

**ORDINANCE NO. 23-02**

**Introduced by: Commissioner Thomas B. Willis, Jr.**

**AN ORDINANCE OF THE TOWN OF QUEENSTOWN TO AMEND ARTICLE IV, PART III OF THE QUEENSTOWN ZONING ORDINANCE TITLED, "CRITICAL AREA OVERLAY DISTRICT" TO COMPLY WITH AMENDMENTS TO THE NATURAL RESOURCES ARTICLE**

WHEREAS, Md. Code Ann. Land Use Article § 4-202 authorizes municipalities to adopt zoning regulations as it determines are in the public health, safety and welfare; and

WHEREAS, in accordance with Md. Code Ann. Natural Resources Article § 8-1808, the Town of Queenstown has adopted a Critical Area Program, which is set forth in Article IV, Part III of the Queenstown Zoning Ordinance, titled "CA Critical Area Overlay District"; and

WHEREAS, pursuant to Md. Code Ann. Natural Resources Article § 8-1809(g), each local jurisdiction is required to review its Critical Area Program and propose any necessary amendments at least every six (6) years; and

WHEREAS, the Queenstown Planning Commission undertook the necessary review and proposed necessary amendments to the Critical Area Program which were submitted to the Critical Area Commission for review; and

WHEREAS, the Commissioners of Queenstown held a duly advertised public hearing on the amendments to the Critical Area Program on May 24, 2023; and

WHEREAS, the Queenstown Planning Commission and the Commissioners of Queenstown have determined that the amendments set forth herein are consistent with the Town's planning goals and objectives set forth in the Town's Comprehensive Plan and the standards sets forth in Md. Code Ann. Natural Resources Article § 8-1808(b)(1) through (3).

NOW THEREFORE, BE IT ORDAINED BY THE COMMISSIONERS OF QUEENSTOWN AS FOLLOWS:

**Section 1.** The Queenstown Zoning Ordinance, Article II, Section 8 is hereby amended as follows:

**§ 8. Definitions and word usage.**

~~COMMUNITY PIERS - Boat docking facilities associated with subdivisions or similar residential areas, and with condominium, apartment, and other multiple family dwelling units. Private piers are excluded from this definition.~~ **[Community pier" has the meaning stated in Natural Resources Article, §8-1808.5(a), Annotated Code of Maryland.]**

...

~~PORT - A facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce. [A facility or area established or designated by the State or a jurisdiction for the purpose of water-borne commerce.]~~

...

~~WATER USE INDUSTRY—An industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.~~

**Section 2.** The Queenstown Zoning Ordinance, Article IV, Part III, Section 31 is hereby amended as follows:

**§ 31. Land Use and Density.**

**A. Permitted Uses**

1. Permitted uses in the Critical Area shall *be* limited to those uses allowed by the underlying zoning classification as modified by Table A1a and the supplemental use standards in §32 provided such uses meet all standards established for the Critical Area Overlay District.

Table A1a Permitted Uses

<b>LEGEND:</b> P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted		<b>Land Use Management Designation</b>		
<b>ITEM</b>	<b>USE DESCRIPTION</b>	<b>IDA</b>	<b>LDA</b>	<b>RCA</b>
<b>1.00</b>	<b>RESIDENTIAL</b>			
1.10	Accessory Dwelling Unit	P	P	PC
<b>2.00</b>	<b>INSTITUTIONAL</b>			
2.10	Existing institutional uses	P	P	PC
2.20	New institutional uses	P	P	NP
2.30	Cemetery	P	P	PC
2.40	Group Home	P	P	PC
2.50	Day Care	P	P	PC
<b>3.00</b>	<b>COMMERCIAL</b>			
3.10	Existing commercial uses	P	P	PC
3.20	New commercial uses	P	P	NP
3.30	Home occupation	P	P	PC
3.40	Bed and breakfast facility	P	P	PC
<b>4.00</b>	<b>MARITIME/WATER DEPENDENT</b>			
4.10	Expansion of existing commercial marinas [(See Section 42)]	P	P	PC

4.20	New marina, commercial [(See Section 42)]	P	P	NP
4.30	Community piers and noncommercial boat docking and storage	P	P	PC
4.40	Public beaches and public water-oriented recreational and educational areas [(See Section 42)]	P	P	PC
4.50	Research Areas [(See Section 42)]	P	P	PC
4.60	Fisheries activities [(See Section 42)]	P	P	P
4.70	Structures on Piers	PC	PC	PC
4.80	Private pier [(See Section 42)]	P	P	P
<b>5.00</b>	<b>RECREATION</b>			
5.10	Golf course	P	P	PC
<b>6.00</b>	<b>INDUSTRIAL</b>			
6.10	Existing industrial uses	P	P	PC
6.20	New industrial uses	P	PC	NP
6.30	Non-maritime heavy industry	P	NP	NP
	<b>UTILITIES</b>			
7.10	Utility transmission facilities	PC	PC	PC
<b>8.00</b>	<b>PUBLIC/QUASI-PUBLIC</b>			
8.10	Sanitary landfill; rubble fill	PC	PC	PC
8.20	Solid or hazardous waste collection or disposal facilities	PC	PC	NP
8.30	Sludge Facilities	PC	PC	NP

