



FREDERICK COUNTY PLANNING COMMISSION
October 9, 2013

TITLE: ZT 13-09, Waterbody Buffer Zoning
Ordinance Text Amendment

FILE NUMBER: N/A

REQUEST: On September 18, 2013 Staff presented draft revisions to the Waterbody Buffer Ordinance to the Planning Commission, as initiated by the Board of County Commissioners. Staff will present the Zoning Ordinance Text Amendment and describe the proposed modifications to the existing Waterbody Buffer regulations.

PROJECT INFORMATION:

ADDRESS/LOCATION: N/A
TAX MAP/PARCEL: N/A
COMP. PLAN: N/A
ZONING: N/A
PLANNING REGION: N/A
WATER/SEWER: N/A

APPLICANT/REPRESENTATIVES:

APPLICANT: N/A
OWNER: N/A
ENGINEER: N/A
ARCHITECT: N/A
ATTORNEY: N/A

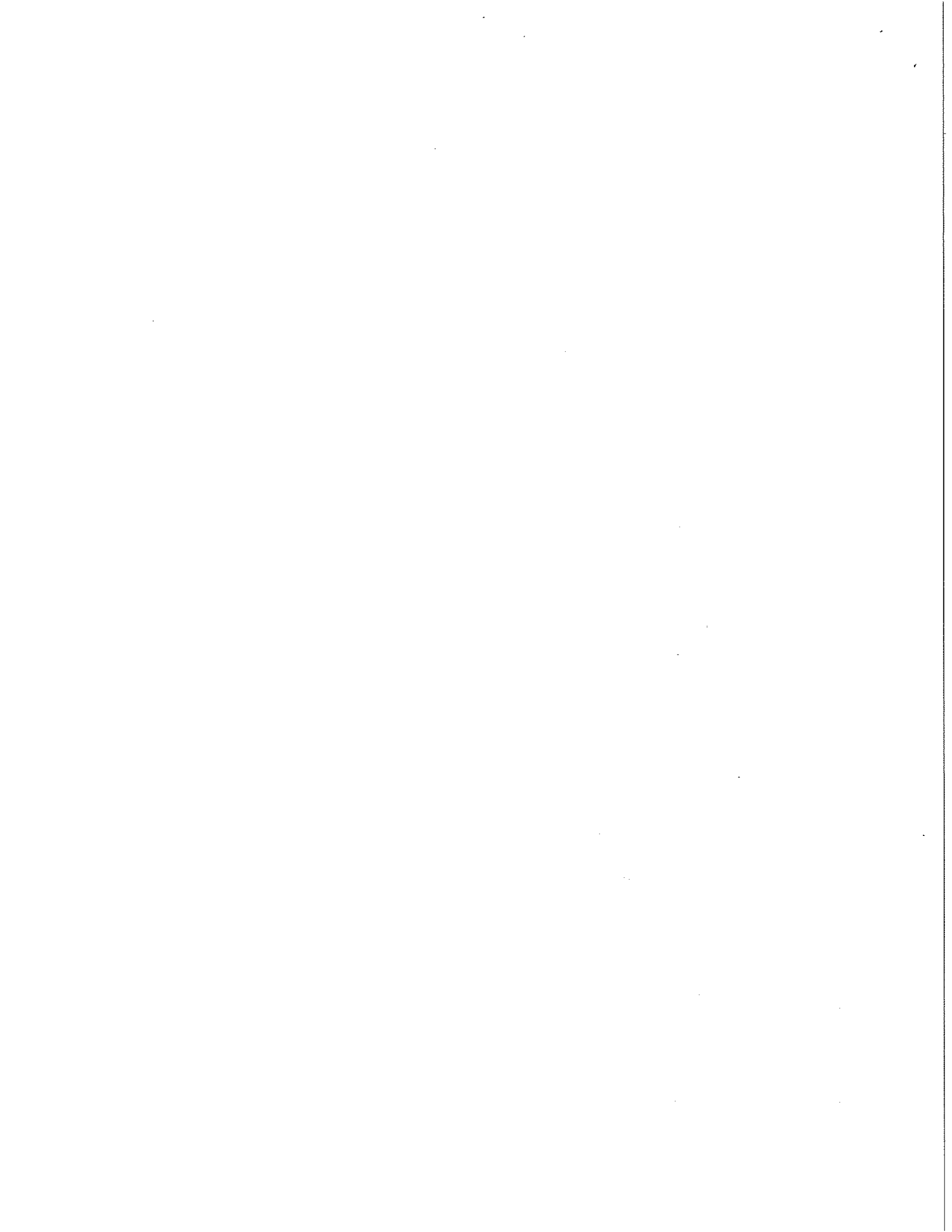
STAFF: Tim Goodfellow, Principal Planner II

