

# *Critical Area Commission*

## **STAFF REPORT**

May 1, 2024

<b>APPLICANT:</b>	Baltimore County
<b>PROPOSAL:</b>	Waterfront Marinas/Restaurants in MBA Text Amendment
<b>JURISDICTION:</b>	Baltimore County
<b>COMMISSION ACTION:</b>	Vote
<b>STAFF RECOMMENDATION:</b>	Approval
<b>STAFF:</b>	Susan Makhoulf
<b>APPLICABLE LAW/ REGULATIONS:</b>	Natural Resources Article 8-1809(p) COMAR 27.01.09.01-8

## **DISCUSSION**

On April 2, 2024, Baltimore County officially submitted a text amendment to the Critical Area Commission for review and approval. The County proposes to amend its Modified Buffer Area (MBA) Policy to provide additional options to waterfront marinas and waterfront restaurants in terms of meeting the mitigation and setback requirements in the County's current MBA provisions. The policy change was previously presented to the Program Subcommittee for discussion purposes. Chair Fisher determined this update to the policy could be considered as a Refinement to the County's Critical Area program. A copy of the draft text changes is attached to this staff report.

### **MBA Policy Update**

COMAR 27.01.09.01-8 allows local jurisdictions to designate areas of the Buffer as Modified Buffer Areas, where it can be determined that the existing pattern of development prevents the Buffer from fulfilling its functions. A local jurisdiction must require mitigation for a development activity within an MBA and may require other measures for achieving the habitat and water quality projection objectives of the Buffer. As noted in the attached March 15th memo, Baltimore County first adopted its MBA program in 1996 and expanded it to include commercial, industrial, institutional, and multi-family residential sites in 2015.

The proposed text amendment provides additional options for commercial marinas and waterfront restaurants to meet the mitigation requirements and setback requirements in the County's current MBA provisions. The policy only applies to development/redevelopment activities that disturb less than 5,000 square feet (sf) on waterfront marinas/restaurants located in

the MBA and could apply to both existing and new marinas and/or restaurants located in areas mapped as MBA. The following sections describe the options in greater detail.

Redevelopment in MBA with no conversion of use (requires a 25-foot setback):

The text amendment would allow two new options. First, an applicant could request a reduction of the 25-foot setback to continue the same use in exchange for an equal amount of setback expansion elsewhere onsite. The second option would allow a reduction of the 25-foot setback to continue the same use in exchange for the installation of a green roof with an equal amount of planted area.

Redevelopment in MBA with conversion of use (requires a 50-foot setback):

The text amendment would allow two new options. First, an applicant could request a reduction of the 50-foot setback to convert a use in exchange for an equal amount of setback expansion elsewhere onsite. The second option would allow a reduction of the 50-foot setback to convert a use in exchange for the installation of a green roof with an equal amount of planted area.

SWM Conversion

Per the attached table, *Baltimore County Marinas/Restaurants: SWM Conversion for Buffer Disturbance in Modified Buffer Area*, certain stormwater management best management practices (SWM BMPs) may be installed to meet the MBA mitigation requirements. All SWM BMPs will be reviewed and approved by the Baltimore County Department of Environmental Protection and Sustainability Stormwater Management Section, and engineered plans may be required.

**March 15<sup>th</sup> Program Subcommittee Discussion**

The text amendment was presented for discussion only at the March 15, 2024, Program Subcommittee meeting (a copy of the memo from this discussion is attached). County staff attended the meeting and responded to questions from the Chair and Commissioners regarding the text amendment. At the conclusion of this meeting, Chair Fisher made the following specific request:

1. Ensure that any SWM required to address MDE and County SWM regulations will be met separately and in addition to any SWM options installed to meet the MBA mitigation.

To address this concern, the County clarified in an email to Commission staff that the proposed text amendment only applies to development/redevelopment that disturbs less than 5,000 sf and, per MDE guidance, projects under 5,000 sf are exempt from SWM regulations. Therefore, there is no possibility of using these stormwater measures to meet another state agency's requirements.

**RECOMMENDATION**

Based on the discussion with the Program Subcommittee and subsequent follow-up from the County regarding the Commission Chair's request, Commission staff recommends concurrence

Waterfront Marinas/Restaurants in MBA Text Amendment, Baltimore County

April 26, 2024

Page 3 of 3

with the Chair's determination of refinement and approval of the proposed changes to the Baltimore County MBA policy.

## **WATERFRONT MARINAS AND RESTAURANTS MODIFIED BUFFER AREA REQUIREMENTS**

### **Mitigation/Offset Requirements for Waterfront Marinas and Waterfront Restaurants in Modified Buffer Areas**

In addition to the mitigation measures for development and redevelopment for commercial, industrial, institutional, recreational and multi-family residential, the following provisions may be used for development and redevelopment under 5000 square feet on waterfront restaurants and marinas in the Modified Buffer Areas.

