

Ordinance No. 110  
Critical Area Program Amendment  
Subject: Addition of Modified  
Buffer Areas

**Purpose**

For the purpose of amending Chapter 60 of the Code of the Town of Leonardtown in order to revise existing provisions and establish provisions relating to Modified Buffer Areas in Leonardtown; the purpose of this ordinance is to accommodate limited use of shoreline areas in certain situations while protecting water quality and wildlife habitat to the greatest extent possible.

**Ordinance**

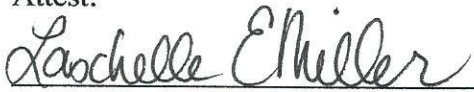
WHEREAS, this Ordinance amends Chapter 60 of the Code of the Town of Leonardtown.

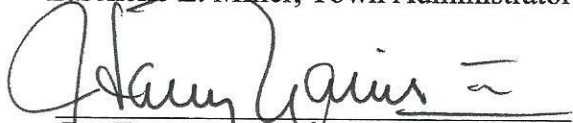
WHEREAS, the General Assembly of the State of Maryland has passed the Chesapeake Bay Critical Area Law, whose primary purpose is to foster more sensitive development activity for all water areas within a thousand (1,000) feet of the landward boundaries of State or private wetlands and the heads of tidal waters as defined in Title A of the Natural Resources Article of the State Code.

WHEREAS, "Modified Buffer Area(s)" or "MBAs" means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as an area where special provisions for development in the 100-foot Buffer and expanded Buffer apply because it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation (as specified in COMAR 27.01.09.01.B).

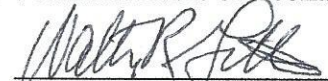
NOW THEREFORE BE IT HEREBY RESOLVED on this 13<sup>th</sup> day of October 2003, that the text addition described in Exhibit A attached hereto shall become effective twenty calendar days following this approval date.

Attest:

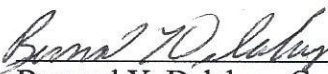
  
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Laschelle E. Miller, Town Administrator

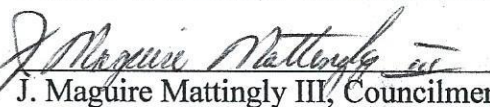
  
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J. Harry Norris, III, Mayor


The Commissioners of Leonardtown

By:   
\_\_\_\_\_  
Walter R. Gillette, Vice President

By:   
\_\_\_\_\_  
Charles R. Faunce, Councilmember

By:   
\_\_\_\_\_  
Bernard Y. Delahay, Councilmember

By:   
\_\_\_\_\_  
J. Maguire Mattingly III, Councilmember

By:   
\_\_\_\_\_  
Walter Wise, Councilmember

**Section 1-124. Modified Buffer Areas (MBAs)**

- (a) **Definition.** “Modified Buffer Area(s)” or “MBAs” means an area officially mapped by the local jurisdiction and approved by the Critical Area Commission as an area where special provisions for development in the 100-foot Buffer and expanded Buffer apply because it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, institutional or recreational development in the Critical Area prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation (as specified in COMAR 27.01.09.01.B).
- (b) **General Policy.** The provisions herein are intended to accommodate limited use of shoreline areas in certain situations while protecting water quality and wildlife habitat to the greatest extent possible.
- (c) **Applicability.** The following criteria apply to new development or redevelopment of single-family residential, commercial, industrial, institutional, recreational, and multi-family residential properties within the Buffer of tidal waters, tidal wetlands, and tributary streams. These provisions apply to lots of record at the time of original program approval or those that meet the subdivision requirements herein.
- (d) **General Standards.**
- 1) New development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces or septic systems will not be permitted in the Buffer unless the applicant can demonstrate that there is no feasible alternative, and the Town finds that efforts have been made to minimize Buffer impacts based on the following guidelines:
    - i. Development and redevelopment activities shall be located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams
    - ii. Variances to other local setback requirements shall be considered before disturbance within the Buffer
    - iii. Convenience or expense shall not be considered sufficient justification for disturbance within the Buffer
  - 2) New development (defined as development on a parcel with less than 15% impervious cover) including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands or tributary streams) than 50 feet. The 50-foot setback shall be maintained for all subsequent development or redevelopment of the property.

- 3) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. On redevelopment sites, new impervious surfaces may be located within the 25-foot setback only if the site development plan will result in an overall 15% reduction in impervious surface area within the 25-foot setback. Existing structures located within the setback may remain or a new structure may be constructed on the footprint of an existing structure or impervious surface. Opportunities to establish a 25-foot setback should be maximized.
- 4) Existing forested areas within the Buffer shall be maintained to the greatest extent possible even if they are located outside of the required setback area.
- 5) Development on or disturbance to slopes greater than 15% within the Buffer or expanded Buffer shall be minimized.
- 6) Development and redevelopment may not impact any HPAs other than the Buffer.
- 7) Modified Buffer Area designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
- 8) Any development or redevelopment in the Modified Buffer Area requires mitigation, in the form of plantings, offsets, or fees-in-lieu.
- 9) Any required reforestation/mitigation/offset areas must be designated under a development agreement or other instrument and recorded among the land records of the jurisdiction.

(e) **Standards for accessory structures on single-family residential properties.**

New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:

- 1) New accessory structures may be located closer to the water or edge of tidal wetlands than the dwelling only if there are no other locations for the accessory structures.
- 2) The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures on the property shall not exceed 500 square feet within 50 feet of the water and 1000 square feet total.
- 3) In no case shall new accessory structures be located less than 25 feet from the water (or edge of tidal wetlands).