RECOMMENDATION:

The Planning Commission will make a recommendation of approval or denial of the Zoning Ordinance Text Amendment to the Board of County Commissioners.

ATTACHMENTS:

Exhibit 1- BOCC Z.O. Amendment





**FREDERICK COUNTY GOVERNMENT
DIVISION OF COMMUNITY DEVELOPMENT**

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TO: Planning Commission
FROM: Eric Soter, Division Director; Tim Goodfellow, Principal Planner
DATE: October 2, 2013
SUBJECT: ZT 13-09, Waterbody Buffer Zoning Ordinance Text Amendment

ISSUE

The Board of County Commissioners (BOCC) has received requests for review of specific sections of the zoning ordinance for possible revision. Staff has initiated a phased approach in updating the zoning ordinance in an attempt to address these concerns. As part of that process efforts have been undertaken to address items within the Board's Business Friendly Improvement Areas (BFIA) list. Staff has created the Waterbody Buffer Zoning Ordinance Text Amendment to address concerns with existing regulations as generally outlined in the BFIA.

BACKGROUND

Several initiatives have been identified over the last several years to provide an avenue for citizen input regarding development regulations and processes. As part of this effort, Staff began a phased update to the zoning ordinance. The proposed text amendment, ZT 13-09, has been crafted to address concerns, as outlined in the BFIA list, regarding existing stream buffer regulations.

Staff gave a preview of ZT 13-09 to the Planning Commission on September 18, 2013, which included historical and background information regarding the Waterbody Buffer Ordinance.

RECOMMENDATION

The Planning Commission shall make a recommendation of approval or denial of ZT 13-09 to the Board of County Commissioners.

ATTACHMENTS

Business Friendly Improvement Areas go to: www.frederickcountymd.gov/planning
Exhibit 1 – Waterbody Buffer Zoning Ordinance Text Amendment

OVERVIEW

The overview section below provides a text amendment issue summary including background information and potential amendments to the zoning ordinance as provided in Exhibit 1 – Waterbody Buffer Zoning Ordinance Text Amendment.

New waterbody buffer standards were adopted into the Zoning Ordinance in 2008 in Article IX Environmental Regulations, Division 4. Waterbody Buffer Requirements, Section 1-19-9.400 Waterbody Buffer Requirements. These existing waterbody buffer requirements apply to an application for subdivision or resubdivision of a parcel, lot, or tract of land submitted on or after August 15, 2008. To provide consistency, those applications for subdivision or resubdivision filed but not formally approved at the time of adoption, are also subject to the regulations.

However, it should be noted that development on existing parcels and lots of record as of August 15, 2008 are exempt from the waterbody buffer requirements in this section of the zoning ordinance. The ordinance also specifically states that the waterbody buffer requirements in section 1-19-9.400 shall not apply to existing structures. In addition, the requirements do not apply to addition plats, correction plats, outlot plats, revisions to previously approved subdivision plats that do not change the number of lots, extensions or reapprovals of previously approved subdivision plats that have not expired, and submission of final plats for recordation provided that the final plat is consistent with the approved preliminary subdivision plat. It was the intent that the waterbody buffer regulations would apply to new development through subdivision and resubdivision moving forward from the time of adoption.

It should also be noted that since being adopted in 2008, there have been no subdivision projects where the waterbody buffer requirements resulted in a reduction of lot yield, or where any significant redesign was required to accommodate the stream setback.

The process to adopt the waterbody buffer requirements in section 1-19-9.400 resulted from an approximately year long process that included many public meetings, public hearings, and several adjustments to the text based on review and input from the Board of County Commissioners and the public. The requirements were crafted and adopted with the intent of implementing environmental and cultural resource policies contained in the Countywide Comprehensive Plan. These policies recognize the benefit of, and intend to provide protection to, sensitive natural resource areas within the County.