- I. As an alternative to the Mitigation/Offset Requirements under #1 on page 13 for a bufferyard, the following options may also be used:

**For redevelopment with no conversion of uses (which requires a 25-foot setback)**

Reduction of the 25-foot setback in one on-site location for an equal amount of setback expansion beyond the 25-foot elsewhere onsite. Would allow up to 50% of the setback to be reduced to zero in exchange for an equal amount of the setback expansion elsewhere on site. A minimum depth of 25 foot must be planted in the setback expansion area.

OR

Allow for a green roof to provide an equal amount of planted area for the 25-foot wide bufferyard. Design and construction of the green roof shall be in accordance with MDE requirements, standard building code requirements, and manufacturer's specifications. A planting plan and maintenance agreement must be provided and approved. The owner shall provide the County with maintenance inspection reports every three years. When used for above, a green roof cannot also be counted towards any mitigation requirement in II below.

**For redevelopment with conversion of uses (which requires a 50-foot setback)**

Reduction of the 50-foot setback in one on-site location down to 25 feet for an equal amount of setback expansion beyond the 50-foot elsewhere onsite. Would allow up to 50% of the setback to be reduced to 25 feet in exchange for an equal amount of the 50-foot setback expansion

Baltimore County Modified Buffer Area Plan  
*Regulations Pertaining to Modified Buffer Areas  
In the Chesapeake Bay Critical Area*

elsewhere on site. A minimum depth of 25 foot must be planted in the setback expansion area.

OR

Allow for a green roof to provide an equal amount of planted area for the 50-foot wide bufferyard, with a minimum bufferyard width of 25 feet. Design and construction of the green roof shall be in accordance with MDE requirements, standard building code requirements, and manufacturer's specifications. A planting plan and maintenance agreement must be provided and approved. The owner shall provide the County with maintenance inspection reports every three years. When used for above, a green roof cannot also be counted towards any mitigation requirement in II below.

- II. As an alternative to the Mitigation/Offset Requirements under #2 on page 15 the following options may also be used:
  - A. Certain stormwater management measures can be used on site, and their pollutant reduction credits can be converted to area of buffer mitigation. See *Baltimore County Marinas/Restaurants: SWM Conversion for Buffer Disturbance in Modified Buffer Area* chart on next page. All stormwater management measures will be reviewed and approved by the EPS Stormwater Management Section, and engineered plans may be required.

**CRITICAL AREA COMMISSION  
CHESAPEAKE AND ATLANTIC COASTAL BAYS  
1804 West Street, Suite 100  
Annapolis, Maryland 21401**

**MEMORANDUM**

To: Critical Area Commission Program Subcommittee

From: Susan Makhoulf, Natural Resources Planner

Date: March 15, 2024

Subject: Waterfront Marinas/Restaurants in MBA Text Amendment, Baltimore County

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At the request of the County Executive, Baltimore County staff from the Department of Environmental Protection and Sustainability have developed a proposed text amendment to address redevelopment of existing waterfront marinas and restaurants that are mapped Modified Buffer Area (MBA). Critical Area Commission staff have provided feedback and guidance throughout this process. At this point, Baltimore County wishes to meet with the Program Subcommittee for preliminary review and comment before officially submitting the text amendment to the Critical Area Commission for review and approval.

There are approximately 70 marinas and waterfront restaurants in Baltimore County, almost all of which are in the Limited Development Area (LDA). In order to add amenities and enhance existing facilities, the marina owners have requested additional flexibility in the County's MBA provisions, specifically the setback requirement and mitigation options.

The draft text amendment, draft *Baltimore County Marinas/Restaurants: SWM Conversion for Buffer Disturbance in Modified Buffer Area* chart, the existing MBA Policy, and several example slides are attached to this memo.

**Modified Buffer Areas (MBAs)**

Per COMAR 27.01.09.01-8, Modified Buffer Areas are areas of the 100-foot Buffer that have been mapped by the County and approved by the Commission that, due to the nature of the area and existing development, prevents the Buffer from fulfilling its functions. If approved, local Critical Area Programs include specific criteria that allow for nonwater dependent development within portions of the Buffer without a variance. The purpose of MBAs is to recognize an existing pattern of development in the Buffer preventing its functioning, accommodate redevelopment, and implement measures to improve water quality and habitat. The original criteria allowing for MBAs were not very specific, therefore those requirements and measures vary greatly from jurisdiction to jurisdiction. Eventually, the Commission published two policy documents in 2002 that provided guidance for local jurisdictions' MBA programs. One policy document covered single family

residential properties and the other policy document was intended for commercial, industrial, institutional, recreational, and multi-family residential development in the MBA.

