

## **ARTICLE 5. DISTRICT REGULATIONS**

### **PART I – ZONING DISTRICTS**

#### Section 5-1. "R-1" Single-Family Residential District Regulations

The purpose of this district is to provide for single-family residential development of spacious character together with such public buildings, schools, churches, public recreational facilities and accessory uses, as may be necessary or are normally compatible with residential surroundings. This district is located to protect existing development of high character and contains vacant land considered appropriate for such development in the future.

1. The following uses are permitted by right:
  - a. Single-Family detached dwellings.
  - b. Public parks, playgrounds, golf courses (public or private, except miniature golf courses, putting greens, driving ranges, and similar activities operated as a business), and non-profit, non-governmental public recreation facilities subject to site plan review.
  - c. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including passenger stations, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
  - d. Type 1 Home Occupation subject to the standards in Section 6-28.
  - e. Satellite dish antennas subject to the conditions contained in Section 6-12.
  - f. Transmission lines and pipelines for local distribution of utilities.
  - g. Temporary buildings, the uses of which are incidental to construction operations or sale of lots during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two years from the time of erection of such temporary buildings, whichever is the sooner.
  - h. Occasional festivals, events or public interest of special events subject to the conditions contained in Section 6-30.
  - i. Residential Group Home. (See Section 6-29)

2. Customary accessory buildings and uses including, but not limited to:
  - a. Accessory private garages for not more than three (3) automobiles.
  - b. Swimming pools and barbecue grills for use of occupants and their guests. Swimming pools shall not be located in a required front yard.
  - c. Utility Buildings subject to the requirements of Section 6-14.
  - d. Private piers, less than six (6) feet in width.
3. The following uses are permitted as special exceptions after approval by the Board of Appeals:
  - a. Farm, truck garden, orchard, or nursery for growing or propagation of plants, trees, and shrubs, including temporary stands for seasonal sales or products raised on the premises, but not including the raising for sale of birds, bees, rabbits, or other animals, fish, or other creatures to such an extent as to be objectionable to surrounding residences by reason of odor, dust, noise, or other factors, and provided no retail or wholesale business office or store is permanently maintained on the premises.
  - b. Churches and parish halls, temples, convents, and monasteries.
  - c. Colleges and schools, public or private, having a curriculum and conditions under which teaching is conducted equivalent to a public school, and institutions of higher learning.
  - d. Non-profit libraries or museums or art galleries.
  - e. Hospitals, nursing homes, and similar institutional uses.
  - f. Housing for the elderly and handicapped.
  - g. Emergency services including fire, rescue, ambulance, police, and other related activities and any use associated therewith.
  - h. Recreational facility, privately or commercially owned and operated, such as boating lake, picnic grounds, private clubs, lodges, and recreational buildings, including country clubs and swimming pools, provided that:
    - 1) the nature of the structure and use will not conflict with the character of the area by reason of traffic, noise, appearance, and other characteristics;

- 2) sufficient safeguards be established by the Board of Appeals to prevent undue disturbance of any residential area, including but not limited to the enlargement of required yards and reduction of building coverage.
- i. Temporary buildings, the uses of which are incidental to construction operations or sale of lots during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two years from the time of erection of such temporary buildings, whichever is the sooner.
- j. Type 2 Home occupation subject to the requirements of Section 6-28.
- k. One accessory dwelling unit subject to the requirements of Section 6-27.
- l. Assisted living facility subject to the requirements of Section 6-29.
- m. Non-profit religious, educational, and philanthropic institutions social, fraternal clubs and lodges.
- n. Museums, Boys Club, and Girls Clubs.
- o. Public utility installations for sewer, water, gas, electric, and telephone mains and incidental appurtenances. (See Section 6-1)
- p. Towers and related structures subject to the requirements of Section 6-25.
- q. Satellite dish antenna subject to the conditions outlined in Section 6-12.
- r. Semi-public and private institutions of an educational, medical, charitable or philanthropic nature, including but not limited to schools, hospitals, sanatoria, clinics, nursing homes, and orphanages.
- s. Bed and Breakfast.

## 4. Height, Area and Bulk Regulations:

Maximum Height	2½ stories or 35 feet
Minimum Lot Specifications	
- Area (total)	10,000
- Per Family	10,000
- Width	60
- Depth	100
Maximum Lot Coverage	50%
Minimum Yard Specifications	
- Front Yard Depth	25
- Side Yard Width (two required unless otherwise specified)	10
- Rear Yard Depth	30
[AMENDED PER ORDINANCE 2010-02-01]	

## 5. Permitted Signs: See Article 7

## 6. The following additional regulation shall apply in the “R-1” District: No outdoor storage shall take place in the Buffer or any required bufferyard.

## Section 5-2. "R-2" Two-Family Residential District Regulations

The purpose of this district is to provide for single-family and two-family residential development of moderately spacious character together with such public buildings, schools, churches, public recreational facilities, and accessory uses, as may be necessary or are normally compatible with residential surroundings. The district is located to protect existing development of this character and contains vacant land considered appropriate for such development in the future.

1. The following uses are permitted by right:
  - a. All uses permitted by right in the "R-1" District.
  - b. Two-family dwellings, duplex.
  - c. Accessory uses and structures as provided in the "R-1" District.
2. The following uses are permitted by special exception after approval by the Board of Appeals:
  - a. All uses permitted by special exception in the "R-1" District.
  - b. Senior housing.
  - c. Adult Day Care.
3. Height, Area and Bulk Regulations:

Maximum Height	2 ½ stories or 35 feet
Minimum Lot Specifications	
- Area (total)	8,000
- Per Family	5,000
- Width	60
- Depth	100
Maximum Lot Coverage	50%
Minimum Yard Specifications	
- Front Yard Depth	15
- Side Yard Width (two required unless otherwise specified)	5(1)(2)
- Rear Yard Depth	30
[AMENDED PER ORDINANCE 2010-02-01]	

### Footnotes:

(1) The two required side yards shall total 15 feet and neither shall be less than five (5) feet.

(2) The dwelling units of a two-family dwelling may be sold separately if separate utilities systems are provided. Each dwelling unit of a two-family dwelling must comply with the minimum lot area per dwelling unit.

4. Permitted Signs: See Article 7
5. The following additional regulation shall apply in the "R-2" District: No outdoor storage shall take place in the Buffer or any required bufferyard.

Section 5-3. "R-3" Multi-Family Residential District Regulations

This district provides for the continuation of existing higher density multiple-family residence and townhouse projects approved prior to June 28, 2006. The Town shall limit the extent of this district to those areas currently approved for development and zoned "R-3". The Town does not intend to create or expand any existing "R-3" District. The Town will instead rely on the "R-4" Mixed-Use Residential District, which provides for well planned, mixed-use neighborhoods that includes a diverse mix and efficient arrangement of land uses and housing types, to address community needs for higher density multifamily residences and attached single family residential units.

1. The following uses are permitted by right:
  - a. Any use permitted in the "R-1" Single-Family Residential District.
  - b. Townhouses.
  - c. Two-family dwellings, duplex.
  - d. Multiple-family dwellings.
  - e. Boarding, rooming, and lodging houses.
  - f. Private clubs, fraternities, sororities, and lodges, excepting those for which the chief activity is a service customarily carried on as a business.
  - g. Apartments.
  - h. Non-profit, religious, educational, and philanthropic institutions.
  - i. Accessory buildings and uses.
2. The following uses are permitted by special exception after approval by the Board of Appeals:
  - a. All uses permitted by special exception in the "R-2" District.
  - b. In the case of efficiency, one bedroom apartment development designed specifically for occupancy by not more than one or two persons, each efficiency apartment shall be considered equivalent to 0.50 family dwelling unit and the lot area and number of parking spaces required per unit may be determined accordingly, subject to the provisions of this Ordinance governing special exceptions, and upon approval by the Board of Appeals.

3. Height, Area and Bulk Regulations:

	Single Family or Two Family	Townhouses
Maximum Height	3 stories or 45 feet	Same
Minimum Lot Specifications	1 family – 6,500 2 family & over – 3,250 per unit (2)	2,200
Width	1 family – 50 ft. 2 family & over – 50 ft.	20 ft.
Depth	100 ft	
Coverage	---	50%
Minimum Yard Requirements		
- Front Yard Depth	15 ft.	20 ft.
- Side Yard Width (two required unless otherwise specified)	1, 2, 2½ story – 5 ft. (1) 3 story – 10 ft. (2)	10 ft. (3) 15 ft. (3)
Rear Yard Depth	30 ft. [AMENDED PER ORDINANCE 2010-02-01]	25 ft.
Maximum Number of Units per Building	Multifamily 10	6 (1)
Maximum Number of Dwelling Units per Acre	1 family – 5 2 family & over – 5 Multifamily - 16	NA

Footnotes:

(1) The two required side yards shall total 15 feet and neither shall be less than five (5) feet.

(2) The dwelling units of a two-family dwelling may be sold separately if separate utilities systems are provided. Each dwelling unit of a two-family dwelling must comply with the minimum lot area per dwelling unit.

(3) Side yard requirements applies to end units only.

4. Permitted signs: See Article 7

5. The following additional regulations shall apply in the "R-3" District: No outdoor storage shall take place in the Buffer or any required bufferyard.

Section 5-3A “RM-C” Multifamily Residential District Regulations.  
(ADOPTED PER ORDINANCE 2008-03-03)

1. Purpose of the District

While existing land uses in the Town’s Corporate limit provide for a variety of residential uses, it is the Town’s intent to provide opportunities for Multifamily Residential uses interspersed with commercial uses along the Route 272 and Route 40 corridor. Residents within the Multifamily residential district would benefit by the close proximity of goods and services to the residents. These neighborhoods would provide and encourage multi-modal transportation opportunities, unique to the Route 272 and Route 40 corridor, as the road systems in these areas have been designed to handle traffic volumes, which can support the multi-family residential district.

Any tract of land so developed shall be in one ownership or in the case of multiple ownership of the tract, it shall be developed according to a single plan with common authority and common responsibility. If the developer/owner has received approval for a development project, then opts at a later time, to not proceed with the project as proposed, future phases may be developed in accordance with the regulations which are current at the time of development, provided the landscaping, bufferyards, setbacks, open space provisions, etc., provided on the original plan remain in the subsequent phases. All property owners shall be signators on the development plan. (AMENDED BY ORDINANCE 2013-07-01)

2. The following uses are permitted by right:

- a. Detached Single-Family Dwelling
- b. Two-family Dwellings, Duplex
- c. Townhouses
- d. Multifamily Dwelling
- e. Apartments
- f. Non-profit, religious, educational, and philanthropic institutions.
- g. Accessory buildings and uses.
- h. Type 1 Home Based Business subject to the standards in Section 6-28.

3. The following uses are permitted by special exception after approval by the Board of Appeals:

- a. All uses permitted by special exception in the R-2 District.

4. Height, Area and Bulk Requirements:

	Minimum Area & Dimension		Minimum Yard Requirements [1]			Maximum Height	Minimum Road Frontage
	(Sq.Ft.)	Width (ft.)	Front	Side [2]	Rear [2]	Feet	Feet
Detached, Single Family	6,500	65	30 [1]	10	30*	3 stories or 45 [2]	100/25 [5]
Semi-Detached	6,500 [3]	65	30 [1]	15	30*	3 stories or 45 [2]	100/25 [5]
Duplex	13,000 [4]	80	30 [1]	15	30*	3 stories or 45 [2]	100/50 [5]
Townhouse	1,800	18	20 [1]	15 [6]	30*	3 stories or 45 [2]	18
Apartments	5 acre minimum development tract **	n/a**	n/a**			3 stories or 45 feet**	50**

\*[AMENDED PER ORDINANCE 2010-02-01] \*\* (AMENDED PER ORDINANCE 2013-07-01)

Notes:

- [1] Principal structures shall be setback a minimum of 50 feet from any right-of-way or road widening easement of collector or arterial roadways or streets as defined on a current Official Cecil County Roadway Classification Map.
- [2] When required, side and rear yards are each increased by at least one foot for each additional foot of building above 35 feet.
- [3] Per unit
- [4] Per building
- [5] Road frontage requirements may be reduced to the lower figure for lots on a local roadway as defined on a current Official Cecil County Roadway Classification Map.
- [6] A 15-foot side yard is required for end units.