Specifically, buffers act to protect a waterbody by filtering damaging pollutants, such as sediment, nitrogen, and phosphorous, that runoff from nearby lands. As development occurs across the County and open spaces and natural areas are reduced, these existing buffers become crucial in minimizing damage to existing streams.

Maintaining undisturbed landscape conditions adjacent to sensitive waterways enhances property values, promotes better physical design and flood protection, and offers water quality benefits. Riparian, or stream-side, areas are important components of the landscape because they are transitional areas between the terrestrial (uplands) and the aquatic environment and contain unique soil types and higher plant and animal species diversity. Surface runoff, shallow groundwater flows, and subsurface flows interact and pass through riparian areas and influence the quality and quantity of water in streams, rivers and lakes.

It is with these factors in mind that Staff has reviewed the existing regulations and prepared amendments to address concerns as identified in the BFIA. Comments from the Land Use Council of the Frederick County Building Industry Association were incorporated into the draft amendments.

Stream Buffer Modification

The amendment will provide increased flexibility and reduced complexity to the existing regulations while retaining a certain level of environmental benefit to County streams and rivers, and therefore County residents.

The current stream protection ordinance contains 3 tiers of setback distances based on the degree and extent of gradient or slope within a defined stream valley. The existing setback distances are generally a minimum of 100' (slopes less than 15%), a minimum of 150' for areas of moderate slopes (15% to <25%), and a minimum of 175' for areas of steep slopes (25% or greater). This variable-width stream buffer is site specific, examining landscape qualities and characteristics, and tailoring the stream protection to each unique development area.

The existing regulations were created to include a variable width component depending on how steep the ground is within that area of study adjacent to the stream. A variable width considers the fact that a buffer area should reflect the varied components of the landscape within the stream or river corridor in that specific area. Each buffer area is different and should consider issues such as steep slopes which should remain intact to prevent soil erosion which can deliver sediment to the stream. Excess sediment in a stream smothers habitat for fish and aquatic insects, disrupts flow regimes and leads to additional stream bank erosion.

The overall structure of the amendment continues to account for site specific characteristics, but reduces the overall width of the stream valley study area, and also reduces the required setback for moderate and steep slopes. This proposed modification also adds an allowance for the placement of recreational amenities inside the buffer.

In this option the minimum required setback for moderate slopes has been reduced from 150' to 125', the minimum required setback for steep slopes has been reduced from 175' to 150'. In addition the required 175' cross-section on each side of the waterbody (that is used as the study area to determine the gradient of the slope) has been reduced to 150'.

These modifications will reduce the overall area of consideration for calculation purposes and will also reduce the resulting required minimum setback for moderate and steep slopes. However, the modifications will retain the structure of the existing regulations which reflect a calculation that is based on site specific characteristics which respect features and topographical changes on each property.

As reflected in Exhibit 1 – Waterbody Buffer Draft Zoning Ordinance Text Amendment – the following amendments would be needed to accomplish the changes as proposed.

ARTICLE IX: ENVIRONMENTAL REGULATIONS
DIVISION 4. WATERBODY BUFFER REQUIREMENTS
§ 1-19-9.400. WATERBODY BUFFER REQUIREMENTS.

This existing section of the zoning ordinance would be amended to accomplish the changes as discussed above.

- Subsections (C)(1) and (C)(3) reflect the reduction of the overall stream evaluation area from 175' to 150' and reduces the waterbody buffer for moderate slopes from 150' to 125'
- Subsection (C)(4) is proposed for deletion which would remove a specific requirement for the setback to extend to the crest of a moderate slope.
- Subsection (C)(5) reflects the reduced overall study area and is proposed for amendment to reduce the waterbody buffer requirement for steep slopes from 175' to 150'.
- Subsection (C)(6) is proposed for deletion which would remove a specific requirement for an increased setback within the Linganore Watershed Protection Area.
- Subsection (C)(7) is proposed for amendment to remove a specific requirement for the setback to extend to the crest of the steep slope.

Text has also been added to this section to permit the placement of minor recreational amenities within the waterbody buffer. The addition of this text adds flexibility and increases the options for placement of minor recreational amenities at the time of development. This text was added to Subsection (D).