## **Background**

Baltimore County's MBA program was created in 1996 to address redevelopment on the typically narrow (50' wide), grandfathered, single-family, residential lots. In 2015, the County expanded the MBA program to include multi-family residential, commercial, industrial, and institutional areas that were experiencing redevelopment pressure. At that time, the County was reviewing several proposals to convert marina properties to multi-family residential.

The rules for commercial MBAs are as follows:

- Setback
  - 50-foot setback new commercial development
  - 25-foot setback for redevelopment
  - 50-foot setback for redevelopment that is a change in use
- Mitigation
  - All development and redevelopment projects must provide a forested or landscaped 25-foot bufferyard.
  - 2:1 mitigation is required for the footprint of development activity, or acceptable offsets (removal of impervious surface, "extra" stormwater management).

Since the 2015 update, the market for marina use has changed, and instead of converting to multi-family residential, the marina owners are now looking to add a variety of non-water dependent amenities (like waterfront restaurants or tiki bars) and enhance their existing facilities. The typical marina property predates the Critical Area program, is small in acreage<sup>1</sup>, and is often located within a residential neighborhood. Additionally, there are approximately 15-20 non-marina waterfront restaurants. Both property types are mostly impervious.

The proposed text amendment provides additional options to meet the mitigation requirements and setback requirements in the County's current MBA provisions. The text amendment only applies to development/redevelopment that disturbs less than 5,000 square feet (sf) on waterfront marinas/restaurants located in the MBA and could apply to both existing and new marinas and/or restaurants located in areas mapped as MBA. The following sections describe the options in greater detail.

## **MBA Setback Requirements**

Per the County's current MBA provisions, new commercial development requires a 50-foot setback and commercial redevelopment requires a 25-foot setback. Existing structures may remain, and new structures may be constructed on the footprint of an existing structure or over existing lot coverage. The proposed text amendment provides additional flexibility regarding the required setback width as described below.

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<sup>1</sup> The median marina size is 3 acres; 11 marinas are under 1 acre in size, 24 are under 3 acres, and 5 are over 10 acres.

Redevelopment in MBA with no conversion of use (requires a 25-foot setback):

The text amendment would allow two new options. First, an applicant could request a reduction of the 25-foot setback to continue the same use in exchange for an equal amount of setback expansion elsewhere onsite. Up to 50% of the setback could be reduced to zero feet in exchange for an equal amount of setback expansion elsewhere onsite. A minimum width of 25 feet must be planted in the setback expansion area.

The second option would allow a reduction of the 25-foot setback to continue the same use in exchange for the installation of a green roof with an equal amount of planted area. Design and construction of the green roof must be in accordance with Maryland Department of the Environment (MDE) stormwater requirements, standard building code requirements, and manufacturer's specifications. A planting plan and maintenance agreement must be provided and approved, and the property owner must provide the County with maintenance inspection reports every three years. When a green roof is installed in exchange for a reduction in the required 25-foot setback, the green roof cannot also be counted towards the 2:1 mitigation requirement as described below.

Redevelopment in MBA with conversion of use (requires a 50-foot setback):

The text amendment would allow two new options. First, an applicant could request a reduction of the 50-foot setback to convert a use in exchange for an equal amount of setback expansion elsewhere onsite. Up to 50% of the setback could be reduced to 25 feet in exchange for an equal amount of setback expansion elsewhere onsite. A minimum width of 25 feet must be planted in the setback expansion area.

The second option would allow a reduction of the 50-foot setback to convert a use in exchange for the installation of a green roof with an equal amount of planted area. Design and construction of the green roof must be in accordance with MDE requirements, standard building code requirements, and manufacturer's specifications. A planting plan and maintenance agreement must be provided and approved, and the property owner must provide the County with maintenance inspection reports every three years. When a green roof is installed in exchange for a reduction in the required 50-foot setback, the green roof cannot also be counted towards the 2:1 mitigation requirement as described below.

### **MBA Mitigation Requirements**

The County's MBA regulations require 2:1 planting mitigation for the footprint of the development activity to be planted onsite within the Buffer or at another location, preferably onsite. The proposed text amendment provides additional SWM options to planting the setback and Buffer to address the MBA mitigation requirement as described below.