5. District Standards

- a. Maximum Residential Density Provisions. Maximum permitted residential densities shall be as follows:

- (1) Detached Single Family Units- Six (6) dwelling units per acre.
- (2) Duplex Units - Six (6) dwelling units per acre.
- (3) Semi-detached Units - Six (6) dwelling units per acre.
- (4) Townhouse Units - Twelve (12) dwelling units per acre.
- (5) Apartment Units - Sixteen (16) dwelling units per acre.

6. All development in the “RM-C” district shall comply with the following:

- (1) Adequate pedestrian access shall be provided throughout all developments.
- (2) The development shall be designed in such a way to allow for adequate access throughout the site for emergency vehicles and apparatuses.
- (3) Parking areas should be separated from the main vehicular circulation system.
- (4) All areas not occupied by buildings, roads, parking areas, service areas, or other required or permitted uses, including open spaces and usable recreation areas shall be landscaped by lawns, trees, shrubs, gardens, or other suitable ground cover.
- (5) No outdoor storage shall take place in the Buffer.

7. Townhouse and Apartments

- (1) Townhouse and apartment developments shall be served by public water and sewer facilities.
- (2) In townhouse and apartment developments, provided that all buildings are located to provide access for servicing, fire protection and off-street parking, lots may front on open space, courts or group parking areas.
- (3) No building shall be constructed closer to any other building on the same lot than a distance equal to the height of the higher of the two buildings. The space between two buildings can be reduced to a distance equal to half of the taller of the two buildings provided that:

- (a) The spacing is approved by the Emergency Services representative to the Cecil County Technical Advisory Committee; and
    - (b) The buildings are oriented side to side, or corner to corner; and
    - (c) The reduction in the building spacing requirement will allow for additional usable open space to be provided on the site; and
    - (d) The buildings are designed in clusters rather than strips.
  - (4) No apartment building in this zone shall be constructed closer to any property line of the development tract than a distance equal to the height of the building.
  - (5) No more than eight (8) dwelling units shall be contained in a townhouse structure without a setback between structures as specified below.
  - (6) The minimum distance between townhouse structures shall be sixty (60) feet if townhouse structures are face to face. The point of measurement shall be the exterior walls of the structures and does not include balconies or other architectural features.
  - (7) No townhouse structure shall be closer than twenty (20) feet to any interior roadway or closer than fifteen (15) feet to any off-street parking area excluding garages built into an individual townhouse unit.
  - (8) Apartment buildings shall be set back at least twenty (20) feet from all parking areas and internal roads.
  - (9) Apartment buildings shall be set back 50 feet from any right-of-way or road widening easement of collector or arterial roadways as defined on a current Official Cecil County Roadway Classification Map.
  - (10) The maximum length of an apartment building shall be 300 feet.
  - (11) The minimum lot size for townhouse and/or apartment development shall be one acre.
8. Landscaping and Bufferyards. The following landscaping and bufferyards shall be required:

- a. A minimum of 25 percent of the development envelope shall be landscaped.
  - b. A minimum 25 foot bufferyard meeting the “C” standard in Appendix A shall be provided around the perimeter of the development tract. No parking areas, roadways, or accessory structures shall be permitted in the 25 foot planted bufferyard.
- 9. Open Space Provisions. Common open space shall be provided as stated below and shall not include roads, parking areas or accessory structures unless permitted by the Planning Commission and shall be improved by the developer with recreation amenities as required by the Planning Commission:
  - a. Subdivisions involving all detached single family dwellings units, 15 percent of the gross site area.
  - b. Development involving any other type of dwelling unit, 20 percent of the gross site area.
- 10. Permitted signs. All signs permitted in the R-1 districts subject to the sign regulations of Article 7.
- 11. Additional Requirements. The Planning Commission may impose additional development requirements to achieve compliance with all applicable development standards contained in the current North East Zoning Ordinance and current North East Subdivision Regulations and all other regulatory standards of the Town of North East where such modifications do not require a major redesign of the proposed development or preparation of an amended site plan or subdivision plat as previously approved by Cecil County.

Section 5-4. "R-O" Residential Office District Regulations

This district is meant to provide for a mixture of residential uses and business uses. It permits business uses not unduly disruptive of a high-density residential area. In addition, it is the intent of the Town to insure that new development and redevelopment in the district maintains an appropriate scale and character consistent with the surrounding neighborhoods.

1. The following uses are permitted by right:
  - a. All uses permitted by right in "R-3" Residential District.
  - b. Bed and breakfast.
  - c. Offices for professional or business purposes, including but not limited to medical, law, real estate, insurance and manufacturer's representatives' offices.
  - d. (Deleted per Ordinance 2014-12-01)
  - e. Semi-public and private institutions of an educational, medical, charitable or philanthropic nature, including but not limited to schools. (AMENDED PER ORDINANCE 2014-12-01)
  - f. accessory uses and structures, including but not limited to those permitted in "R-3" Residential District;
  - g. temporary construction uses as provided in the "R-1" Residential District by special exception.
2. Height, Area, and Bulk Regulations.
 

The height, area and bulk regulations shall be in all respects the same as that for "R-3" Residential District.
3. Permitted Signs. See Article 7
4. Community Appearance Standards
 

All new construction and redevelopment in the "RO" Residential Office District shall be subject to the community appearance standards in Section 6-32. (AMENDED PER ORDINANCE 2014-12-01)
5. The following additional regulations shall apply in the "RO" District: No outdoor storage shall take place in the Buffer or any required bufferyard.

Section 5-5. “R-4” Mixed-Use Residential District Regulations

1. The purpose of this district is to provide for single-family and two-family residential development of moderately spacious character together with such public buildings, schools, churches, public recreational facilities, and accessory uses, as may be necessary or are normally compatible with residential surroundings. It also is the purpose of the “R-4” Mixed-Use Residential District to encourage Master Planned Communities that include a diverse mix and efficient arrangement of land uses and housing types and to create communities that exhibit the following characteristics:
  - a. Range of housing types and densities;
  - b. Compact design;
  - c. Interconnected streets designed to balance the needs of all users, with sidewalks and on-street parking;
  - d. Open spaces integral to the community; and
  - e. Location adjacent to and extending the Town into new areas in a manner that insures development that is consistent with and complimentary to the existing Town character.
2. The following uses are permitted by right:
  - a. Any use permitted in the "R-2" Two-Family Residential District.
  - b. Private clubs, fraternities, sororities, and lodges, excepting those, the chief activity of which is a service customarily carried on as a business.
  - c. Non-profit, religious, educational, and philanthropic institutions.
  - d. Accessory buildings and uses as provided in the “R-1” Residential District.
  - e. Accessory dwelling unit, subject to the requirements of Section 6-27.
3. The Planning Commission may permit a Master Planned Community (MPC) meeting the requirements of Section 6-31.
4. The following uses may be permitted by special exception after approval by the Board of Appeals:
  - a. All uses permitted by special exception in the “R-2” Residential District.

- b. In the case of efficiency, one bedroom apartment development designed specifically for occupancy by not more than one or two persons, each efficiency apartment shall be considered equivalent to 0.50 family dwelling unit and the lot area and number of parking spaces required per unit may be determined accordingly, subject to the provisions of this Ordinance governing special exceptions, and upon approval by the Board of Appeals.
- 5. Height, Area and Bulk Regulations shall be in all respects the same as the "R-2" Residential District except as provided for a Master Planned Community (MPC) in the "R-4" District approved as per Section 6-31.
- 6. Permitted signs: See Article 7.
- 7. The following additional regulations shall apply in the "R-4" Mixed-Use Residential District: No outdoor storage shall take place in the Buffer or any required bufferyard.

Section 5-6. “VC” Village Commercial District Regulations

The purpose of the “VC” Village Commercial district is provide for a mix of residential, commercial and business uses of limited scale and intensity. Development standards are designed to insure that the scale and intensity of non-residential uses permitted in this district are compatible with adjacent residential neighborhoods and uses. Use should not be so intensive as to create congestion and/or parking problems along Main Street and in the adjacent residential neighborhoods.

1. The following uses are permitted by right provided the hours of operation for non-residential uses are limited to 8:00 am to 8:00 pm:
  - a. All uses permitted by right in “R-2” Residential District.
  - b. Bed and breakfast and country inns.
  - c. Accessory uses and structures, including but not limited to those permitted in “R-1” Residential District.
  - d. Satellite dish antenna subject to the requirements of Section 6-12.
2. The following uses are permitted by right if the use does not exceed 800 square feet gross floor area and provided the hours of operation are limited to 8:00 a.m. to 8:00 p.m.: (AMENDED PER ORDINANCE 2008-03-02)
  - a. Craft or specialty shops.
  - b. Dressmaking, tailoring, decorating, shoe repairing, repair of household appliances and bicycles, and bakery, with sales of bakery products on the premises and other uses of a similar character.
  - c. Book stores, news centers, gift shops, jewelry shops, boutiques, photographic art supply stores, antique stores, and florist shops.
  - d. Barber shops, beauty parlors, photographic or artists' studios, and messenger services.
  - e. Business services, including computer repair, copying, and postal services.
  - f. (DELETED PER ORDINANCE 2008-03-02)
3. The following uses are permitted as special exceptions after approval by the Board of Appeals:
  - a. One accessory dwelling unit subject to the requirements of Section 6-27.

- b. Government buildings.
  - c. Non-profit museums or art galleries.
  - d. Child care centers, large institutional. (See Section 6-29)
  - e. Post office, local.
  - f. Type 2 home occupation subject to the requirements of Section 6-28.
  - g. Churches and parish halls, temples, convents, and monasteries including accessory community care services.
  - h. Offices for professional or business purposes, including but not limited to medical, law, real estate, insurance and manufacturer's representatives' offices limited to 1,000 square feet gross floor area. The 1,000 square feet gross floor area limit does not apply to buildings with an existing footprint of the building which is in excess of 1,000 square feet. (AMENDED PER ORDINANCE 2010-09-02)
  - i. All uses outlined in Section 5-6; paragraph 2 above, which encompass greater than 800 square feet of gross floor area. (AMENDED PER ORDINANCE 2008-03-02)
  - j. Limited Restaurant. (See Section 6-19)  
(AMENDED PER ORDINANCE 2009-05-01)
  - k. Public or private parking lot or facility for vehicles, not exceeding twenty (20) spaces. Parking lot or facility shall have a minimum horizontal buffer distance of 100 feet to any similar independent, stand-alone parking lot or facility. The horizontal buffer may contain uses (other than private or public parking lots) which are consistent with the "VC" Village Commercial District Regulations.  
(ADOPTED PER ORDINANCE 2012-11-01)
4. Community Appearance Standards – (AMENDED PER ORDINANCE 2008-03-02)
- a. All new construction and development in the VC District, except infill development approved as per the requirements of Section 5-14, shall be subject to the community appearance standards in Section 6-32.
  - b. Hours of operation. Hours of operation may be modified by the Board when the use requires a special exception.
  - c. Parking: Compliance with off street parking requirements is encouraged but shall not be required if the use is 800 square feet or less. Uses greater than 800 square feet are encouraged to

provide on site parking, however, applicant may utilize Article 6-8. Parking Regulations. Paragraph 2. Joint Use and Off-Site Facilities.

