

## LOCAL GOVERNMENT ASSISTANCE GUIDE

### Lot Coverage

Approved September 3, 2008

#### **Background**

In the spring of 2008, House Bill 1253 amended the provisions of § 8-1808 of the Natural Resources Article of the Annotated Code of Maryland pertaining to limiting the footprint of development activity of properties designated as Limited Development Area (LDA) and Resource Conservation Area (RCA) within the Critical Area. The amendment involved primarily a change in terminology from “impervious surface” to “lot coverage.” The effect of this change was to include all developed areas of a property that are not vegetated or in a naturally permeable state as part of lot coverage limitations set forth in the law.

The purpose of this amendment was to focus on limiting the “footprint of development activity” by providing a clear and inclusive definition that could be applied consistently and uniformly throughout the Critical Area.

This document summarizes current law regarding limitations on lot coverage within LDAs and RCAs in the Critical Area. Pending the development and approval of regulations, it is intended as interim guidance to local governments and applicants for development activity regarding the implementation of the lot coverage provisions.

#### **Definition**

The Critical Area Law now includes a definition of lot coverage that reads as follows:

“Lot Coverage” means the percentage of a total lot or parcel that is:

1. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
2. Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or any manmade material.

Lot coverage does not include:

1. A fence or wall that is less than one foot in width that has not been constructed with a footer;
2. A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier (local governments shall ensure that impacts to the Buffer associated with access are minimized);
3. A wood mulch pathway; or
4. A deck with gaps to allow water to pass freely.

NOTE: (In response to numerous inquiries from local jurisdictions, the following is meant for clarification purposes:

Impermeable decks - Lot coverage includes the ground area covered or occupied by an impermeable deck, even when that deck is not directly touching the ground surface.

Stairways - Lot coverage does not include walkways or stairways in the Buffer that provide direct access to a community or private pier. All other stairs or walkways count.

Stormwater management and erosion control measures - Lot coverage does not include these practices when they are approved only for the specific purpose of performing stormwater management or erosion control.)

### **Lot Coverage Limits**

In general, the limits of development remain the same except for a change that will facilitate clustering where small lots may be created and developed in order to promote the conservation of larger areas of the project site. For new subdivisions, lot coverage within the subdivision as a whole is still limited to 15 percent; however, an individual lot less than one acre may exceed the 15 percent limit. The maximum lot coverage limit for these lots is no longer capped at 25 percent as long as the subdivision as a whole, including its internal roads, complies with the 15 percent limit. The following standards summarize the lot coverage requirements:

1. In general, lot coverage is limited to 15 percent of a parcel or lot.
2. If a parcel or lot existed on or before December 1, 1985 in the Chesapeake Bay Critical Area, or on or before June 1, 2002 in the Coastal Bays Critical Area, and is one-half acre or less in size, then lot coverage is limited to 25 percent of the parcel or lot.
3. Unless otherwise restricted by a local government, a lot in a subdivision approved after December 1, 1985 in the Chesapeake Bay Critical Area or after June 1, 2002 in the Coastal Bays Critical Area may exceed the 15 percent lot coverage limit; however, lot coverage for the entire subdivision cannot exceed 15 percent. Any changes to a previously platted subdivision to adjust lot coverage limits, allowing individual lots to exceed the former 25 percent cap, will be considered a project that needs to be submitted to the Commission for

comment. The submittal must include appropriate documentation indicating that the entire subdivision is currently, and can be maintained, in full compliance with the new lot coverage provisions. The new definition of lot coverage would apply to the entire subdivision.

4. Lot coverage limits do not apply to a trailer park that was in residential use on or before December 1, 1985 in the Chesapeake Bay Critical Area or on or before June 1, 2002 in the Coastal Bays Critical Area.
5. For grandfathered lots that pre-date the Critical Area Program, a local government may allow a property owner to exceed the lot coverage limits outlined above and comply with the lot coverage limits set forth in the table below if the following requirements are met:
  - (a) Lot coverage associated with new development activities has been minimized;
  - (b) Water quality impacts associated with runoff from development activities that contribute to lot coverage have been minimized; and
  - (c) The property owner performs on-site mitigation or pays a fee-in-lieu of mitigation as required by the local jurisdiction to offset potential adverse water quality impacts.

