

Proposed Amendments to Bill 1162
To Change Private Piers from Special Exceptions to Accessory Uses; to Change Community Piers from Accessory Uses to Special Exceptions

Proposed by: Councilman Foster

Date: February 24, 2009

Proposed Amendments: To amend the Table of Uses at Page 47 to make private piers accessory uses, not special exceptions, and to make community piers special exceptions, not accessory uses. To amend the text of the Bill to conform it to these changes in the Table of Uses. Underlining shows new text, ~~strikethrough~~ shows text to be deleted by this amendment.

1. Purpose of the Proposed Amendment: To change private piers from special exceptions to accessory uses; to change community piers from accessory uses to special exceptions

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§190-16. General Table of Land Uses Table III-1. General Table of Land Uses

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Table	P = permitted use; S = special exception; A = accessory use										
Land Use	Agricultural Conservation	Countryside Preservation	Western Rural Conservation	Rural Conservation	Rural Residential	Town Conservation	Town Residential	Village Center	Limited Commercial	General Commercial	Limited Industrial
Piers and Related Boat Facilities - Includes community piers, private piers, boat ramps and raised walkways. See regulations for specific land uses in this Article.											
Piers, Community				<u>A</u>	<u>A</u>		<u>A</u>	<u>A</u>			
Piers, Private				<u>S</u>	<u>S</u>		<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>	<u>S</u>
Boat Ramp				A	A		A	A	A	A	A
Raised walkway				A	A		A	A	A	A	A

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1 **§190-75. Piers and Related Boat Facilities (Community and Private)**

2 A. Number of Piers, Community Piers, Private Piers, Compensation

- 3 (1) Parcels and lots shall be limited to one pier.
- 4 (2) The owner(s) of a pier shall not be permitted to receive compensation for
5 the use of their pier.
- 6 (3) Community piers are permitted as an accessory a special exception use,
7 subject to the following:
- 8 (a) A community pier shall serve at least two lots.
- 9 (b) The right of access to a community pier shall be adequately
10 provided for in a properly recorded set of covenants that
11 incorporate maintenance agreements.
- 12 (c) Primary Dwelling Footings and foundation members shall be in
13 place and construction shall be diligently pursued on at least one
14 lot prior to issuance of a permit for a community pier.

15 (4) ~~A private-Private piers are permitted as an accessory use, subject to the~~
16 ~~following:~~

- 17 (a) Shall not be permitted on a lot served by a community pier.
- 18 (b) Primary Dwelling footings and foundation members shall be in
19 place and construction shall be diligently pursued prior to issuance
20 of a permit for a private pier.
- 21 ~~(b)(c) Is permitted by right on any lot created prior to the effective date~~
22 ~~of this ordinance.~~
- 23 ~~(c)(d) Is a special exception on any lot created after the effective date of~~
24 ~~this ordinance.~~

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25 B. Setbacks

26 Except for a community pier located on a joint property line, piers may not be
27 constructed closer to a side property line than the required side yard setback for
28 the zoning district in which they are located.

29 C. Water area for location

- 30 (1) The water area within which a pier may be located is defined by the harbor
31 lines and lateral lines and shall be determined in accordance with §190-
32 147, Critical Area.
- 33 (2) All piers shall be located a minimum distance of 25 feet from the lateral
34 lines. This setback may be reduced if a letter of no objection is obtained
35 from the adjacent property owner.

36 D. Extension, width, length, impedance of natural channel

- 37 (1) No new piers or expansion of existing piers shall extend into any body of
38 water a distance greater than 150 feet measured from the mean high-water
39 line. Notwithstanding any other section of this chapter, this limitation shall
40 not be subject to modification by either a special exception or a variance.
- 41 (2) The maximum width of a pier shall be ~~five feet for a private pier and six~~
42 ~~feet for community pier.~~
- 43 (3) Additional area at the end of the pier or along the pier, including finger
44 piers, platform areas and floating docks associated with a pier, shall not
45 exceed a cumulative total area of 200 square feet.
- 46 (4) In no case shall any parts of a pier exceed one half of the distance from the
47 mean high-water line to the center line of the body of water, said line
48 herein established as the tributary harbor line.
- 49 (5) In no case shall any parts of a pier impede the natural channel of the
50 waterway.
- 51 (6) When measuring the width of creeks or rivers with a total width of less
52 than 500 feet, small and shallow coves along the shoreline shall not be
53 used in determining the width of the waterway.
- 54 (7) Replacement or extension of existing piers
- 55 The following requirements apply to piers completed prior to February 14,
56 2004.
- 57 (a) A pier may be replaced in kind, even if it exceeds the maximum
58 allowed width, the 150-foot extension into a body of water or the
59 200-square foot limit on additional area.
- 60 ~~(b) A pier narrower than the maximum permitted width may be upgraded~~
61 ~~to the allowed width of 5 feet for a private pier or 6 feet for a~~
62 ~~community pier, even if the pier exceeds the 150-foot extension~~
63 ~~into a body of water.~~
- 64 ~~(e)(b)~~ Finger piers, platform areas and floating docks may be added, only
65 if the additional areas are in compliance with the requirements in
66 D(1) through (6) above.

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67 E. Mooring pilings, floating docks and platforms

68 All detached mooring pilings, floating docks and platforms associated with a
69 land-based pier shall be considered a part of the land-based structure and shall
70 comply with the applicable setback, pier length and platform area requirements
71 contained in this chapter.

72 F. Additional Requirements for Community Piers

73 The following requirements apply to community piers, in addition to the
74 supplemental requirements for the use in §190-147 of Article VI, Critical Area:

- 75 (1) The facilities shall not offer food, fuel, or other goods and services for
76 sale;
- 77 (2) The facilities shall be community owned and operated for the benefit of
78 the residents of a recorded riparian subdivision;
- 79 (3) Disturbance to the shoreline development buffer shall be the minimum
80 necessary to provide a single point of access through the buffer to the
81 facilities;
- 82 (4) The number of slips shall be the lesser of subsections (a) or (b) below:
- 83 (a) One slip for each 300 feet of shoreline in the subdivision in the
84 Rural Conservation District or for each 50 feet of shoreline in the
85 subdivision in a Rural Residential, Village Center, or Town
86 Residential District; or
- 87 (b) A ratio of slips to platted lots or dwellings within the subdivision
88 in the Critical Area according to the following schedule:

Lots or Dwellings	Slips
Up to 15	1 for each lot
16 - 40	15 or 75% of total lots, whichever is greater
41 - 100	30 or 50% of total lots, whichever is greater
101 -300	50 or 25% of total lots, whichever is greater
Over 300	75 or 15% of total lots, whichever is greater

- 89 G. Walkway, raised, over nontidal wetlands
- 90 (1) A raised walkway may be installed, subject to required permits, to provide
91 access to a pier.
- 92 (2) Maximum length over a nontidal wetland: 100 feet
- 93 (3) Maximum width of walkway: 5 feet
- 94 H. Boathouses and floating residences are prohibited.
- 95 I. One boat ramp per lot shall be permitted, subject to the required side yard
96 setbacks.

Substantive: Opinion of Counsel: No – the Courts have said that an amended ordinance cannot be deemed to be new or different one unless it enlarges or narrows the scope of the original ordinance to such an extent that the ordinance as enacted can be said to be misleading in a substantial manner in its final form. Amendments that do not defeat the original purpose of the ordinance are not so substantial as to become a new ordinance. *Ajamian v. Montgomery County*, 99 Md. App. 665, 684-685 (1994). This amendment meets that test and is therefore not substantive in Counsel’s opinion.