5. Height, Area and Bulk Regulations:

Maximum Height	2½ stories or 35 feet
Minimum Lot Specifications	
- Area (total) – Residential Uses	6,500
- Area - Non-residential uses outlined above	None
- Per Family	For Dwelling – 3,250
- Width	50
- Depth	100
Maximum Lot Coverage	60%
Minimum Yard Specifications	
- Front Yard Depth	5 ft. (1)
- Side Yard Width (two required unless otherwise specified)	None, except noted (2)
- Rear Yard Depth	None, except as noted (3)

Footnotes:

(1) Front yards shall conform to the average front yard along the block face as determined by the Planning Commission and in no case shall be less than five (5) feet.

(2) There shall be a side yard not less than ten (10) feet in width on any side adjoining a residential zoning district.

(3) There shall be a rear yard not less than twenty (20) feet in depth on the rear adjoining a residential district.

6. Permitted Signs. See Article 7

7. The following additional regulations shall apply in the "VC" Village Commercial District: No outdoor storage shall take place in the Buffer or any required bufferyard.

Section 5-7. “VM” Village Marine District Regulations

The purpose of the “VM” Village Marine district is to permit limited commercial development on key waterfront properties serving recreational boaters and watermen. In addition to docking and tie-up facilities, these sites may also be appropriate for related services, such as restaurant, boating specialties and supplies, and sanitary facilities. The standards for these sites do not permit more intense marina uses, such as dry dock facilities, major boat repair, and high and dry storage.

1. The following uses are permitted by right:
  - a. Boatyard for the sale, docking, storage, and minor repair of yachts and pleasure boats.
  - b. Boat sales and storage, but not including high and dry or dry-stack storage.
  - c. Government buildings.
  - d. Satellite dish antennas subject to the conditions contained in Section 6-12.
  - e. Temporary buildings, the uses of which are incidental to construction operations or sale of lots during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such construction, or upon the expiration of a period of two years from the time of erection of such temporary buildings, whichever is the sooner.
  - f. Swimming pools and barbecue grills for use of occupants and their guests. Swimming pools shall not be located in a required front yard.
  - g. One accessory private garage for not more than three (3) automobiles.
  - h. Customary accessory use and structures.
  - i. All uses permitted by right in “R-2” Residential District. (ADOPTED PER ORDINANCE 2009-05-01)
  - j. Bed and breakfast and country inns. (ADOPTED PER ORDINANCE 2009-05-01)
  - k. Accessory uses and structures, including but not limited to those permitted in “R-1” Residential District. (ADOPTED PER ORDINANCE 2009-05-01)

2. The following uses are permitted as special exceptions after approval by the Board of Appeals:
  - a. Docks, piers, bulkheads and other over water structures, except private over-water piers and boathouses accessory to a dwelling.
  - b. Marinas and yacht clubs, provided that:
    - (1) The marina or yacht club complies with all other codes, regulations, laws and ordinances, including those relating to the establishment of bulkhead lines and the necessary approval is obtained from the United States Army Corps of Engineers.
    - (2) The proposed design is satisfactory as regards such safety features as location of fueling points, fuel storage effect on navigation, and possibilities for water pollution.
    - (3) The marina or yacht club is properly located with respect to access roads and existing and future developed areas.
  - c. Standard restaurant, limited to no more than 3,500 square feet.
  - d. Retail sales in a ships store with total floor area not exceeding 3,500 square feet.
  - e. Television antennas 50 feet tall or more, towers and antennas more than 50 ft tall and associated sub-stations.
3. Height, Area and Bulk Regulations:

Maximum Height	3 stories or 45 feet
Minimum Lot Specifications	
- Area (total)	6,500
- Width	50
- Depth	100
Maximum Lot Coverage	70%
Minimum Yard Specifications	
- Front Yard Depth	None
- Side Yard Width (two required unless otherwise specified)	None, except as noted (1)
- Rear Yard Depth	None, except as noted (2)

Footnotes:

(1) There shall be a side yard not less than ten (10) feet in width on any side adjoining a residential zoning district.

(2) There shall be a rear yard not less than twenty (20) feet in depth on the rear adjoining a residential district.

4. Permitted Signs. See Article 7
5. The following additional regulations shall apply in the "VM" Village Marine District: No outdoor storage shall take place in the Buffer or any required bufferyard.

### Section 5-8. "GC" General Commercial District Regulations

The "GC" General Commercial district encompasses the shopping and office core in the area known as the Central Business District. The purpose of the "GC" General Commercial District is to provide for an appropriate mix of retail, business, and service uses catering to residents and visitors in a traditional town center. Development standards for the "GC" district address both functional and aesthetic characteristics such as architecture, signage and pedestrian comfort that differentiates the town center from typical strip commercial development located along major highway corridors. They promote appropriate development and redevelopment, maintaining shops near the street edge, with on-street and rear parking.

1. The following uses are permitted by right:
  - a. Parking lots for vehicles not exceeding 15,000 pounds gross vehicle weight.
  - b. Display room for merchandise to be sold on order where merchandise sold is stored elsewhere.
  - c. Dressmaking, tailoring, decorating, shoe repairing, repair of household appliances and bicycles, bakery, with sales of bakery products on the premises and other uses of a similar character.
  - d. Offices and office buildings, including medical clinics.
  - e. Personal service uses, including barber shops, banks with the exception of drive-in-banks as set forth in Section 6-22, beauty parlors, photographic or artists' studios, messengers, taxicabs, newspaper or telegraphic service stations, dry cleaning receiving stations (no on site dry cleaning shall be permitted), undertaking establishments, florist shops and other personal service uses of a similar character.
  - f. Printing, publishing, and engraving establishments.
  - g. Retail stores, but there shall be no slaughtering of animals or poultry on the premises of any retail store.
  - h. Self-service laundry only.
  - i. Commercial apartments, except street level apartments.
  - j. Craft or specialty shop.
  1. Material storage yards in connection with retail sales of products where storage is incidental to the approved occupancy of a store, provided all products and materials used or stored shall be located in the rear yard of the property.

- m. Accessory building and uses.
2. The following uses are permitted as special exceptions after approval by the Board of Appeals:
- a. Temporary construction uses and structures as provided in the “R-1” Residential District.
  - b. Privately owned and operated convalescent homes, nursing homes, or homes for the aged.
  - c. Automobile filling stations or motorcycle or motor vehicle repair and maintenance, as provided in Sections 6-23 and 6-24.
  - d. Grocery stores as provided in Section 6-21.
  - e. Drive-in Banks as provided in Section 6-22.
  - f. Adult day care, child day care.
  - g. Standard restaurants subject to Section 6-19.
  - h. Taverns, bars, pubs, or sports bars.
  - i. Fast food restaurants excluding drive-in or drive-thru fast food restaurants subject to Section 6-19.
3. Height, Area and Bulk Regulations:

Maximum Height	3 stories or 45 feet
Minimum Lot Specifications	
- Area (total)	Residential - 6,500 Other uses permitted uses listed in 3 above – none
- Per Family	For Dwelling 6,500 sq. ft. per family
- Width	50
- Depth	100
Minimum Yard Specifications	
- Front Yard Depth	None
- Side Yard Width (two required unless otherwise specified)	None, except as noted (1)
- Rear Yard Depth	None, except as noted (2)

Footnotes:

(1) There shall be a side yard not less than ten (10) feet in width on any side adjoining a residential zoning district.

(2) There shall be a rear yard not less than twenty (20) feet in depth on the rear adjoining a residential district.

5. Permitted signs: See Article 7.

6. The following additional regulations shall apply in the “GC” General Commercial District: No outdoor storage or parking is permitted in the Buffer or any required bufferyard.
7. Community Appearance Standards – all new construction and redevelopment in the “GC” General Commercial District, except infill development approved as per the requirements of Section 5-14, shall be subject to the community appearance standards in Section 6-32.

Section 5-9. “HC” Highway Commercial District Regulations

The intent of the “HC” Highway Commercial District is to provide for commercial activities that depend on highway traffic for business. These areas are generally retail and service establishments that locate along high volume highways for accessibility and visibility. The district standards specify the types of uses and applicable development standards for highway commercial uses. In addition, this section includes development design standards intended to improve highway safety and the visual quality associated with highway commercial uses within the Town of North East.

1. The following uses are permitted by right:
  - a. Movie houses and open-air theaters.
  - b. Recreation facility privately or commercially owned and operated.
  - c. Reserved. (AMENDED PER ORDINANCE 2012-11-01)
  - d. Transmission lines and pipelines for local distribution of utilities.
  - e. Communication towers 50 feet tall or less as provided in Section 6-25.
  - f. Satellite dishes antenna as provided in Section 6-12.
  - g. Post office and mailing facilities.
  - h. Recycling Centers.
  - i. Grocery stores, mini-markets, and supermarkets as set forth in Section 6-21.
  - j. Bus or passenger train terminals.
  - k. Dressmaking, tailoring, decorating, dry cleaning and pressing and bakery, with sales of bakery products on the premises and other uses of a similar character.
  - l. Business and repair services.
  - m. Retail stores.
  - n. Hotel, motel.
  - o. Personal services.
  - p. Health services, but not including State Licensed Medical Clinics,

Clinics, or Clinic Services as defined in this Ordinance or any kind of retail or wholesale store or warehouse, except as otherwise provided herein (AMENDED PER ORDINANCE 2012-11-01)

- q. Department stores.
- r. Shopping centers and malls as set forth in Section 6-18.
- s. Retail Establishments in an office building.
- t. Display room for merchandise to be sold on order where merchandise sold is stored elsewhere.
- u. Building material and supply, boat sales, farm implements storage and sales, feed and grain storage and sales, heavy equipment sales and service provided there is no storage of goods outside fully enclosed building.
- v. Wholesale establishment or warehouse in a completely enclosed building.
- w. Offices and office buildings.
- x. Financial institutions, banks.
- y. Drive-in banks as set forth in Section 6-22.
- z. Restaurant, standard.
- aa. Drive-in or drive-thru fast food restaurants or fast food restaurants as set forth in Section 6-19.
- bb. Motor vehicle sales or rental.
- cc. Automobile, trailer and truck sales, service and repair, and emission testing, not including body work.
- dd. Drinking places, e.g., pubs, bars, dance halls, nightclubs, cocktail lounges, coffee houses.
- ee. Funeral parlors, undertaking establishments, and mortuaries.
- ff. Open-air markets (farm and craft markets, flea markets, produce markets, non-municipal) greenhouses and horticultural sales with outdoor display, wholesale or retail.
- gg. Temporary buildings, the uses of which are incidental to construction operations or sale of lots during development being conducted on the same or adjoining tract or subdivision and which shall be removed upon completion or abandonment of such

construction, or upon the expiration of a period of two years from the time of erection of such temporary buildings, whichever is the sooner.

