

Critical Area Commission

STAFF REPORT

April 26, 2024

APPLICANT:	Baltimore City
PROPOSAL:	Text Amendment: Water-Dependent Facilities and Activities and Nonwater-Dependent Projects
COMMISSION ACTION:	Concurrence with Chair’s Determination of Refinement
STAFF RECOMMENDATION:	Approval
STAFF:	Kate Durant
APPLICABLE LAW/REGULATIONS:	Natural Resources Article §8-1808.4, §8-1809(p), COMAR 27.01.13

DISCUSSION

On April 8, 2024, the Baltimore City Council approved Ordinance No. 24-322, amending Article 32, Title 7, Subtitle 4 of the Baltimore City Zoning Code titled, “Chesapeake Bay Critical Area Overlay Zoning District.” Mayor Scott signed the Ordinance on April 16, 2024. The proposed text amendment will allow the construction of nonwater-dependent structures as authorized under Natural Resources Article §8-1808.4, which is an opt-in program within the Critical Area.

Baltimore City is surrounded by Baltimore County. The city has two Critical Area land classifications: Intensely Developed Area (IDA) and Resource Conservation Area (RCA). Within the IDA, there are two subareas: the Waterfront Revitalization Area, and the Waterfront Industrial Area. Within the RCA, the only subarea is called the Shoreline Conservation Area.

A copy of Ordinance 24-322 is attached.

Ordinance Update

In 2013, the Maryland General Assembly authorized amendments to the Environment Article and the Natural Resources Article allowing Maryland Department of Environment to issue permits for non-water dependent projects on piers provided local jurisdictions “opt-in” to those provisions as a part of their Critical Area Program. To date, nine local jurisdictions have opted in to these provisions. The provisions in Natural Resources Article §8-1808.4 allow for nonwater-dependent projects that are no more than 1,000 square feet in the IDA, as long as the project is related to a commercial activity that is permitted as a secondary or accessory use. The provisions also allow for the installation of a small-scale renewable energy system that is permitted as a

secondary or secondary use on a pier that is authorized under Title 16 of the Environmental Article. Baltimore City would now like to opt-in and add the nonwater-dependent projects language into its Critical Area program. The City's program is current as it was last comprehensively updated in August of 2020.

The text amendment will update the language under Article 32, §7-406 of the Baltimore City Zoning Code to prohibit "a nonwater-dependent structure, except as authorized under State Natural Resources Article §8-1808.4." The text amendment will also add definitions for "nonwater-dependent project" and "nonwater-dependent structure" to §7-402. Finally, text regarding the identification of the RCA's Shoreline Conservation Area Subarea will be added to §7-404, along with a reference to the boundaries for the Development Areas and Subareas that were previously adopted when the City updated its Critical Area boundaries and maps in 2020.

The proposed text amendment is in accordance with and conforms to Natural Resources Article §8-1808.4 and the provisions of COMAR 27.01.13.

RECOMMENDATION

Commission staff recommends that the Commission concur with the Chair's determination that this text amendment be processed as a refinement to the City's Critical Area Program, as the proposed changes are consistent with the Critical Area Law and its regulations. Staff also recommends that the Chair approve this text amendment as proposed.

CITY OF BALTIMORE
ORDINANCE **24-322**
Council Bill 24-0494

Introduced by: Councilmember Costello
At the request of: The National Aquarium
Address: c/o Ryan Fredriksson
111 Market Pl, Ste 800
Baltimore, Maryland 21202
Telephone: (410) 385-8276

Introduced and read first time: February 26, 2024

Assigned to: Economic and Community Development Committee

Committee Report: Favorable

Council action: Adopted

Read second time: April 8, 2024

AN ORDINANCE CONCERNING

1 **Chesapeake Bay Critical Area Overlay Zoning District –**
2 **Prohibited Uses**

3 FOR the purpose of amending certain prohibited uses within the Chesapeake Bay Critical Area
4 Overlay Zoning District; defining certain terms; and establishing a special effective date.

5 BY repealing and re-ordaining, with amendments

6 Article 32 - Zoning
7 Sections 7-702, 7-704 and 7-406
8 Baltimore City Code
9 (Edition 2000)

10 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the**
11 Laws of Baltimore City read as follows:

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

Council Bill 24-0494

Baltimore City Code

Article 32. Zoning

Title 7. Open-Space and Environmental Districts

Subtitle 4. Chesapeake Bay Critical Area Overlay Zoning District

§ 7-402. Definitions.

(a) *In general.*

In this subtitle, the following terms have the meanings indicated.

