

Bill No. 15-12

Concerning: Modifying Permitted Uses in Waterbody Buffers

Revised: \_\_\_\_\_ Draft No. \_\_\_\_\_

Introduced: October 6, 2015

Expires: \_\_\_\_\_

Enacted: \_\_\_\_\_

Executive: \_\_\_\_\_

Effective: \_\_\_\_\_

Frederick County Code, Chapter 1-19, Section(s) \_\_\_\_\_

9-400(D)

## COUNTY COUNCIL FOR FREDERICK COUNTY, MARYLAND

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By: Council Members Jerry Donald (Primary Sponsor) and Jessica Fitzwater (Co-Sponsor)

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**AN ACT** to: Modify waterbody permitted uses by providing that: (1) impervious surfaces are not permitted therein; (2) open shelters and pole type structures are not permitted therein; and (3) bikeways and trails, utilities, public roads and driveway must meet certain requirements before being permitted therein.

By amending:

Frederick County Code, Chapter 1-19, Section(s) 9.400(D)

Other:

**Boldface**

*Heading or defined term.*

Underlining

*Added to existing law by original bill.*

[Single boldface brackets]

*Deleted from existing law by original bill.*

Double underlining

*Added by amendment.*

[[Double boldface brackets]]

*Deleted from existing law or the bill by amendment.*

\* \* \*

*Existing law unaffected by bill.*

Bill No. 15-12

The County Council of Frederick County, Maryland ("Council"), has determined that certain uses heretofore allowed within the waterbody buffer area be inconsistent with the purposes of the waterbody buffer and should not be permitted therein.

The Council has further determined that certain other uses heretofore allowed within the waterbody buffer should be allowed only under certain conditions and with certain conditions.

The Council believes that amending Frederick County Code Section 1-19-9.400 (D) to accomplish these goals is necessary and appropriate and in the best interests of the citizens of Frederick County.

NOW, THEREFORE, BE IT ENACTED BY THE COUNTY COUNCIL OF FREDERICK COUNTY, MARYLAND, that the Frederick County Code be, and it is hereby, amended as shown on the attached Exhibit 1.

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Harold F. (Bud) Otis, President  
County Council of Frederick County, Maryland

## **CHAPTER 1-19: ZONING**

### **ARTICLE IX: ENVIRONMENTAL REGULATIONS**

#### **§ 1-19-9.400. WATERBODY BUFFER REQUIREMENTS.**

A parcel, lot, or tract of land submitted to Frederick County for subdivision or resubdivision review and approval shall be subject to the following waterbody buffer requirements. The requirements in this section shall not apply to existing structures.

(A) All subdivision plans shall have waterbody buffers clearly shown and certified by a professional engineer, registered professional land surveyor, or registered property line surveyor. To meet the requirements of this section, applicants shall use best available data.

(B) All waterbody buffer areas shall be maintained in a natural vegetative state unless otherwise utilized for reforestation or afforestation to satisfy forest resource ordinance obligations or for environmental enhancement projects administered or approved by federal, state, or local government agencies.

(C) Waterbody buffer widths shall be determined in accordance with the requirements described below and shall apply to each side of a waterbody. As used herein, the term "moderate slope" means a slope with a gradient of 15% to less than 25%; and the term "steep slope" means a slope with a gradient of 25% or greater.

(1) The waterbody buffer width shall be derived by calculating the gradient of the slope within a 150-foot cross-section on each side of a waterbody, drawn perpendicular to the direction of water flow. Cross-sectional measurements shall be taken every 50 feet along the bank(s) of the waterbody.

(2) The minimum waterbody buffer shall be 100 feet.

(3) If 60% or more of the 150-foot cross-section includes moderate (15% to <25%) slopes, then the waterbody buffer shall be increased to 125 feet for that side of the waterbody.

(4) If 60% or more of the 150-foot cross-section includes steep (25% or greater) slopes, then the waterbody buffer shall be increased to 150 feet, for that side of the waterbody.

(5) Waterbody buffer widths may be greater than those provided herein if floodplain and wetlands extend beyond the waterbody buffer area.

(D) No buildings, structures, or impervious surfaces, and no activities requiring clearing or grading over 5,000 square feet will be permitted in waterbody buffers, except for stormwater management facilities, structures and appurtenant conveyances; environmental

restoration or mitigation projects; [open shelters; pole-type structures (open on all sides and without walls); fences and recreational uses (including bikeways and trails), and recreational equipment which are not contained in a building. U]utilities[.]; public and private roads[.]; [and] driveways; bikeways, and trails. Utilities, public and private roads, and driveways [are permitted in the waterbody buffer, but] must meet the requirements of subsection (F) below or qualify for the exemption in subsection (G) below[.] in order to be located within the waterbody buffer.

(E) Sewage disposal systems, including but not limited to septic tanks and their associated piping, drainfields, septic reserve areas or sand mound systems, receiving approval after August 15, 2008 shall be located outside the waterbody buffer area. If Frederick County Health Department-administered percolation tests outside the waterbody buffer fail and the applicant can demonstrate that an alternative location outside the waterbody buffer is not feasible, the Frederick County Health Department may approve a sewage disposal system within the waterbody buffer area provided all Code of Maryland regulations are met.

(F) (1) Public and private roads, driveways, and utilities may be permitted in the waterbody buffer only if the applicant has clearly demonstrated that no feasible alternative exists, and that every reasonable effort has been made to locate the public and private roads, driveways, and utilities outside of the buffer area.

(2) In order to locate public and private roads, driveways, or utilities in the waterbody buffer, the applicant must submit a justification statement to the appropriate county agency or division, including: (a) an evaluation of at least one alternative location for the requested public and private roads, driveways, and utilities; and (b) the reasons why the alternative location or locations are not feasible.

(3) Public and private roads, driveways, and utilities that are allowed in the buffer area must be located to create the least disturbance to existing vegetation, grade, and wetlands.

(4) Where feasible, utility easements shall be set back a minimum of 50 feet from all waterbodies or outside wetlands and their buffers, whichever is greater.

(5) Utility, bikeway or trail easements or rights-of-way within the waterbody buffer shall be co-located whenever possible.

(G) Upgrades, maintenance or repair of existing public and private roads, driveways, utilities, bikeways and trails shall be exempt from the requirements of subsection (F) above.

(H) Sediment and erosion control structures or facilities may be allowed as a temporary use in the waterbody buffers. At a minimum, grading must be at least 25 feet from the bank of the waterbody and from any wetlands.

(I) Deposition or stockpiling of any material, including excavated rock, topsoil, stumps, shrubs, or any building or construction material, within the designated waterbody buffer is prohibited. However, stockpiling which is necessary to restore an area within a utility easement or temporary sediment control area may be approved by the appropriate county agency or division on a temporary basis.