- hh. Temporary buildings for use as a sales or rental office for an approved real estate development or subdivision, the time period to be determined by the Board of Appeals.
- ii. Festivals, events of public interest or special events.
- jj. Itinerant merchants subject to Section 6-33.
- kk. Accessory Use, utility buildings.
- ll. Automobile parking lots and automobile storage garages.
- mm. Automobile and light truck storage lots.
- nn. Automobile filling stations as set forth in Section 6-23.
- oo. Motorcycle and motor vehicle repair and maintenance as set forth in Section 6-24.
- pp. Storage of goods not related to sale or use of those goods on the same lot where they are stored provided all storage is within completely enclosed structure.
- qq. Food Storage lockers.
- rr. Material storage yards in connection with retail sales of products where storage is incidental to the approved occupancy of a store. Storage areas shall not be located in the front yard, and if visible from a public right-of-way must be screened.
- ss. Customary accessory use and structures.
- tt. Public utilities and related structures.
- uu. Video arcades, pool halls, billiard rooms, and game rooms.
- vv. Hospital or clinic for small animals, dogs, cats, birds, and the like, provided that such hospital or clinic and any treatment rooms, cages, pens, or kennels be maintained within a completely enclosed, soundproof building and that such hospital or clinic be operated in such a way as to produce no objectionable odors outside its walls.
- ww. Big Box Retail Establishments. (ADOPTED PER ORDINANCE 2007-08-01)

- xx. Churches and parish halls, temples, convents, and monasteries.  
(ADOPTED PER ORDINANCE 2012-11-01)
  - yy. Colleges and schools, public or private, having a curriculum and conditions under which teaching is conducted equivalent to a public school, and institutions of higher learning.  
(ADOPTED PER ORDINANCE 2012-11-01)
  - zz. Non-profit libraries or museums or art galleries.  
(ADOPTED PER ORDINANCE 2012-11-01)
  - aaa. Housing for the elderly and handicapped.  
(ADOPTED PER ORDINANCE 2012-11-01)
2. The following uses are permitted as special exceptions after approval by the Board of Appeals:
- a. Adult oriented commercial enterprises and services.
  - b. Satellite simulcast betting/off-tracking betting.
  - c. Towers and antennas more than 50 ft tall and associated sub-stations and wireless communications towers.
  - d. Railroad freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
  - e. Automobile painting, body work, automobile repair garage but not a junk yard or open storage of salvage automobiles or used automobile parts.
  - f. A State Licensed Medical Clinic, Clinic, or Clinic Services, as provided for in Article 6: Section 6-34.  
[ADOPTED PER ORDINANCE 2012-09-02]
  - g. Hospitals, nursing homes, and similar institutional uses.  
(ADOPTED PER ORDINANCE 2012-11-01)
  - h. Emergency services including fire, rescue, ambulance, police, and other related activities and any use associated therewith.  
(ADOPTED PER ORDINANCE 2012-11-01)

3. Height, Area and Bulk Regulations:

Maximum Height	3 stories or 45 feet
Minimum Lot Specifications	
- Area (total)	20,000
- Width	100
- Depth	100
Minimum Yard Specifications	
- Front Yard Depth	40
- Side Yard Width (two required unless otherwise specified)	10
- Rear Yard Depth	25

4. Permitted Signs. See Article 7.

5. The following additional regulations shall apply in the “HC” Highway Commercial District: No outdoor storage or parking is permitted in the Buffer or any required bufferyard.

Section 5-9A. "LC" Limited Commercial District Regulations  
(ADOPTED PER ORDINANCE 2007-01-01)

Limited Commercial encompasses selected historically recognized commercial or business uses established prior to the adoption of this ordinance that have adequate land area for the existing and potential uses and are located in areas with adequate vehicle access, including for limited truck traffic. The purpose of the Limited Commercial District is to recognize these locations where existing limited industrial, commercial and/or business activities have been conducted and to provide for their continued use, expansion and conversion to appropriate similar uses in compliance with existing standards.

1. The following uses are permitted by right:
  - a. Building material and supply establishments and related storage.
  - b. Retail stores the total floor area of which does not exceed 15,000 square feet.
  - c. Business and repair services the total floor area of which does not exceed 15,000 square feet.
  - d. Commercial apartments.
  - e. Mini Warehouses as set forth in Section 6-20.
  - f. Material storage yards in connection with retail sales of products where storage is incidental to the approved occupancy of a store, provided all products and materials used or stored shall be located in the rear yard of the property.
  - g. Railroad rights-of-way, including a strip of land with tracks and auxiliary facilities for track operations, but not including, freight terminals, switching and classification yards, repair shops, round houses, power houses, interlocking towers, and fueling, sanding and watering stations.
  - h. Public utilities and related structures.
2. The following uses are permitted as special exceptions after approval by the Board of Appeals:
  - a. Retail stores or business and repair services with a floor area in excess of 15,000 square feet.
  - b. Wholesale businesses, warehouses and similar non-processing storage and distribution uses, including limited bulk storage of

petroleum products, and other flammable, explosive, or noxious materials.

- c. Railroad passenger stations.

3. Height, Area and Bulk Regulations:

Maximum Height	3 stories or 45 feet
Minimum Lot Specifications	
- Area (total)	20,000
- Width	100
- Depth	100
Minimum Yard Specifications	
- Front Yard Depth	30
- Side Yard Width (two required unless otherwise specified)	10
- Rear Yard Depth	25

4. Permitted signs: See Article 7.
5. The following additional regulations shall apply in the "LC" General Limited Commercial District: No outdoor storage or parking is permitted in the Buffer or any required bufferyard.

Section 5-10. "LI" Light Industrial District Regulations

This district is intended for light manufacturing, fabricating, warehousing, and wholesale distributing activities which can operate in a clean and quiet manner. Also, within this district, the "HC" Highway Commercial uses will be allowed as these intensified uses are deemed to be compatible with the other permitted uses within the "LI" Light Industrial District.

Regulations are designed to protect abutting or surrounding districts; to establish standards for intensity of use and to guide the character or development. In keeping with the purpose of this district, no use may be permitted which may be detrimental to the area because of odor, smoke, dust, fumes, fire, noise, explosion or unsightly storage of materials or products.

1. The following uses are permitted by right:
  - a. Any use permitted in the "HC" Highway Commercial District.
  - b. Manufacture and assembly of:
    - (1) medical and dental equipment;
    - (2) drafting, optical, and musical instruments;
    - (3) watches, clocks, toys, games;
    - (4) electrical or electronic apparatus; and
    - (5) boats; and
    - (6) bolts, nuts, screws, rivets, ornamental metal products, firearms, appliances, tools, dies, machinery, hardware products and sheet metal products.
  - c. Manufacture of baskets, boxes, cabinets, furniture other wood products of similar nature, mattresses, clothing and fabrics fibers into fabric goods, hosiery, millinery, rugs, pillows, quilts, printing, and finishing of textiles.
  - d. Wholesale businesses, warehouses and similar nonprocessing storage and distribution uses, except bulk storage of chemicals, petroleum products, and other flammable, explosive, or noxious materials.
  - e. Building material sales yard, including the sales of rock, sand, gravel, and the like as an incidental part of the main business, and contractors' equipment storage yard or plant.

- f. Public utilities uses, such as electrical substations, storage of materials and trucks, repair facilities, offices and electric generating plants.
  - g. Accessory uses and structures, including but not limited to retail sales of products manufactured on the premises.
  - h. Boat sales, docking; storage and minor repair of yachts and pleasure boats.
  - i. Mini Warehouses as set forth in Section 6-20.
  - j. Satellite simulcast betting/off-track betting.
2. The following uses are permitted as a special exception after approval by the Board of Appeals:
- a. Temporary construction structures and uses, as provided in the "R-1" Residential District.
  - b. Production, processing, cleaning, testing, and distribution of other materials, goods, foods, and products and research, experimental, or testing laboratories provided that they:
    - (1) Emit no obnoxious, toxic or corrosive fumes or gases except for those produced by internal combustion engines under design operating conditions;
    - (2) Emit no odorous gases or other odorous matter in such quantities as to be perceptible at or beyond any point on the lot boundaries;
    - (3) Emit no smoke greater than that emitted by properly operating domestic heating equipment;
    - (4) Discharge into the air no dust or other particulate matter created by any industrial operation or emanating from any products stored prior or subsequent to processing;
    - (5) Produce no heat or glare humanly perceptible at or beyond the lot line;
    - (6) Produce no physical vibrations humanly perceptible at or beyond lot lines;
    - (7) Produce no noise exceeding the level of ordinary conversation at the boundaries of the lot;

- (8) Utilize all lighting in a manner which does not permit an external light source to be visible from any point beyond a lot line;
  - (9) Are carried on in completely enclosed buildings. Storage may be permitted out-of-doors, but shall be effectively screened by a solid, uniformly finished wall or fence with solid entrance and exit gates, which wall or fence shall be in no case lower than the enclosed storage. Such storage shall not be deemed to include the parking of licensed vehicles under 1½ ton rated capacity.
- c. A State Licensed Medical Clinic, Clinic, or Clinic Services, as provided for in Article 6: Section 6-34. [ADDED PER ORDINANCE 2012-09-02]
3. All areas not covered by buildings or parking facilities shall be landscaped in accordance with Article 12.
4. Height, Area and Bulk Regulations:

Maximum Height	4 stories or 55 feet
Minimum Lot Specifications	
- Area (total)	40,000 sq. ft.
- Width	150
- Depth	200
Minimum Yard Specifications	
- Front Yard Depth	25
- Side Yard Width (two required unless otherwise specified)	20
- Rear Yard Depth	25

5. Special Height and Yard Regulations:
- a. Whenever any building in the "LI" Light Industrial District adjoins or abuts upon a residential district, such building shall not exceed two stories and shall not exceed 35 feet in height, unless it is set back one foot from all required yard lines for each foot of additional height above 35 feet.
  - b. If a side yard and/or rear yard adjoins a residential district, there shall be a side and/or rear yard of not less than 25 feet.
6. Permitted signs: See Article 7
7. The following additional regulations shall apply in the "LI" Light Industrial District: No outdoor storage shall take place in the Buffer or any required bufferyard.

Section 5-11. "HI" Heavy Industrial District Regulations

This district is intended to provide for the complete range of business, commercial and industrial uses which may operate in an area proximate to an interstate highway. Within this district intensive business, commercial and industrial uses, as well as multiple-mixed uses which both serve the traveling public; production, manufacture and movement of industrial goods and services are all contemplated. Permitted uses in this district will only be restricted as set forth below and by prevailing State and Federal regulations, if any.

The traffic control problems associated with major truckstop facilities and travel plazas are a cause for concern and in order to protect adequately the free access to and from the interstate highway and the combination of uses contemplated within this district, truckstop facilities and travel plazas and facilities catering primarily to tractor trailers and other large highway vehicles, are therefore, permitted only by special exception. It is recognized that travel plazas and other interstate related commercial uses rely on all modes of travel along the interstate highway. Accordingly, those uses are expected to market to and solicit the business of said interstate highway traffic.

The only restrictions on use within this district shall be that the treatment or processing of hazardous waste will not be permitted within this district. The storage of hazardous wastes shall only be such as is allowed, on a temporary basis, under Federal regulations, and such as is necessary in a manufacturing or production process for a permitted use within the district. All other uses shall be deemed permitted, except as hereinafter set forth and provided that any use within this district shall be subject to site plan approval as set forth in Section 10-2, et seq. of this Ordinance.

1. Permitted uses: Not in limitation of the foregoing, but by way of example as to the broad uses permitted in this district, the following uses are permitted:
  - a. Any use permitted in the "LI" Light Industrial District.
  - b. Any industrial use not specifically listed above including uses requiring outdoor storage. Any use requiring a Special Exception in the "LI" Light Industrial District or "HC" Highway Commercial District shall be considered a permitted use under this district.
  - c. Any multiple or mixed commercial, industrial, or business uses including, but not limited to, industrial parks, business parks, services-oriented parks or any combination thereof.
2. Landscaping: All areas not covered by building or parking facilities shall be landscaped, maintained and approved in accordance with Article 12.