**Section 3.** The Queenstown Zoning Ordinance, Article IV, Part III, Section 32 is hereby amended as follows:

**§ 32. Supplemental Use Standards.**

**F. Expansion of existing commercial marinas (4.10)**

1. ~~Expansion of existing commercial marinas may be permitted within Resource Conservation Areas provided:~~
  - a. ~~Water quality impacts are quantified and appropriate Best Management Practices that address impacts are provided;~~
  - b. ~~That it will result in an overall net improvement in water quality at or leaving the site of the marina;~~
  - c. ~~The marina meets the sanitary requirements of the Department of the Environment; and~~
  - d. ~~Expansion is permitted under the nonconforming use provisions of this Chapter.~~
  
2. ~~Expansion of existing commercial marinas may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that the applicant demonstrates:~~
  - a. ~~The project meets a recognized private right or public need;~~

- b. ~~Adverse effects on water quality, fish, plant and wildlife habitat are minimized and Best Management Practices are applied to address impacts;~~
- e. ~~Insofar as possible, non-water dependent structures or operations associated with water dependent projects or activities are located outside the buffer; and~~
- d. ~~Expansion is permitted under the nonconforming use provisions of this Chapter.~~

G. ~~New marina, commercial (4.20)~~

- 1. ~~New commercial marinas shall not be permitted in Resource Conservation Areas (RCAs).~~
- 2. ~~New commercial marinas may be permitted in Limited Development Areas (LDAs) and Intensely Developed Areas (IDAs) if allowed in the underlying zoning, provided:~~
  - a. ~~New marinas shall establish a means of minimizing the discharge of bottom wash waters into tidal waters.~~
  - b. ~~New marinas meet the sanitary requirements of the Department of the Environment.~~
  - e. ~~New marinas may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:~~
    - (1) ~~The project meets a recognized private right or public need;~~
    - (2) ~~Adverse effects on water quality, fish, plant and wildlife habitat are minimized and Best Management Practices are applied to address impacts; and~~
    - (3) ~~Insofar as possible, non-water dependent structures or operations associated with water dependent projects or activities are located outside the Buffer.~~

H. ~~Community piers and noncommercial boat docking and storage (4.30)~~

- 1. ~~New or expanded community marinas and other non-commercial boat docking and storage facilities may be permitted in the Buffer subject to the requirements in this Chapter provided that:~~
  - a. ~~These facilities may not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;~~
  - b. ~~The facilities are community owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;~~
  - e. ~~The facilities are associated with a residential development approved by the Town for the Critical Area and consistent with all State requirements and the requirements of this Chapter applicable to the Critical Area;~~
  - d. ~~Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities and Best Management Practices are applied to address impacts; and~~
  - e. ~~If community piers, slips, or moorings are provided as part of the new development, private piers in the development are not allowed.~~
- 2. ~~Number of slips or piers permitted.~~

- The number of slips or piers permitted at the facility shall be the lesser of §a or §b below:
- a. — One slip for each 50 feet of shoreline in the subdivision in the Intensely Developed and Limited Development Areas and one slip for each 300 feet of shoreline in the subdivision in the Resource Conservation Area; or
  - b. — A density of slips or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Table b2 Number of Slips Permitted

<b>Platted Lots or Dwellings in the Critical Area</b>	<b>Slips</b>
up to 15	1 for each lot
16 — 40	15 or 75% whichever is greater
41 — 100	30 or 50% whichever is greater
101 — 300	50 or 25% whichever is greater
over 300	75 or 15% whichever is greater

- I. — Public beaches and public water oriented recreational and educational areas (4.40)
  1. — Public beaches or other public water oriented recreation or education areas including, but not limited to, publicly owned boat launching and docking facilities and fishing piers may be permitted in the Buffer in Intensely Developed Areas.
  2. — These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:
    - a. — Adequate sanitary facilities exist;
    - b. — Service facilities are, to the extent possible, located outside the Buffer;
    - c. — Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
    - d. — Disturbance to natural vegetation is minimized and Best Management Practices are applied to address impacts and Best Management Practices are applied to address impacts; and
    - e. — Areas for possible recreation, such as nature study, and hunting and trapping, and for education, may be permitted in the Buffer within Resource Conservation Areas if service facilities for these uses are located outside of the Buffer.
  
- J. — Research areas (4.50)
  1. — Water dependent research facilities or activities operated by State, Federal, or local agencies or educational institutions may be permitted in the Buffer, if non-water dependent structures or facilities associated with these projects are, to the extent possible, located outside of the Buffer.
  