SWM Conversion

Per the attached table, *Baltimore County Marinas/Restaurants: SWM Conversion for Buffer Disturbance in Modified Buffer Area*, certain stormwater management best management practices (SWM BMPs) may be installed to meet the MBA mitigation requirements. The SWM BMPs were chosen for their suitability for sites that have a high water table and/or difficulty with drainage. All

SWM BMPs will be reviewed and approved by the Baltimore County Department of Environmental Protection and Sustainability Stormwater Management Section, and engineered plans may be required. As noted above, design and construction of green roofs must be in accordance with MDE requirements, standard building code requirements, and manufacturer's specifications. A planting plan and maintenance agreement must be provided and approved, and the property owner must provide the County with maintenance inspection reports every three years.

**Program Subcommittee Discussion**

The purpose of this Program Subcommittee discussion is to provide preliminary feedback to Baltimore County regarding the draft text amendment. The text amendment is planned to be submitted to the Project Subcommittee again on April 26<sup>th</sup> and to the full Critical Area Commission for final review and approval at the May 1<sup>st</sup> Commission meeting. Baltimore County wants to ensure that any questions from the Commission are addressed well in advance before this final review.

Baltimore County staff has been invited to attend the Program Subcommittee meeting to help answer any questions and to hear the subcommittee's feedback.

If you have any questions regarding the proposed Waterfront Marinas/Restaurants in MBA text amendment prior to the upcoming discussion at the March 15, 2024 Program Subcommittee meeting, please contact Susan Makhoulf at [susana.makhoulf@maryland.gov](mailto:susana.makhoulf@maryland.gov) or (410) 260-3476.

**Baltimore County Marinas and Restaurants: SWM Conversion for Buffer Disturbance in Modified Buffer Areas (MBAs)**

<b>Buffer Disturbance (sf)</b>	<b>Green Roofs*</b> md = 2-6 in, waterproofing system/membrane, non-soil engineered mix, annual maintenance required	<b>Rooftop and Non-rooftop Disconnection (A/B Soils)</b> DA<1,000 sf Filter path > 15 ft Slope between 3%-5%	<b>Rainwater Harvesting (Cisterns and Rain Barrels)</b> See page 5.71 of MDE Design Manual	<b>Bioretention Planter</b> Use micro-bioretention design guidance pd<0.5 ft filter bed>18 inches	<b>Rain Gardens (A/B Soils or underdrain)</b> pd<0.5 ft DA<2,000sf	<b>Bioswale (A/B Soils)</b> filter bed>18 inches
250-500	150 sf	150 sf	50-gallon minimum storage capacity required for 50 sf of Buffer disturbance	100 sf, 0.50 ft pd, 1.5 ft md	100 sf, 0.5 ft pd, 1.5 ft md	100 sf, 0.75 ft pd, 1.5 ft md
500-1,000	300 sf	300 sf		250 sf, 0.5 ft pd, 1.5 ft md	200 sf, 0.5 ft pd, 1.5 ft md	200 sf, 0.75 ft pd, 1.5 ft md
1,000-2,000	600 sf	600 sf		450 sf, 0.5 ft pd, 1.5 ft md	500 sf, 0.5 ft pd, 1.5 ft md	400 sf, 0.75 ft pd, 1.5 ft md
2,000-3,000	800 sf	800 sf		700 sf, 0.5 ft pd, 1.5 ft md	(2) 1,500 DA: 400 sf, 0.5 ft pd, 1.5 ft md	550 sf, 0.75 ft pd, 1.5 ft md
3,000-4,000	1,100 sf	1,100 sf		900 sf, 0.5 ft pd, 1.5 ft md	(2) 2,000 DA: 550 sf, 0.5 ft pd, 1.5 ft md	750 sf, 0.75 ft pd, 1.5 ft md
4,000-5,000	1,400 sf	1,400 sf		1,150 sf, 0.5 ft pd, 1.5 ft md	(2) 2,000 DA: 550 sf, 0.5 ft pd, 1.5 ft md + (1) 1,000 DA: 300 sf, 0.5 ft pd, 1.5 ft md	950 sf, 0.75 ft pd, 1.5 ft md

Permanent disturbance means a material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity. Permanent disturbance includes construction or installation of any material that will result in lot coverage, construction of a deck, grading and clearing except under temporary disturbance, and a septic system in a forest or developed woodland on a lot created before program approval, if clearing is required.

In the IDA, 10% Critical Area stormwater management is required in addition to any SWM provided in lieu of Buffer planting in accordance with the chart above.

Fifty square feet of permanent Buffer disturbance may be offset with the planting of one ¾" caliper tree or a rain barrel (50-gallon minimum capacity).

\*Design and construction of a green roof must be in accordance with MDE requirements, standard building code requirements, and manufacturer's specifications. A planting plan and maintenance agreement must be provided and approved, and the property owner must provide the County with maintenance inspection reports every three years.