3. **Parking:** Parking for commercial uses shall be provided at a rate of one space (9' X 20') per 200 square feet of floor space or as required for the anticipated volume of usage. Industrial uses shall provide parking sufficient for employees considering the largest shift plus a reasonable number of visitor spaces and required handicapped spaces. Industrial and Commercial uses shall provide one loading dock space per use.
4. **Height, Area and Bulk Regulations:**

Maximum Height	6 stories or 75 feet
Minimum Lot Specifications	
- Area (total)	40,000 sq. ft.
- Width	150
- Depth	200
Minimum Yard Specifications	
- Front Yard Depth	25
- Side Yard Width (two required unless otherwise specified)	25 (1)
- Rear Yard Depth	25

Footnotes:

(1) Parking may be permitted in a required side yard but shall not be located closer than ten (10) feet to any property line.

5. **Permitted Signs:** See Article 7
6. **Special Exceptions:**
  - a. Truck stops
  - b. Travel Plazas
  - c. Truck stops and travel plazas shall be located where traffic congestion does not exist on roads used for immediate access to the center, and where congestion is not likely to be created by the proposed center; or where such congestion will be alleviated by currently scheduled improvements to access roads, by demonstrable provision for proper exits and entrances, and by internal provision for parking and traffic circulation.
  - d. Any commercial use not specifically permitted in the "LI" Light Industrial District.
  - e. A State Licensed Medical Clinic, Clinic, or Clinic Services, as provided for in Article 6: Section 6-34. [ADDED PER ORDINANCE 2012-09-02]

7. Definitions: For purposes of this section, the following words have the following definitions:
- a. Truck stop - An independent facility catering predominantly to tractor trailers and other large highway vehicles in which highway services such as fuel, food, repair and similar items are provided.
  - b. Travel Plaza - A complete integrated facility servicing the motoring public located near an interstate highway, including overnight accommodations, restaurants, fuel, servicing and other necessary items required by all sectors of the motoring public including automobiles, buses, and trucks, and which do not cater predominantly to tractor trailers and other large highway vehicles.

## PART II – SPECIAL DISTRICTS

### Section 5-12. “CAO” Critical Area Overlay District Regulations (REPEAL AND ADOPTION OF ORDINANCE 2008-03-01)

#### 1. Purpose

In 1984 the Maryland General Assembly passed the Chesapeake Bay Critical Area Protection Program to establish a resource protection program for the Chesapeake Bay and its tributaries by fostering more sensitive development activity by setting forth standards requiring the minimization of adverse impacts on water quality and protection of the natural plant, fish and wildlife habitats.

#### 2. Intent and Goal

The intent of the Critical Area Program is to provide special regulatory protection for the resources located within the Town Critical Area and to foster more sensitive development activity for shoreline areas. The goals of the Program are to accomplish the following:

- Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
- Conserve fish, wildlife, and plant habitat; and
- Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

#### 3. Implementation of the Critical Area Provisions

- a. Local Implementation. These provisions regulate development activities and resource utilization activities, eg., agriculture and forestry, within the Critical Area. They supplement existing land use regulations by imposing specific standards and requirements as set forth in the Critical Area Act and Criteria. The Critical Area provisions as set forth herein and in any other applicable regulations, supersede any inconsistent law, section, or plan of the Town. In the case of conflicting provisions, the stricter provisions shall apply.
- b. Critical Area Program. The Town adopted its Critical Area Program June 26, 1988. The Program consists of this ordinance, the Town’s Critical Area maps, the Comprehensive Plan and Subdivision Regulations.

4. Application

The requirements of the Critical Area Overlay District shall apply to all areas shown on the zoning Map Overlay District to include, at a minimum, all areas within 1,000 feet of tidal waters and state or private wetlands and the heads of tides and such additional areas as designated to meet the purpose of the district.

5. Applicability and Findings Requirements.

Any applicant for a permit or license to pursue activities within the Critical Area, including but not limited to, development or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture related activities shall have such permits or licenses issued by the Zoning Administrator or their designee after review and approval under the Town's Critical Area Program. No person shall develop, alter or use any land for residential, commercial, industrial, or institutional uses, nor conduct agricultural, fishery or forestry activities in the Town's Critical Area except in compliance with the applicable provisions contained herein and the North East Comprehensive Plan. To ensure this end, no development or resource utilization activity shall be permitted until the applicable approving authority shall make specific findings that the proposed development or activity is consistent with the goals and objectives of the Critical Area Program.

6. State and Local Projects.

For all development in the Critical Area resulting from State and local agency projects, the Town shall adhere to COMAR 27.02.02 and COMAR 27.02.06. If applicable, consistency reports shall be submitted to the Critical Area Commission.

7. Program Enforcement.

- a. Consistency. The Critical Area provisions of this Ordinance, in accordance with the Critical Area Act and Criteria supersede any inconsistent law, Chapter or plan of the Town of North East. In the case of conflicting provisions, the stricter provisions shall apply.
- b. Responsible agencies. These provisions shall be implemented and enforced by the Zoning administrator with the assistance of the Critical Area Circuit Rider. Should an infraction under the Critical Area Program, or under any law, ordinance or plan related to a Critical Area

Program provision or requirement, be brought to the attention of any official of the Town, said official shall immediately contact the Zoning administrator or designee who may consult with the Critical Area Circuit Rider, and if necessary the Town Attorney, to determine the proper remedial course of action. The Zoning Administrator shall send a copy of the course of action taken under the provisions of this section to the Critical Area Commission. The Commission, at its discretion, may also take action under its authority in the State Critical Area law.

- c. Violations. In addition to any other penalty applicable under State or municipal law, a person who violates a provision of Natural Resources Article, Title 8 Subtitle 18, or the Town's Critical Area Program, ordinances, or regulations is subject to a fine not to exceed \$10,000. In determining the amount of the penalty to be assessed under paragraph c, the Town may consider the following:
  - (1) The gravity of the violation;
  - (2) The willfulness or negligence involved in the violation; and
  - (3) The environmental impact of the violation.
- d. Responsible Persons. The owner or occupant of any land, building, structure, premises, or part thereof, or any architect, builder, contractor, agent, realtor, or other persons who commits, participates in or assists, any violation of the terms of the Town Critical Area Ordinance may each be chargeable with such violation.
- e. Implementation. All fines imposed under this section are supplemental to any mitigation requirements that may be imposed and shall not be deemed to substitute for the mitigation requirements stated in any section of the Ordinance.
  - (1) For purposes of assessing fines under this section, each day that the violation continues unabated shall be considered a separate violation.
  - (2) The imposition of fines for violations shall be supplemental to, and not as a substitute for compliance with any and all development requirements imposed by the Zoning Ordinance, including but not limited to any requirements for afforestation, reforestation, mitigation, planting, construction of stormwater management facilities,

and site design limitations, including such requirements that are imposed only upon a violation of the provisions of this Ordinance.

- (3) In addition to the civil penalties set forth above, the Zoning Administrator or designee may seek the abatement of the conditions which are the basis of the violation. The Zoning Administrator may require the restoration of the disturbed area to the conditions existing prior to the violation and may include an order for the removal of any structures. The restoration shall be undertaken in a manner which is consistent with the Critical Area requirements of the Natural Resources Article, COMAR and the Town's Local Critical Area Program found in the Town Ordinance.
- f. Clearing Violations. Clearing of vegetation is defined as removal of trees, understory trees, saplings, shrubs or herbaceous plants. Clearing includes using a mechanical device to remove vegetation (e.g., bushhogging). Clearing as defined above shall not be interpreted to restrict the removal of hazardous, dead, dying or diseased trees as approved in advance by the Zoning Administrator or designee in consultation with the Critical Area Circuit Rider or as otherwise specified in the Town's ordinance. At the Town's discretion, replacement of trees may be required. Horticultural practices necessary to maintain the health of individual trees are not restricted, but must be approved if associated with any Buffer cutting.
  - g. Clearing or Disturbance in the 110-foot Buffer or Special Buffer Area. Any person or persons, who remove vegetation and/or trees within the Buffer or alter the slope of the land surface within the Buffer without a valid zoning certification, grading permit, or required authorization from the Town, shall be subject to a fine of \$1000. Any subsequent Buffer clearing violations by the same party shall be assessed a fine of \$5,000 for the second violation and a fine of \$10,000 for any further Buffer violations.
  - h. Unauthorized Tree Removal Within the IDA. Any person or persons, who remove trees within the IDA without a valid zoning certification, grading permit, or required authorization from the Town, shall be subject to a fine of \$100. Any subsequent violation of tree removal by the same party shall be subject to a fine of \$500 for the second violation and a fine of \$1,000 for any further tree removal violations.

- i. Unauthorized Tree and Vegetation Removal Within the RCA and LDA. Any person or persons, who remove trees or vegetation within the RCA and LDA without a valid zoning certification, grading permit, or required authorization from the Town, shall be subject to a fine of \$1000. Any subsequent violation by the same party shall be subject to a fine of \$2,500 for the second violation and a fine of \$5,000 for any further unauthorized tree and vegetation removal within the RCA and LDA. Any person or persons, who remove trees or vegetation within the RCA and LDA on a grandfathered lot in excess of what may be authorized in accordance with the forest and woodland protection provisions of the Town's zoning ordinance shall be subject to fine of \$500. Any person or persons, who remove trees or vegetation within the RCA and LDA associated with projects requiring site plan review in excess of what may be authorized in accordance with the forest and woodland protection provisions of the Town's zoning ordinance shall be subject to a fine of \$10,000.
- j. Disturbance of Steep Slopes Within the RCA and LDA (Not Expanded Buffer). Any person or persons who disturb steep slopes by clearing, grading, or unauthorized development activities in excess of 250 square feet on a grandfathered lot shall be subject to a fine of \$500. Any person or persons, who disturb greater than 250 square feet and less than 2,500 square feet shall be subject to a fine of \$1,000. Any person or persons who disturbs greater than 2,500 square feet shall be subject to a fine of \$5,000. Any person or persons who disturb steep slopes in excess of 250 square feet by clearing, grading or unauthorized development activities associated with projects requiring site plan review shall be subject to a fine of \$10,000.
- k. Violations of Order. Any person or persons who has been cited for a violation when said violation(s) occur after a refusal by the Zoning Administrator or designee to issue a permit for the specific actions taken, or which occur in violation of a stop work order or cease and desist order issued by the Zoning Administrator or designee, shall be subject to a fine in the amount of \$10,000, regardless of whether the actions are a mistake, unintentional, intentional or willful.
- l. Unauthorized Development Activities Within the Critical Area. Any person or persons, who undertakes a development activity without a valid zoning certification, grading permit, or required authorization from the Town, shall be required to obtain any necessary approvals, permits and authorizations and shall be assessed a fine in

the amount of \$1.00 per square foot of the development activity. Any subsequent violation on any property by the same person shall be assessed a fine of \$5.00 per square foot for the second violation and a fine of \$10.00 per square foot for any further violations.