- K. — Fisheries activities (4.60)

~~1. Commercial water dependent fisheries including, but not limited to structures for crab shedding, fish off loading docks, shellfish culture operations and shore based facilities necessary for aquaculture operations and fisheries activities may be permitted in the Buffer in Intensely Developed Areas, Limited Development Areas and Resource Conservation Areas.~~

L. ~~Structures on Piers (4.70)~~

~~1. Except as provided in §(1), §(2), and §(3) below, construction of dwelling unit or other non water dependent structure on a pier located on State or private tidal wetlands is prohibited.~~

~~a. A building permit for a project involving the construction of a dwelling unit or other non water dependent structure on a pier located on State or private wetlands within the Critical Area may be approved provided a permit was issued by the Department of Natural Resources on or before January 17, 1989.~~

~~b. A building permit for a project involving the construction of a dwelling unit or other non water dependent structure on a pier located on State or private wetlands within the Critical Area may be approved if the following conditions exist:~~

~~(1) The project is located in an Intensely Developed Area (IDA);~~

~~(2) The project is constructed on a pier that existed as of December 1, 1985 that can be verified by a Department of Natural Resources aerial photograph dated 1985, accompanied by a map of the area; and~~

~~(3) The project does not require an expansion of the pier greater than 25% of the area of piers or dry docks removed on the same property; however, additional expansion may be allowed in the amount of 10% of the water coverage eliminated by removing complete piers from the same or other properties. If the horizontal surface of a pier to be removed is not intact, but pilings identify its previous size, then that area may be used in determining the additional expansion permitted. The project expansion based on water coverage eliminated can be considered only if all nonfunctional piers on the property are removed except for the project pier. The total expansion may not exceed 35% of the original size of the piers and dry docks removed.~~

~~c. A building permit for the repair of an existing dwelling unit or other non water dependent structure on a pier located on State or private wetlands within the Critical Area may be approved.~~

~~d. If a structure that is not water dependent is permitted under the exceptions included in this section, an applicant is required to demonstrate that the project will meet the following environmental objectives using the standards established herein:~~

~~(1) The construction and operation of the project will not have a long term adverse effect on the water quality of the adjacent body of water;~~

- ~~(2) — The quality of stormwater runoff from the project will be improved; and~~
- ~~(3) — Sewer lines or other utility lines extended for the pier will not affect the water quality of adjoining waters.~~

**M[F].** Golf course (5.10)

1. A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc., may be permitted in Resource Conservation Areas (RCAs) provided:
  - a. Such use is a permitted use allowed in the underlying zoning district; and
  - b. Development is in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005.

**N[G.]** Existing industrial uses (6.10)

1. Existing industrial facilities and uses, including those that directly support agriculture, forestry, or aquaculture may be permitted in Resource Conservation Areas (RCAs).
2. Expansion of existing industrial facilities and use in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Chapter and the Grandfathering provisions in § 34 and may require growth allocation.

**Ø[H].** New industrial uses (6.20)

1. New industrial uses shall not be permitted in Resource Conservation Areas (RCA).
2. New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas (LDA) if permitted uses in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.
3. New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas (IDAs) that have been designated as Buffer Management Areas.

**P[I].** Non-maritime heavy industry (6.3)

1. Non-maritime heavy industry may be permitted if:
  - a. The site is located in an Intensely Developed Area (IDA); and

- b. The activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.

**Q[J]. Utility transmission facilities (7.10)**

1. Utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:
  - a. The facilities are located in Intensely Developed Areas (IDAs); and
  - b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
2. These provisions do not include power plants.

**R[K]. Sanitary landfill; rubble fill (8.10)**

1. Sanitary landfills or rubble fills may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

**S[L]. Solid or hazardous waste collection or disposal facilities (8.20)**

1. Solid or hazardous waste collection or disposal facilities, including transfer stations may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Department of the Environment.

**T[M]. Sludge Facilities (8.40)**

1. Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities may be permitted in the Critical Area provided:
  - a. The facility or activity is located in an Intensely Developed Areas; and



- b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
2. Agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer.

**Section 4.** The Queenstown Zoning Ordinance, Article IV, Part III, Section 42 is hereby amended as follows:

**§ 42. Water-Dependent Facilities and Activities.**

**A. Definition. In this section, the following term has the meaning indicated.**

**1. Term Defined — Water-Dependent Facility or Activity.**

- (a) **"Water-dependent facility or activity" means a structure or activity that, by reason of its intrinsic nature or operation or because of its association with an industrial, maritime, recreational, educational, aquaculture, or fishery activity, is dependent on the water and requires location at or near the shoreline or in the buffer.**
- (b) **"Water-dependent facility or activity" includes:**
  - (1) **A port;**
  - (2) **An intake or outfall structure;**
  - (3) **A marina, another boat-docking facility, or a structure or activity that is essential to the operation of the water-dependent facility, structure, or activity;**
  - (4) **A fuel pump or other fuel-dispensing equipment on a pier, a sanitary sewage pump or other wastewater removal equipment on a pier, and an office on a pier for managing marina operations, such as monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations;**
  - (5) **A public beach and any other public water-oriented recreation area; and**