<b>LOT/PARCEL SIZE</b>	<b>LOT COVERAGE</b>
0 – 8,000 SF	25% of Parcel + 500 SF
8,000 – 21,780 SF	31.25% of Parcel
21,781 – 36,300 SF	5,445 SF
36,301 – 43,560 SF	15 % of Parcel
Over 43, 560 SF	15 % of Parcel

**Lot Coverage Within the 100-Foot Buffer**

Amendments to the law also clarify that there is no allowable, by right, percentage of lot coverage within the 100-Foot Buffer. Exceptions include projects defined as water-dependent facilities, projects in a Buffer Exemption Area under an approved local program, variances granted in accordance with the variance procedures in the law, and projects in waterfront revitalization areas or waterfront industrial areas developed under an approved local program. (A walkway or stairway through the Buffer that provides direct access to a pier is not included in lot coverage calculations.)

**Grandfathering Provisions**

In order to address the many existing developed lots that may be made non-conforming as a result of the new legislation and to accommodate development projects that are under design or in various stages of construction, the law includes grandfathering provisions. Lots or parcels that are legally developed (pre-dated a local Critical Area program or were properly permitted in accordance with the local program and impervious surface policies in effect at the time of construction) are considered legally nonconforming, even if the lot coverage on the property exceeds the specified limits. This means that all existing structures, accessory structures, and developed areas may remain in place.

For development activities associated with projects under design or in various stages of construction, there are two categories of projects where there is flexibility with regard to the new

lot coverage provisions. Projects in the categories described below may proceed in accordance with the impervious surface limits and accepted review practices and standards used by the local government prior to the new legislation.

1. The new lot coverage provisions do not apply to development projects for which a building permit was issued before July 1, 2008 as long as construction is initiated and an inspection is performed by July 1, 2009.
2. Projects that are under design may be exempted from the strict application of the lot coverage provisions if:
  - a) An application for a building permit or grading permit is filed by October 1, 2008, and the permit is issued by January 1, 2010; or
  - b) An initial application for development is filed by October 1, 2008, and the development plan is approved by July 1, 2010

In addition, projects under design must meet the following requirements:

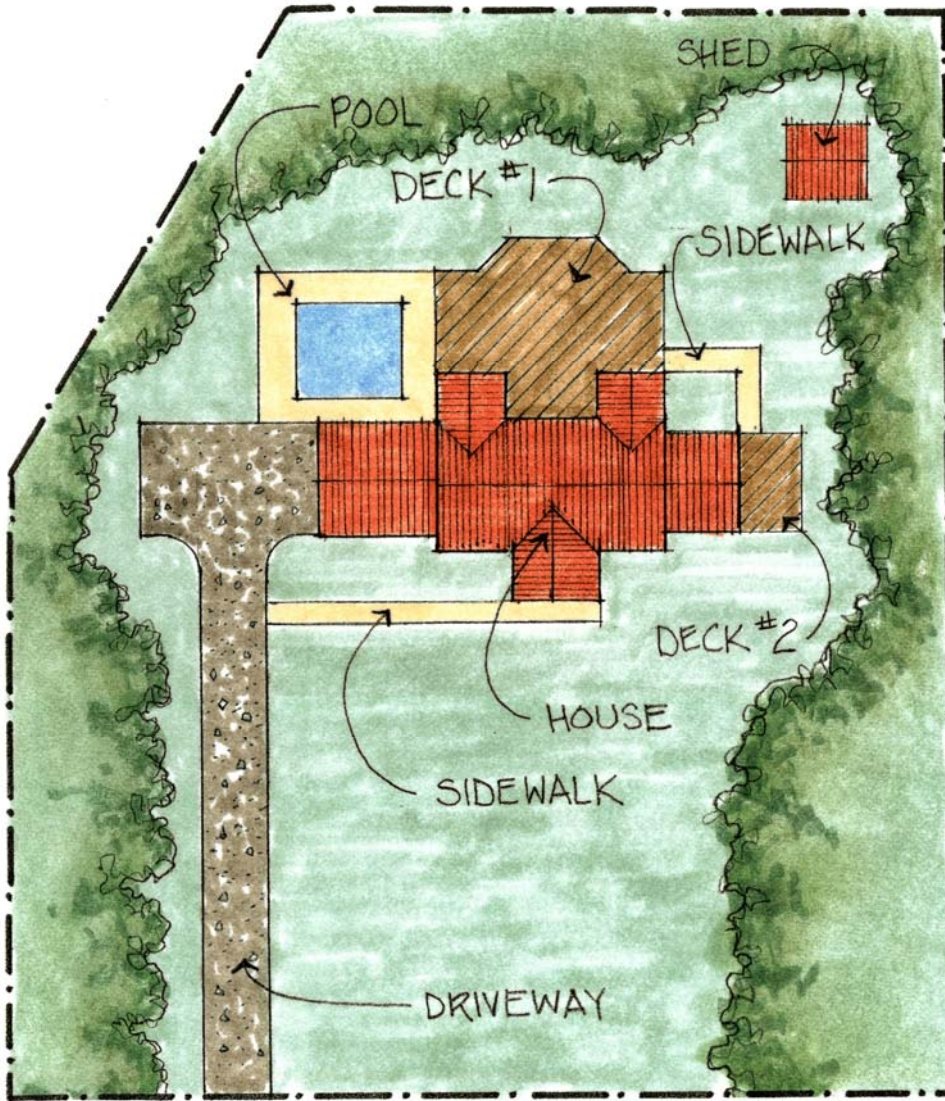
- a) There must be a detailed lot coverage plan, drawn to scale, showing the amounts of impervious surface area, partially pervious surface area, and developed pervious surface area for the project.
  - b) The lot coverage plan must be approved by the local government and maintained in the local jurisdiction's files.
  - c) The development plan must remain valid in accordance with local procedures, except that a moratorium or an adequate public facilities ordinance cannot terminate the validity of an approved development plan for purposes of lot coverage.
3. Development plans and lot coverage plans may be modified in accordance with formally adopted local policies or procedures; however, the amounts of impervious surface, partially pervious, and developed pervious areas cannot be increased. Reductions in these areas are permitted. (Developed pervious areas are those areas that would be included in lot coverage calculations under the 2008 legislation, but that previously were considered pervious by the local government in accordance with its written standards or approved practices prior to July 1, 2008.)
4. Projects, including new subdivisions, for which an initial application for development is filed by October 1, 2008 and approval is obtained by July 1, 2010, but for which there is no approved lot coverage plan, will be required to comply with all of the lot coverage provisions in House Bill 1253.
5. In order to properly and consistently implement the provisions involving grandfathering and lot coverage plans under House Bill 1253 and to ensure that the Commission provides appropriate comments on these projects, local governments must provide the Commission with a copy of the jurisdiction's written standards or approved practices regarding the percentage of imperviousness associated with various materials (i.e. pavers, decking, etc.) that were in effect prior to July 1, 2008. Local jurisdictions must also provide a list of projects for which lot coverage plans are filed.