(b) *Buffer.*

(1) *In general.*

“Buffer” means area that:

- (i) based on conditions at the time of development, is immediately landward from mean high water of tidal waterways, the edge of a bank of a tributary stream, or the edge of a tidal wetland; and
- (ii) exists, or may be established in, natural vegetation to protect a stream, tidal wetland, tidal waters or terrestrial environments from human disturbance.

(2) *Inclusions.*

“Buffer” includes:

- (i) an area of at least 100-feet, even if that area was previously disturbed by human activity; and
- (ii) any expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.

(c) *Critical area.*

(1) *In general.*

“Critical Area” means all lands and waters defined in §8-1807 of the State Natural Resources Article.

(2) *Inclusions.*

“Critical Area” includes:

Council Bill 24-0494

1 (i) all waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays
2 and their tributaries to the head of tide;

3 (ii) all State and private wetlands designated under Title 16 of the State
4 Environment Article;

5 (iii) all land and water areas within 1,000 feet beyond the landward boundaries of
6 State or private wetlands and the heads of tides designated under Title 16 of
7 the State Environment Article; and

8 (iv) modification to these areas through inclusions or exclusions proposed by local
9 jurisdictions and approved by the Critical Area Commission, as specified in
10 § 8-1807 of the State Natural Resources Article.

11 (d) *Critical Area Management Program.*

12 “Critical Area Management Program” or “CAMP” means the Baltimore City Critical
13 Area Management Program, as adopted by Resolution or Ordinance of the Mayor and
14 City Council of Baltimore and approved by the Chesapeake Bay Critical Area
15 Commission.

16 (e) *Development.*

17 (1) *In general.*

18 “Development” has the meaning stated in COMAR 27.01.01.01B(21).

19 (2) *Inclusions.*

20 “Development” includes any one or a combination of the following:

21 (1) construction, reconstruction, modification, expansion, or demolition of
22 structures;

23 (2) placement of fill;

24 (3) dredging;

25 (4) drilling;

26 (5) mining;

27 (6) grading;

28 (7) paving;

29 (8) land excavation;

30 (9) land clearing;

Council Bill 24-0494

1 (10) land improvement; or

2 (11) storage of materials.

3 (f) *Disturb.*

4 (1) *In general.*

5 “Disturb” means to alter or change land in any way.

6 (2) *Inclusions.*

7 “Disturb” includes any amount of clearing, grading, or construction activity.

8 (3) *Exclusions.*

9 “Disturb” does not include gardening or maintenance of an existing grass lawn.

10 (G) *NON-WATER DEPENDENT PROJECT.*

11 “NON-WATER DEPENDENT PROJECT” HAS THE MEANING STATED IN COMAR 27.01.13.01.

12 (H) *NON-WATER DEPENDENT STRUCTURE.*

13 “NON-WATER DEPENDENT STRUCTURE” MEANS A TEMPORARY OR PERMANENT STRUCTURE
14 OR ACTIVITY WHICH, BY REASON OF ITS INTRINSIC NATURE OR OPERATION, IS NOT
15 REQUIRED TO BE LOCATED IN OR OVER STATE OR PRIVATE TIDAL WETLANDS.

16 (I) [(g)] *Significant development.*

17 “Significant development” means any development that would:

18 (1) disturb any land in the Buffer;

19 (2) disturb 10,000 or more square feet of land in the Critical Area;

20 (3) result in any disturbance, caused by use, development, or destruction of
21 vegetation, to land in an area designated under the Critical Area Management
22 Program as a “Designated Habitat Protection Area”; or

23 (4) involve an expenditure for improvements to the property equal to or greater than
24 50% of the assessed value of the property, as recorded in the State Department of
25 Assessment and Taxation’s database.

26 (J) [(h)] *Water-dependent facilities.*

27 (1) *In general.*

28 “Water-dependent facilities” means land uses or structures that:

Council Bill 24-0494

1 (i) are associated with industrial, maritime, recreational,
2 educational, or fisheries activities;

3 (ii) require a location within the Buffer near the shoreline; and

4 (iii) are dependent on the water by reason of the intrinsic
5 nature of their operation.

6 (2) *Inclusions.*

7 “Water-dependent facilities” include:

8 (i) ports;

9 (ii) intake and outfall structures of power plants;

10 (iii) industries that withdraw water from surface waters regulated by
11 this State, requiring a Water Appropriation and Use Permit from
12 the Maryland Department of the Environment;

13 (iv) marinas and other boat-docking structures;

14 (v) public beaches and water-oriented recreation areas; and

15 (vi) fisheries.