## 8. General Regulations and Development in the Critical Area

- a. Except within the Resource Conservation Area (RCA) as provided below, uses, accessory uses and special exception uses shall be those permitted within the applicable underlying base zoning district as shown on the Official Zoning Maps.
- b. General Policies. In order to accommodate already existing land uses and growth in the Town Critical Area while providing for the conservation of habitat and the protection of water quality, the Town has identified and mapped three separate land use management districts for the purpose of planning, regulating and monitoring the type and intensity of land use, development, and redevelopment activities occurring within the Critical Area. The three land use management categories are:
  - Intensely Development Areas (IDAs)
  - Limited Development Areas (LDA)
  - Resource Conservation Areas (RCA)

These land use management areas correspond to the definitions established in the Chesapeake Bay Critical Area Criteria, as amended, for each area and specifically as identified on the Town's Critical Area Maps, adopted as part of the Town's Critical Area Program. Mapped land use management area classifications are based on land uses that existed on or before 1 December 1985, except for areas where the land classification may be changed through the use of Growth Allocation. Growth Allocation of 41.09 acres was granted to the Heron Cove Subdivision on February 26, 2007. At the time of the adoption of this Ordinance, the Town has a total of 274.78 Critical Area acres: 156.59 acres of IDA and 118.19 acres of LDA. The following regulations shall be applied based on the specific land management classification.

- (1) Intense development should be directed outside of the Critical Area. Future intense development activities, when proposed in the Critical Area, shall be directed towards the Intensely Developed Areas.

- (2) Additional low intensity development may be permitted in the Limited Development Areas, but shall be subject to strict regulation to prevent adverse impacts on habitat and water quality.
- (3) Development shall be limited in the Resource Conservation Area, which shall be chiefly designated for agriculture, forestry, fisheries activities, other resource utilization activities and for habitat protection.

c. Grandfathering.

- (1) Continuation of existing uses. The Town shall permit the continuation, but not necessarily the intensification or expansion of any use in existence as of June 26, 1988, unless the use has been abandoned for more than one year or is otherwise restricted by this Ordinance. If any existing use does not conform to the provisions of this ordinance, its intensification or expansion may be permitted only in accordance with the Critical Area variance procedures outlined in the applicable article of this ordinance.
- (2) Residential Density. Except as otherwise provided, the Town shall permit the types of land described in the following subsections to be developed in accordance with the density requirements in effect prior to the adoption of the North East Critical Area Program notwithstanding the density provisions of the Program. The Town shall permit a single lot or parcel of land that was legally of record on the date of Program approval to be developed with a single family dwelling if a dwelling is not already placed there (notwithstanding that such development may be inconsistent with the density provisions of this Ordinance) provided that:
  - (a) It is on land where the development activity has progressed to the point of the pouring of foundation footings or the installation of structural members.
  - (b) It is a legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985 and the land was subdivided into recorded, legally buildable lots, where the subdivision received the Town's final approval prior to June 1, 1984 if:

- [1] At the time of development, the land is brought into conformance with the Critical Area Program insofar as possible, including the consolidation or reconfiguration of lots not individually owned and these procedures are approved by the Critical Area Commission; or
    - [2] The land received a building permit subsequent to December 1, 1985, but prior to Program approval.
  - (c) It is on land that was subdivided into legally recorded lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985; and
  - (d) It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval after December 1, 1985 and provided that either development of such land conforms to the IDA, LDA or RCA requirements in this Ordinance or the area of the land is counted against growth allocation permitted under this Ordinance.
- (3) Consistency. Nothing in this section may be interpreted as altering any requirements for development activities in the Water Dependent Facilities Section or Habitat Protection Areas Section of this Ordinance.
- d. Activities permitted only in IDA. Certain new development, redevelopment or expanded activities or facilities, because of their intrinsic nature, or because of their high potential for adverse impact on plant and wildlife habitats and water quality, may not be permitted in the Critical Area except in Intensely Developed Areas under regulations of this section, and 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. These activities include the following:
  - (1) Non-maritime heavy industry;
  - (2) Transportation and utility transmission facilities, except those necessary to serve permitted uses, or where regional or interstate facilities must cross tidal

water (utility transmission facilities do not include power plants);

- (3) Permanent sludge handling storage, and disposal facilities, other than those associated with wastewater treatment facilities. However, 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 110-foot Buffer.
  - (4) The Town may preclude additional development activities that it considers detrimental to water quality, fish, wildlife, or plant habitats within the Critical Area.
- e. Activities not permitted. Certain new development activities or facilities, or the expansion of certain existing facilities, because of their intrinsic nature, or because of their potential for adversely affecting habitat and water quality, 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. These include:
- (1) Solid or hazardous waste collection or disposal facilities, excluding dumpsters and trash receptacles; or
  - (2) Sanitary landfills. Continuation of existing, permitted facilities of the type noted above shall be subject to the standards and requirements of the Department of the Environment, under COMAR, Title 26.
- f. Continuation of existing, permitted facilities. Existing, permitted facilities of the type noted in paragraph (e) above shall be subject to the standards and requirements of the Department of Environment, under COMAR Title 26.
- g. Reasonable accommodations for the needs of disabled citizens. The Board of Appeals may make reasonable accommodations to avoid discrimination on the basis of a physical disability. Reasonable accommodations for the needs of disabled citizens may be permitted in accordance with the evidentiary requirements set forth in the following paragraphs:

- (1) An applicant shall have the burden of demonstrating the following:
  - (a) The existence of a physical disability;
  - (b) Literal enforcement of the provisions of this ordinance would result in discrimination by virtue of such disability;
  - (c) A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this ordinance;
  - (d) The accommodation request will not substantially impair the purpose, intent, or effect of the provisions of this ordinance as applied to the property;
  - (e) Environmental impacts associated with the accommodation are the minimum necessary to address the needs resulting from the particular disability of the applicant.
- (2) The Board of Appeals shall determine the nature and scope of any accommodation under this section and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
- (3) The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this ordinance. Appropriate bonds may be collected or liens placed in order to ensure the Town's ability to restore the property should the applicant fail to do so.

## 9. Water-Dependent Facility Requirements.

- a. Definition. "Water dependent facilities" means those structures or works associated with industrial, maritime, recreational, educational or fisheries activities that require location at or near the shoreline within the 110-foot Buffer. An activity is water-dependent if it cannot exist outside the

Buffer and is dependent on the water by reason of the intrinsic nature of its operation.

- b. Identification. Water dependent facilities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities. Excluded from this regulation are individual private piers installed or maintained by riparian landowners, and which are not part of a subdivision that provides community piers.
- c. General Policies. The policies of the Town with regard to water-dependent facilities shall be to limit development activities in the Buffer to those that are water-dependent and provide by design and location criteria that these activities will have minimal individual and cumulative impacts on water quality, fish, wildlife, and plant habitat in the Critical Area.
- d. Standards. The following standards shall apply to new or expanded development activities associated with water-dependent facilities:
  - (1) New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development areas provided that it can be shown:
    - (a) That they are water-dependent;
    - (b) That the project meets a recognized private or public need;
    - (c) That adverse effects on water quality, fish, plant and wildlife habitat are minimized;
    - (d) That, insofar as possible, non-water dependent structures or operations associated with water-dependent projects or activities are located outside the Buffer; and
    - (e) They meet the requirements of the Critical Area Provisions and comply with the requirements of the underlying zoning district.
  - (2) Except as otherwise provided in this ordinance, new or expanded development activities may not be

permitted in those portions of the Buffer that occur in the Resource Conservation Areas.

- e. Implementation. Applications for new or expanded water-dependent facilities in Intensely Developed Areas or Limited Development Areas shall be outlined in the application how the above requirements are met. Applicants for water-dependent facilities in a Resource Conservation Area, other than those specifically permitted herein, must apply for a portion of the Town's growth allocation as set forth in this ordinance.
  
- f. Evaluating plans for new and expanded water-dependent facilities. The Town shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The Town shall work with appropriate State and federal agencies to ensure compliance with applicable regulations. The following factors shall be considered when evaluating proposals for new or expanded water dependent facilities:
  - (1) That the activities will not significantly alter existing water circulation patterns or salinity regimes;
  - (2) That the water body upon which these activities are proposed has adequate flushing characteristics in the area;
  - (3) That disturbance to wetlands, submerged aquatic plant beds, or other areas of important aquatic habitats will be minimized;
  - (4) That adverse impacts to water quality that may occur as a result of these activities, such as non-point source run-off, sewage discharge from land activities or vessels, or from boat cleaning and maintenance operations, is minimized;
  - (5) That shellfish beds will not be disturbed or be made subject to discharge that will render them unsuitable for harvesting;
  - (6) That dredging shall be conducted in a manner, and using a method which causes the least disturbance to water quality and aquatic and terrestrial habitats in the area immediately surrounding the dredging operation or within the Critical Area generally;
  - (7) That dredged spoil will not be placed within the Buffer or elsewhere in that portion of the Critical

area which has been designated as a Habitat Protection Area except as necessary for:

- (a) Backfill for permitted shore erosion protection measures;
  - (b) Use in approved vegetated shore erosion projects;
  - (c) Placement on previously approved channel maintenance spoil disposal areas; and
  - (d) Beach nourishment.
- (8) That interference with the natural transport of sand will be minimized; and
- (9) That disturbance will be avoided to historic areas of waterfowl staging and concentration or other Habitat Protection areas identified in the Habitat Protection Area sections of this ordinance.
- g. Availability of information. The information necessary for evaluating the above factors, if not available locally, shall be obtained from appropriate State and Federal agencies.
- h. Industrial and port-related facilities. 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 that have been designated as Special Buffer Areas as described in this ordinance and are subject to the provisions set forth in that section.
- i. Marinas and other commercial maritime facilities. Newly expanded or redeveloped marinas may be permitted in the Buffer within Intensely Developed Areas and Limited Development Areas subject to the requirements set forth in this section. New marinas or related maritime facilities may not be permitted in the Buffer within Resource Conservation Areas except as provided in i, j, and k below. Expansion of existing marinas may be permitted by the Town within Resource Conservation Areas provided that it is sufficiently demonstrated that the expansion will not adversely affect water quality, and that it will result in an overall net improvement in water quality at or leaving the site of the marina. New and existing marinas shall meet the sanitary requirements of the State Department of Environment as required in COMAR 26.04.02. New

marinas shall establish a means of minimizing the discharge of bottom wash water into tidal waters.

j. Community Piers. 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 section of the zoning ordinance provided that:

- (1) These facilities do not offer food, fuel, or other goods and services for sale and shall provide adequate and clean sanitary facilities;
- (2) The facilities are community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision and shall not be rented, leased, sold or conveyed in any way to any individual not owning a unit or lot within the subdivision;
- (3) The facilities are associated with a residential development approved by the Town for the Critical Area and consistent with all State requirements and program requirements;
- (4) Disturbance to the Buffer is the minimum necessary to provide a single point of access to the facilities; and;
- (5) If community piers, slips, or moorings are provided as part of the new development, private piers in the development shall not be allowed.

k. Number of slips or piers permitted. Where community piers are permitted, the number of slips or piers shall be the lesser of (1) or (2) below:

- (1) 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
- (2) A density of slips, or piers to platted lots or dwellings within the subdivision in the Critical Area according to the following schedule:

Platted Lots or Dwelling Units in the Critical Area	Number of Slips Permitted
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

1. Public Beaches, Recreation or Education Areas. 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. These facilities may be permitted within the Buffer in Limited Development Areas and Resource Conservation Areas provided that:
  - (1) Adequate sanitary facilities exist;
  - (2) Service facilities are, to the extent possible, located outside the Buffer;
  - (3) Permeable surfaces are used to the extent practicable, if no degradation of groundwater would result;
  - (4) Disturbance to natural vegetation is minimized; and
  - (5) Areas for passive 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 the Buffer.
- m. Research Areas. 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.
- n. Fisheries Activities. Activities associated with new or expanded fisheries or aquaculture facilities are permitted in the Buffer upon identifying land and water areas with high potential for this use in cooperation with the State. 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, Limited Development and Resource  
Conservation Areas.