### **Implementation Recommendations for Nonconforming Lots**

As a result of the change in terminology from impervious surface to lot coverage and the definition of lot coverage, there are numerous lots or parcels that may be made “nonconforming” with regard to lot coverage. These are properties that are legally developed (pre-dated a local Critical Area program or were properly permitted in accordance with the local program and impervious surface policies in effect at the time of construction), but may now exceed the specified lot coverage limitations. This means that all existing structures, accessory structures, and developed pervious areas may remain in place; however, redevelopment activities must be carefully considered to ensure that they meet the intent of the lot coverage provisions.

### **Lot Coverage Plans**

- Local governments may develop their own standards for lot coverage plans for individual building permits, projects involving site plan approval, and projects involving subdivision approval.
- Lot coverage plans must be drawn to scale and clearly show and identify all proposed development activities.
- The plans should be labeled or include a table that indicates the square footage and percentage of imperviousness associated with all impervious surfaces, partially pervious surfaces, and developed pervious areas.
- If a local government has previously allowed a percentage of imperviousness to be associated with various materials (i.e. pavers, decking, etc.) these percentages must be included on the plan and must be consistent with the local government’s written standards or approved practices prior to July 1, 2008.
- The lot coverage plan should include a stamp indicating the local government’s approval and should be signed and dated by the lot coverage plan reviewer.



**LOT COVERAGE PLAN**  
SCALE: 1" = 40'-0"

**LOT COVERAGE TABLE**

Structure Type	Material	% Impervious	Square Footage	Impervious Area
HOUSE	TYPICAL	100	2520	2520
SHED	TYPICAL	100	252	252
DECK #1	WOOD W/ GAPS	50	2292	1146
DECK #2	WOOD W/ GAPS	50	280	140
POOL	CONCRETE	100	1140	1140
SIDEWALKS	PAVERS	60	412	247
DRIVEWAY	GRAVEL	0	2488	0
<b>TOTAL</b>	-----	-----	<b>9384</b>	<b>5445</b>

Impervious Area 5445 SF / Lot Size 39,900 SF = 13.6 %

Total 100% Impervious Area: 3912 SF  
 Total Partially Impervious ( 50 %) Area: 2572 SF  
 Total Partially Impervious ( 60 %) Area: 412 SF  
 Total Partially Impervious (        %) Area:       SF  
 Total Developed Pervious Area: 2488 SF

**NOTE:** The percentage of imperviousness associated with various materials (i.e. pavers, decking, etc.) included on the plan and the identification of "developed pervious areas" must be consistent with the local government's written standards or approved practices prior to July 1, 2008.