16 (3) *Exclusions.*

17 “Water-dependent facilities” does not include private piers that are installed and
18 maintained by riparian landowners and are not part of a subdivision that provides
19 community piers.

20 **§ 7-404. Development areas.**

21 (a) *In general.*

22 State law requires the City to designate “Development Areas” within the Chesapeake Bay
23 Critical Area, based generally on existing development patterns and densities.

24 (b) *Types Designated.*

25 The 2 types of Development Areas specified in the Critical Area Management Program
26 are:

27 (1) “Resource Conservation [Areas] AREAS, WHICH INCLUDE THE SUBAREA
28 DESIGNATED AS “SHORELINE CONSERVATION AREA”; and

29 (2) “Intensely Developed Areas”, which comprise 2 subareas designated as:

30 (i) “Waterfront Industrial Areas”; and

Council Bill 24-0494

1 (ii) "Waterfront Revitalization [Areas",] ARFAS." [which include subareas
2 designated as:

3 (A) "Waterfront Industrial Areas".]

4 (C) *AREA BOUNDARIES.*

5 DEVELOPMENT AREA BOUNDARIES EXIST AS ESTABLISHED ON THE BALTIMORE CITY
6 CAMP MAP AS PROVIDED FOR UNDER § 7-405(A) OF THIS SUBTITLE {"BOUNDARIES
7 DELINEATED ON MAP"}.

8 **§ 7-406. Prohibited uses.**

9 (a) *Scope.*

10 The uses prohibited by this section are in addition to those prohibited by § 1-218 {"Uses
11 prohibited citywide"} of this Code.

12 (b) *Within Critical Area.*

13 Except as specified in subsection(d) of this section, the following uses are prohibited
14 within the Critical Area:

- 15 (1) a [dwelling unit or other] non-water dependent structure [on a pier, wharf, dock,
16 walkway, bulkhead, breakwater, piles, or other similar structure], except as
17 authorized under State Natural Resources Article § 8-1808.4 {"Critical Area
18 Protection Program: Nonwater-dependent projects"};
- 19 (2) collection, storage, handling, or disposal of hazardous or toxic materials, as
20 defined in COMAR 11.07.01.01;
- 21 (3) industrial landfills;
- 22 (4) liquefied natural gas and petroleum gas terminals;
- 23 (5) maintenance, dismantling, or storage of abandoned, unlicensed, junked, or
24 derelict vehicles or vehicle parts;
- 25 (6) non-water dependent uses on barges in tidal waters, except maritime museums;
- 26 (7) non-water dependent uses on permanently moored vessels in the Inner Harbor
27 Basin, except maritime museums;
- 28 (8) recycling collection stations;
- 29 (9) solid waste acceptance facilities, as defined in City Code Article 23, except for
30 facilities approved as a conditional use under this subtitle; and
- 31 (10) storage and handling of radioactive waste.

Council Bill 24-0494

1 (c) *Within Buffer.*

2 Except as specified in subsection (d) of this section, the following additional uses are
3 prohibited within the Buffer:

- 4 (1) cement plants;
- 5 (2) chemical plants;
- 6 (3) sand or gravel extraction operations; and
- 7 (4) storage facilities for nutrients – that is, elements or compounds essential as raw
8 material for organic growth and development (for example, carbon, nitrogen,
9 and phosphorus).

10 (d) *Exceptions — IN GENERAL.*

11 The prohibitions in subsections (b) and (c) of this section do not apply if the following
12 standards are met:

13 (1) on recommendation of the Department of Planning, the Board of Municipal and
14 Zoning Appeals finds both that:

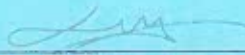
- 15 (i) there is no environmentally acceptable alternative outside the Critical
16 Area; and
- 17 (ii) the use is needed to correct an existing water quality or wastewater
18 management problem; and

19 (2) for any new use that constitutes a significant development or for any expansion
20 of a nonconforming use, a best management practices plan that will achieve a net
21 improvement in water quality and habitat is submitted and implemented as a
22 requirement of the Critical Area review process.

23 **SECTION 2. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it is
24 enacted.

Council Bill 24-0494

Certified as duly passed this 8 day of April, 2024



President, Baltimore City Council


Certified as duly delivered to His Honor, the Mayor,

this 8 day of April, 2024



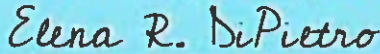
Chief Clerk

Approved this 16 day of April, 2024



Mayor, Baltimore City

Approved for Form and Legal Sufficiency
This 11th Day of April, 2024.



Chief Solicitor

A TRUE COPY
Michael Moiseyev
Director of Finance