10. Structures on Piers.

- a. Definition. "Pier" means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure. "Pier" does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.
- b. Standards. Except as provided in (1), (2) and (3) below, a Construction Authorization shall not be issued for any 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.
  - (1) The Town may issue a Construction Authorization 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 that was issued by the Department of Natural Resources on or before January 1, 1989.
  - (2) The Town may issue a Construction Authorization 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 if the following conditions exist:
    - (a) The structure was located on a pier in existence as of December 1, 1985 and can be verified by a Department of Natural Resources aerial photograph dated 1985;
    - (b) 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 non-functional 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) The project is approved by the Planning Commission;
  - (d) The project is located in an Intensely Developed Area (IDA) as designated in programs approved by the Critical Area Commission.
- (3) The Town may issue a Construction Authorization 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.
- (4) If a structure that is not water-dependent is to be permitted by the Town 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 under this ordinance and relevant chapters in the Town's Comprehensive Plan.
- (a) 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;
  - (b) The quality of stormwater runoff from the project will be improved; and
  - (c) Sewer lines or other utility lines extended for the pier will not affect the water quality of adjoining waters.

#### 11. Shore Erosion Control Measures.

- a. Definition. Shoreline erosion protection works means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area. The use of structural devices to protect the shoreline from erosion can result in a significant disturbance to the aquatic environment and increase erosion downstream. This section sets forth a plan for limiting the use of structural erosion control devices to only those areas where major erosion problems exist. As an alternative to structural erosion controls, the Town encourages the use of non-structural controls such as marsh creation, maintenance of buffer zones, and the establishment of natural barriers to prevent intrusion on fragile vegetated

shorelines. The criteria set forth in this chapter are not intended to apply to those structures necessarily associated with water-dependent facilities as discussed in the water-dependent facilities section of this ordinance.

- b. General Policies. In protecting shore areas from erosion, the Town shall follow these policies:
  - (1) Encourage the protection of rapidly eroding portions of the shoreline in the Critical Area by public and private landowners.
  - (2) Where such measures can effectively and practically reduce or prevent shore erosion, the use of non-structural shore protection measures should be encouraged in order to conserve and protect plant, fish and wildlife habitat.
- c. Standards: The following standards shall be followed:
  - (1) A site evaluation shall be conducted based on actual site conditions, including aerial photography, and available information on Historic Shoreline Erosion Rates as may be available from the Maryland Geological Survey, the Maryland Department of the Environment, and the Department Natural Resources. Sites shall be classified based on the following criteria and shoreline characteristics:
    - (a) Areas where no appreciable erosion appeared;
    - (b) Areas where appreciable erosion appeared and where non-structural measures would be practical and effective; and
    - (c) Areas where appreciable erosion appeared and where only structural measures would provide effective and practical erosion control.
  - (2) Structural control measures shall only be used in areas where appreciable erosion occurs and where non-structural measures would not be practical or effective as determined by the site evaluation.
  - (3) Where structural erosion control is required, the measure that best provides for conservation of fish and plant habitat, and which is practical and effective shall be used.

- (4) Non-structural measures shall be utilized in areas of erosion where they would be a practical and effective method of erosion control.
- (5) Structural erosion measures shall not be encouraged in areas where no significant erosion occurs.
- (6) Shore erosion projects must include appropriate authorization from the Maryland Department of the Environment and the U.S. Army Corps of Engineers prior to issuing any local Construction Authorization.
- (7) Projects involving shoreline clearing of natural vegetation shall be required to replant the impacted area of the Buffer, replacing trees and understory on a 2:1 basis. Trees shall be balled and burlap or containerized 1 ½" to 2" caliper. A shrub and tree combination may be used to accomplish this requirement.
- (8) The criteria set forth in this section are not intended to apply to those structures necessarily associated with water-dependent facilities as discussed in other sections of this ordinance.

12. Intensely Developed Areas (IDAs).

- a. Description. Intensely Developed Areas are those areas where residential, commercial, institutional, and/or industrial developed uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall have had at least one of the following features.
  - (1) Housing density equal to or greater than four dwelling units per acre.
  - (2) Industrial, institutional or commercial uses concentrated in the area; or
  - (3) Public sewer and water collection distribution systems serving the area and housing density greater than three dwelling units per acre. In addition, these features shall be concentrated in an area of at least 20 adjacent acres, or the entire upland portion of the Critical Area within the boundary of a municipality, whichever is less.
- b. General Policies. The Critical Area ordinance for the Town hereby incorporates the following policies for

Intensely Developed Areas. New or expanded development or redevelopment shall take place in such a way as to:

- (1) Improve the quality of runoff from developed areas that enters the Chesapeake Bay or its tributary streams;
- (2) Accommodate additional development of the type and intensity designated by the Town provided that water quality is not impaired;
- (3) Minimize the expansion of Intensely Developed Areas into portions of the Critical Area designated as Habitat Protection Areas and Resource Conservation Areas;
- (4) Conserve and enhance fish, wildlife, and plant habitats, as identified in the Habitat Protection Area sections of this ordinance to the extent possible within Intensely Developed Areas; and
- (5) Encourage the use of retrofitting measures to address existing stormwater management problems.

c. Development Standards. All uses in the IDA shall be subject to the following development standards/or conditions in addition to those established in other sections of this ordinance. Development and redevelopment in those areas designated Intensely Developed Areas (IDAs) shall be subject to the following standards:

- (1) Density in the Intensely Developed Areas (IDAs) shall be as established in the underlying base zoning district.
- (2) All sites for which development activities are proposed, and which requires subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of the site within the Critical Area. This information shall be made part of the Environmental Impact Assessment Report as part of the application for site plan review. (See Appendix CA-1 for information to be included in the Environmental Assessment.)
- (3) All plans shall be assessed for their impacts on water quality and other biological resources.
- (4) Alterations in the plans shall be made to mitigate any negative impacts.

- (5) Urban best management practices shall be considered and, where appropriate, implemented as part of all plans for development and redevelopment.
- (6) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in those sections of this ordinance.
- (7) Stormwater shall be addressed in accordance with the following provisions:
  - (a) The Town shall require, at the time of development or redevelopment, that technologies as required by applicable State and local ordinances be applied by anyone undertaking development activities in order to minimize adverse impacts to water quality caused by stormwater.
  - (b) In the case of redevelopment, if these technologies do not reduce pollutant loadings measured by use of the keystone pollutant method by at least 10 percent below the level of pollution on the site prior to redevelopment, then offsets shall be provided. Guidance for compliance with this requirement is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule Guidance - Fall, 2003 and as may be subsequently amended.
  - (c) In the case of new development, offsets as determined by the Town shall be used if they reduce pollutant loadings by at least 10 percent of the predevelopment levels. Guidance for compliance with this requirement is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical Area 10% Rule guidance - Fall 2003 and as may be subsequently amended.
  - (d) Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that the benefits are obtained within the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation measures. Guidance regarding offsets is provided in the Maryland Chesapeake and Atlantic Coastal Bays Critical

Area 10% Rule Guidance - Fall 2003 and as may be subsequently amended.

- (e) Residential single family lots disturbing 250 square feet or less shall be exempt from implementing stormwater practices unless there is a water quality concern as determined by the Zoning Administrator or their designee.
- (8) If practicable, permeable areas shall be established in vegetation and wherever possible redevelopment shall reduce existing levels of pollution.
- (9) Areas of public access to the shoreline, such as foot paths, scenic drives and other public recreational facilities, should be maintained and, if possible, encouraged to be established within IDAs.
- (10) Ports and industries which use water for transportation and derive economic benefits from shore access shall be located near existing port facilities. The Town may identify other sites for planned future port facility development and use if this use will provide significant economic benefit to the State or Town and is consistent with the provisions of the Water Dependent Facilities Section of this ordinance and other State and federal regulations.
- (11) The Town shall promote with the assistance from State agencies, participation in programs and activities for the enhancement of biological resources within the Critical Area for their positive effects on water quality and urban wildlife habitat. These programs may include urban forestry, landscaping, gardens, wetlands and aquatic habitat restoration elements.
- (12) To the extent practicable, future development in the Critical Area shall use cluster development as a means to reduce impervious areas and to maximize areas of natural vegetation.
- (13) Cutting or Clearing of Trees: When cutting or clearing of trees outside the Buffer for any purpose, the following shall be required:
  - (a) Trees cut shall be replanted either on site or in areas established by the Town for the

enhancement of forest and developed woodland resources.

- (b) Where trees cannot be replaced on site, the Town may require the developer to plant in accordance with programs for urban forestry, street tree plantings, garden, landscaping or Buffer planting.
- (c) Alternative provisions may include a fee-in-lieu of planting. The fee to be paid should be based on the average of three estimates that include the planting of the trees (or shrub), staking, mulching and a one year guarantee.
- (d) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
- (e) Development activities shall address the protection of existing forests and developed woodlands as identified as Habitat Protection Areas according to the Habitat Protection Section of this Ordinance.
- (f) Replacement trees shall be of native species and planted on a 1:1 ratio with balled and burlap or containerized trees of 2 inch caliper.

13. Limited Development Areas (LDAs).

- a. Description. Limited Development Areas are those areas which are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats. The quality of runoff from these areas has not been substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:
  - (1) Housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
  - (2) Areas not dominated by agricultural, wetland, forest, barren land, surface water or open space;
  - (3) Areas meeting the conditions of Intensely Developed Area but comprising less than 20 acres;
  - (4) Areas having public sewer or public water, or both.

- b. General Policies. The Town's Critical Area ordinance hereby incorporates the following policies for Limited Development areas. New or expanded development or redevelopment shall take place in such a way as to;
- (1) Maintain, or, if possible, improve the quality of runoff and groundwater entering the Chesapeake Bay and its tributaries;
  - (2) Maintain, to the extent practicable, existing areas of natural habitat; and
  - (3) Accommodate additional low or moderate intensity development if:
    - (a) The development conforms to the water quality and habitat protection criteria in this ordinance; and
    - (b) The overall intensity of development within the Limited Development area is not increased beyond the level established in a particular area so as to change its prevailing character as identified by density and land use currently established in the area.
- c. Development Standards. The following criteria are hereby adopted for Limited Development Areas:
- (1) The density of development and minimum lot sizes permitted within the LDA shall be governed by prescriptive densities and dimensions within the applicable underlying base zoning districts.
  - (2) All sites for which development activities are proposed, and which require subdivision approval or site plan review and approval, shall identify environmental or natural features on that portion of the site within the Critical Area. This information shall be made part of the Environmental Impact Assessment Report as part of the application for site plan review (See Appendix CA-1).
  - (3) Site development shall be designed to assure that features or resources identified as Habitat Protection Areas are afforded protection as prescribed in the Habitat Protection Provisions of this Ordinance and comply with the provisions for water dependent facilities in this Ordinance.