- (f) **Mitigation.** An area of natural vegetation twice the extent of the footprint of the development activity within the Buffer and expanded Buffer shall be planted on site in the Buffer or if planting in the Buffer is not feasible, elsewhere on the project site in the Critical Area. If it is not possible to plant on the project site, then plantings may be located off-site within the Town.
- (g) **Additional mitigation requirements for commercial, industrial, institutional, recreational, and multi-family residential projects.**
- 1) For all development and redevelopment projects, a forested or landscaped bufferyard, 25 feet wide, shall be established on the project site between the development and the water. If this bufferyard is not currently forested, then it shall be densely planted with trees and shrubs in accordance with Table 1, below. The bufferyard must be protected from future development through an easement, development agreement, plat notes or other similar instrument.
  - 2) On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then the width of the planted bufferyard may be modified; however the total area of the bufferyard shall be maintained.

**Table 1  
Suggested Bufferyard Planting**

Area	Quantity and Stocking	Suggested Species
For every 100 linear feet of bufferyard	5 Trees	White or Red Oak, Pin Oak, Willow Oak, Red Maple, American Holly, Eastern Red Cedar
	and	
	10 Understory Trees/Large Shrubs,	Dogwood, Mountain Laurel, Bayberry, Shadbush, Winterberry
	and	
30 Small Shrubs	Peppercorn, Chokeberry, Strawberry Bush, Sweetgum	
and		
	40 Herbaceous Plants, Grasses, Etc.	Wild Columbine, Butterflyweed, Common Milkweed, Asters

- (h) **Alternative mitigation options.**
- 1) Applicants who cannot fully comply with the planting requirements specified above may use offsets to meet the mitigation requirement. Offsets may

include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of Best Management Practices for stormwater in addition to those required by stormwater management regulations, the creation or restoration of wetlands, the implementation of nonstructural shore erosion control measures such as marsh creation, or other measures that improve water quality or habitat.

- 2) If the Planning Commission determines that an applicant cannot comply with either the planting or offset requirements, then an applicant shall be required to pay into a fee-in-lieu program administered by the Town. The fee shall be \$2.50 per square foot of the mitigation requirement that cannot be met on-site. Fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical Area for the benefit of wildlife habitat and water quality improvement.

(i) **Review and Approval Process.** Within Modified Buffer Areas, all new single-family residential, commercial, industrial, institutional, recreational, and multi-family residential development or redevelopment projects shall be submitted to the Critical Area Commission in accordance with COMAR 27.03.01.03. Mitigation plans shall be included as part of the project submission. For those projects not required to be submitted to the Critical Area Commission, the Town must document that the project complies with the provisions in this ordinance and that mitigation shall be provided. This information must be available to the Commission upon request.

(j) **Requirements for Mapping New MBAs.**

- 1) Only existing, grandfathered lots are eligible for mapping as Modified Buffer Areas by the Town unless the original parcel meets the requirements for designation as a MBA and is subdivided in accordance with the provisions herein.
- 2) For each Modified Buffer Area proposed, the area shall contain a Buffer which is, at the time of the proposal, significantly impacted by development activities that existed at the time of program adoption and that prevent the Buffer from fulfilling its functions. Developed parcels or lots shall include development in the Buffer. Undeveloped or vacant parcels or lots may be included in an area as long as the total area does not exceed six acres and at least 50 percent of the Buffer in the area as a whole is developed.
- 3) Any proposal by the Town for designation of an area as a MBA shall include, at a minimum, the jurisdiction's written findings of and supporting reasons which demonstrate the degree to which the proposed MBA does not perform each of the following Buffer functions A. through E:

- i. Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
- ii. Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;
- iii. Maintain an area of transitional habitat between aquatic and upland communities;
- iv. Maintain the natural environment of streams; and
- v. Protect riparian wildlife habitat.

(k) **Subdivision within Modified Buffer Areas.** Land in a Modified Buffer Area may be subdivided and be developed in accordance with the Modified Buffer Area provisions herein if it meets the following criteria:

- (1) The original parcel at the time of local program adoption is less than six acres, and it is designated LDA or IDA.
- (2) The development meets the standards set forth above; however, the setback *for* any development activity on new lots shall be increased to 50 feet from tidal waters, tidal, and McIntosh Run, and the setback for lots on tributary streams shall be increased to 30 feet. Development activity includes structures, roads, parking areas, and paved walkways. Accessory structures on the new lots may be permitted within the Buffer, but not within the minimum 30-foot or 50-foot setback. The total area of existing and new accessory structures per lot within the Buffer in the subdivision shall not exceed 1,000 square feet.
- (3) Mitigation requirements set forth in the sections above shall be met on-site through planting or protection of existing natural vegetation within the 30-foot or 50-foot setback and by planting other areas either on-site in the Buffer, on-site outside the Buffer, or off-site within the Critical Area. Locations outside the Critical Area may be considered if other locations are determined not to be feasible. A landscape plan showing existing and proposed vegetation within the setback shall be submitted and approved as part of the subdivision review process. For projects that are required to be submitted to the Critical Area Commission for review and comment, the landscape plan shall be part of the submittal.
- (4) Any future shore erosion control on the property shall be non-structural if it is practical and effective at the proposed site. Guidance from the Maryland Department of Natural Resources and the Maryland Department of the Environment will be sought.

- (5) A 10% reduction in pollutants from stormwater will be met on-site through the construction of Best Management Practices (BMPs) unless findings are made by the Town or the Town's designee that the construction of BMPs on site is not feasible because of site conditions such as soil type or depth to water table.
- (6) If land designated as a modified buffer area is subdivided, but does not meet the above criteria for subdivision in a modified buffer area, only the parcel that retains the original primary structure will be considered a modified buffer area, and new lots or parcels would must fully comply with the Buffer provisions of the Towns' Critical Area ordinance.



Exhibit A  
 Mapped site of  
 Leonardtown Modified  
 Buffer Area