As reflected in Exhibit 1, the amendments would apply to subdivision and resubdivisions receiving approval after effective date of the ordinance. Unless resubdivision occurs, existing approvals and waterbody buffers will be maintained for all subdivisions that were subject to the August 2008 ordinance. Many subdivision plats have been recorded subject to the existing provisions and therefore would remain subject to the waterbody buffer requirements that were established based on the circumstances and regulations in place at that time. In addition, a retroactive application of less restrictive standards, if approved by the BOCC, would require all subdivision plats to be re-recorded to implement the less restrictive requirements.

STAFF RECOMMENDATION

Staff requests that the Planning Commission make a recommendation of approval or denial of ZTA 13-09 to the Board of County Commissioners.

ARTICLE IX: ENVIRONMENTAL REGULATIONS
DIVISION 4. WATERBODY BUFFER REQUIREMENTS
§ 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 175-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) Except as provided in subsection (4) below, if 60% or more of the 175-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 the toe and the crest of a moderate (15% to <25%) slope and the adjoining backslope are located within the 175-foot cross-section, the waterbody buffer will extend to the crest of the moderate (15% to <25%) slope, or 100 feet, whichever is greater, for that side of the waterbody.~~

~~(5) Except as provided in subsections (6) or (7) below, if 60% or more of the 175-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.~~

~~(6) Within the Linganore Watershed Protection Area only, if the 175-foot cross-section includes a steep (25% or greater) slope and the steep slope extends beyond 175 feet, the waterbody buffer shall be extended to include the entire steep slope area for that side of the waterbody.~~

~~(7) If the toe and the crest of a steep (25% or greater) slope and the adjoining backslope are located within the 175-foot cross-section, the waterbody buffer will extend to the crest of the steep slope, or 100 feet, whichever is greater, for that side of the waterbody.~~

(8) 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.** ~~utilities, public and private roads, 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. ~~if Soil Conservation District (SCD) staff or Natural Resources Conservation Service (NRCS) staff certifies in writing that performance of the overall site sediment control system will be measurably improved by placement of a facility at that location.~~ At a minimum, grading must be at least 25 feet from the bank of the waterbody and from any wetlands.

(I) ~~Stormwater Management (SWM) facilities or structures and appurtenant conveyances (collectively hereinafter referred to as a "SWM Control System") within the waterbody buffer area may be approved by the appropriate county agency or division. In order to obtain this approval, the applicant must submit a written request, including a justification statement discussing each of the following factors:~~

~~(1) Documented and measurable improvement in the effectiveness of the SWM Control System if placed in the buffer.~~

~~(2) Minimization of encroachment into the buffer.~~

~~(3) Avoidance of existing sensitive areas (wetlands and their buffers, floodplains and their buffers, steep (25% or greater) slopes, and habitat for rare, threatened, and endangered species).~~

~~— (4) Whether excessive grading will result from an uphill SWM location; and whether the proposed SWM Control System(s) will allow for the reduction of numerous smaller and less efficient SWM Control Systems outside the buffer.~~

~~— (5) Whether severely degraded conditions within the buffer area exist that could be improved if the SWM facility or structure is located within the buffer area.~~

~~— (6) The presence of man-made structures (e.g., farm ponds) in the buffer area under pre-development conditions that can be converted to SWM use without excessive waterbody disturbance.~~

~~— (J) 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.~~

(Ord. 07-24-464, 7-10-2007; Ord. 07-29-469, 9-4-2007; Ord. 08-21-497, 8-5-2008; Ord. 08-26-502, 10-14-2008)

Comment: This Section shall apply to applications for subdivision or resubdivision filed **APPROVED** on or after August 15, 2008, [**THE EFFECTIVE DATE OF THIS ORDINANCE**] and shall also apply retroactively to any subdivision or resubdivision application filed prior to, but not formally approved by Staff or the Planning Commission as of, August 15, 2008. This Section shall not apply to: addition plats; correction plats; outlot plats; revisions to previously approved subdivision plats that do not ~~change~~ **INCREASE** the number of lots; extensions or re-approvals of previously approved subdivision plats that have not expired; and submission of final plats for recordation, provided that the final plat is consistent with the approved preliminary subdivision plat.