- (4) Roads, bridges and utilities serving development that must cross a Habitat Protection Area shall be located, designed, constructed, and maintained so as to provide maximum erosion protection and minimize negative impacts to wildlife, aquatic life and their habitats and maintain hydrologic processes and water quality. Roads, bridges, or utilities may not be located in any Habitat Protection Area unless no feasible alternative exists. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Areas, the developer shall demonstrate that no feasible alternative location for such infrastructure exists and must show how these standards will be met at each phase of the project, i.e., location, design, construction and maintenance.
- (5) All development activities that must cross or affect streams shall be designed to:
  - (a) Reduce increases in flood frequency and severity;
  - (b) Retain tree canopy so as to maintain stream water temperature within normal variation;
  - (c) Provide for the retention of natural streambed substrate;
  - (d) Minimize adverse water quality and quantity impacts of stormwater.
- (6) All development sites shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this ordinance. The Town shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town attorney through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations.
- (7) For the cutting or clearing of trees in forests and developed woodland areas that are associated with

current or planned development activities in a Limited Development Area, the Town shall:

- (a) Require that the applicant consider the recommendations of the Maryland Department of Natural Resources when planning development on forested land;
  - (b) Design and implement development activities to minimize the destruction of woodland vegetation; and
  - (c) Provide protection for forests and developed woodlands identified as Habitat Protection areas in this Program.
  - (d) Replacement trees shall be of native species and planted on a 3:1 ratio with balled and burlap or containerized trees of 2 inch caliper.
- (8) For the alteration of forest and developed woodland in the Limited Development Area, the Town shall apply all of the following requirements:
- (a) The total acreage in forest coverage within the Critical Area shall be maintained or preferably increased;
  - (b) All forests that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
  - (c) No more than 20 percent of any forest or developed woodland may be removed from forest use, except as provided in paragraph (9) below. The remaining 80 percent shall be maintained through recorded, restrictive covenants or similar instruments approved by the Town attorney; and
  - (d) Developed woodland vegetation shall be conserved to the greatest extent practicable.
- (9) For replacement of forest and developed woodland, if more than 20 percent is to be removed from forest use, an applicant may clear or develop not more than 30 percent of the total forest area provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both.

- (10) In addition, applicants shall adhere to the following criteria for forest and woodland development:
- (a) A Letter of Credit in an amount determined by the Town to assure satisfactory replacement of cleared forest as required in (8) and (9) above;
  - (b) Grading permits shall be required before forest or developed woodland is cleared;
  - (c) Forests that have been cleared before obtaining a grading permit or that exceed the maximum area allowed in (9) above shall be replanted at three times the areal extent of the cleared forest;
  - (d) If the areal extent of the site limits the application of the reforestation guidelines in (7) and (8) and (9) above, alternative provisions or reforestation guidelines may be permitted by the Town if they are consistent with the intent of the Forest and Woodland Element of this Program to conserve the forest and developed woodland resources of the Critical Area. Alternative provisions may include fee-in-lieu provisions or use of a forest mitigation bank if the provisions are adequate to ensure the restoration or establishment of an equivalent forest area;
  - (e) If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent;
  - (f) All forests designed on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants or other protective instruments approved by the Town attorney;
  - (g) The applicant shall designate, subject to the approval of the Town, a new forest area on a part of the site not forested; and
  - (h) The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the Town attorney.

- (11) Development on slopes greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies for LDA set forth above.
- (12) Man-made impervious surfaces shall not exceed 15% of the portion of the lot or parcel within the Critical Area proposed to be developed, except for the following:
  - (a) If a parcel or lot one-half acre or less in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to 25% of the parcel or lot.
  - (b) If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to fifteen percent (15%) of the parcel or lot.
  - (c) If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, man-made impervious surfaces of the lot may not exceed twenty-five percent (25%) of the lot. However, the total of the impervious surfaces of the entire subdivision may not exceed fifteen percent (15%).
  - (d) Limitations on impervious surfaces provided in subsections (a) and (b) above may be exceeded, upon findings by the Planning Commission or their designee that the following conditions exist:
    - [1] New impervious surfaces on the property have been minimized;
    - [2] For a lot or parcel  $\frac{1}{2}$  acre or less in size, total impervious surface area does not exceed impervious surface limits in Section 12-a above by more than twenty five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
    - [3] For a lot or parcel greater than one half acre and less than one acre in size, total impervious surface area does not

exceed impervious surface limits in Section 12-b or 5,445 square feet, whichever is greater;

- [4] The following table summarizes the limits set forth in paragraph 1 through 3 above:

Lot/Parcel Size In square feet	Impervious Surface Limit
0-8,000	25% of parcel + 500 sq. ft
8,001 – 21,780	31.25% of parcel
21,781 – 36,300	5,445 sq ft.
36,301 – 43,560	15% of parcel

- [5] Water quality impacts associated with runoff from the impervious surface have been minimized through site design or the use of best management practices to improve water quality; and
- [6] The property owner performs on-site mitigation to offset potential adverse water quality impacts from the new impervious surfaces, or the property owner pays a fee to the Town in lieu of performing the on-site mitigation. The amount of the fee shall be \$3.50 per square foot of new impervious surface area on the property. The town shall use all fees collected under this provisions to fund projects that improve water quality within the Critical.
- (13) Development may be allowed on soils having development constraints if the development includes mitigation measures that adequately address the identified constraints and that will not have significant adverse impacts on water quality or plant, fish or wildlife habitat.
- (14) To reduce the extent of impervious areas and maximize areas of natural vegetation, cluster development shall be considered when planning for future development.
- (15) Consideration should be given for modifications in road standards on a case-by-case basis to reduce potential impacts to the site and Critical Area

resources, where the reduced standards do not significantly affect safety.

- d. Complementary State laws and regulations. In applying this Critical Area Program, the Town refers to all the following complementary existing State laws and regulations:

- (1) For soil erosion and sediment control (COMAR 26.17.01)

- (a) In order to prevent soil erosion and sedimentation, a Soil erosion and Sedimentation Control Plan shall be required whenever a development within the Critical Area will involve any clearing, grading, transporting, or other form of disturbance to land by the movement of earth. This plan shall be consistent with the requirements of the Natural Resources article and Environmental article of the Annotated Code of Maryland and local ordinances. Sediment control practices shall be appropriately designed to reduce adverse water quality impacts.
- (b) The Town requires erosion control as the basis of sediment control plans within the Critical Area.

- (2) For stormwater runoff (COMAR 26.17.02)

- (a) The Town requires limitations on stormwater runoff such that development may not cause downstream property, watercourses, channels or conduits to receive stormwater runoff at a higher volume or rate than would have resulted from a 10-year storm where the land is in its predevelopment state.
- (b) All stormwater storage facilities shall be designed with the sufficient capacity to achieve water quality goals of this Section and to eliminate all runoff caused by the development in excess of that which would have come from the site if it were in its pre-development state.
- (c) Stormwater management measures shall be consistent with the requirements of

Environment Article 4-201 et seq., Annotated  
Code of Maryland.

14. Resource Conservation Areas (RCAs)

- a. Description. Resource Conservation Areas are those areas which are characterized by natural-dominated environments (that is wetlands, forests, abandoned fields) and resource-utilization activities (that is agriculture, forestry, fisheries activities or aquaculture). At the time of the initial mapping, these areas shall have had at least one of the following features.
  - (1) Existing density is less than one dwelling unit per five acres; or
  - (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water or open space.
- b. General Policies. The Town's Critical Area Ordinance hereby incorporates the following policies for Resource Conservation areas. New or expanded development or redevelopment in these areas shall take place in such a way as to:
  - (1) Conserve, protect and enhance the overall ecological values of the Critical Area, its biological productivity and its diversity;
  - (2) Provide adequate breeding, feeding and wintering habitats for those wildlife populations that require the Chesapeake Bay, the Atlantic Coastal Bays, their tributaries or coastal habitats in order to sustain populations of those species.
  - (3) Conserve the land and water resource base that is necessary to maintain and support land uses such as agriculture, forestry, fisheries activities and aquaculture.
  - (4) Conserve the existing developed woodlands and forests for the water quality benefits that they provide.
- c. Development Standards. In implementing this Critical Area ordinance, the Town shall use all of the following requirements for Resource Conservation Areas:
  - (1) Land use management practices shall be consistent with the policies and criteria for the Habitat

Protection Area Section and the Forest and Woodlands Protection Section of this ordinance.

- (2) Agricultural and conservation easements shall be promoted in Resource Conservation Areas.
- (3) Land within the Resource Conservation area may be developed for residential uses at a density not to exceed one dwelling unit per 20 acres. Within this limit of overall density, minimum lot sizes may be determined by the Town. Such mechanisms as cluster development, transfer of development rights, maximum lot size provisions and/or additional means to maintain the land areas necessary to support the protective uses will be encouraged by the Town and implemented as necessary.
- (4) Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture or residential development not exceeding the density specified above, shall be allowed in Resource Conservation Areas.
- (5) New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation areas, except as provided for in the Town's growth allocation provisions. Additional land may not be zoned or used for industrial, commercial, or institutional development, except as provided by the Town's growth allocation provisions.
- (6) The Town shall ensure that the overall acreage of forest and woodland within the RCA does not decrease.
- (7) Development within the Resource Conservation Areas shall be consistent with the requirements for Limited Development Areas as specified in this ordinance.
- (8) Nothing in this section shall limit the ability of a participant in the Agricultural Easement Program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than one dwelling unit per 20 acres.
- (9) In calculating the 1 in 20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, the Town

may permit the area of any private wetlands located on the property to be included under the following conditions:

- (a) The density of development on the upland portion of the parcel may not exceed one dwelling unit per eight acres; and
- (b) The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the Town and the State Department of Natural Resources.

d. Land use in the Resource Conservation Area. In addition to the uses specified above, certain nonresidential uses may be permitted in Resource Conservation Areas if it is determined by the Zoning Administrator or their designee that the proposed use is one of the following:

- (1) A home occupation as an accessory use on a residential property and as provided for in the Town's Zoning Ordinance.
- (2) A golf course developed in accordance with the guidance provided by the Critical Area Commission, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc.,
- (3) A cemetery that is an accessory use to an existing church; provided impervious surfaces are limited to 15% of the site or 20,000 square feet, whichever is less;
- (4) A bed and breakfast facility located in an existing residential structure, where meals are prepared only for guests staying at the facility.
- (5) A gun club and skeet-shooting range or similar use but not including main buildings and/or structures, such as clubhouse, pro-shop, etc.
- (6) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children;
- (7) A group home or assisted living facility with no more than eight residents;

- (8) Other uses determined by the Town and the Critical Area Commission to be similar to those listed above.

## 15. Intrafamily Transfers

Notwithstanding the one (1) unit per twenty (20) acre density limitation in the RCA, the Town may permit a bona fide intrafamily transfer (as defined in the Definitions Section of this Ordinance), subject to the following conditions:

- a. Bona fide intrafamily transfers shall be made only from parcels of land that were of record on May 1, 1986; and are seven (7) acres or more and less than 60 acres in size.
- b. The transfer shall be subject to all the requirements of the Town Subdivision Regulations and a notation shall be placed on the final subdivision plat denoting the lot(s) that are created under these provisions.
- c. Subdivision of land under the bona fide intrafamily transfer provisions contained herein shall be subject to the following limitations.
  - (1) A parcel that is seven acres or more and less than 12 acres in size may be subdivided into two lots.
  - (2) A parcel that is 12 acres or more and less than 60 acres in size may be subdivided into three lots. The lots may be created at different times.
- d. As a condition of approval, the Town shall require that any deed for a lot that is created by a bona fide intrafamily transfer shall contain a covenant approved by the Town attorney stating that the lot is created subject to the provisions of Natural Resources Article Section 8-1808.2, Annotated Code of Maryland.
- e. A lot created by a bona fide intrafamily transfer may not be conveyed subsequently to any person other than a member of the owner's immediate family, except under provisions set forth below.
- f. The lot created by a bonafide intrafamily transfer does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.
- g. The following standards and procedures are established as part of this section to permit the subsequent conveyance of lots to persons other than immediate family members under

certain circumstances. The application shall demonstrate to the Planning Commission that:

- (1) The lot was created as part of a bona fide intrafamily transfer and not with the intent of subdividing the original parcel of land for purposes of ultimate commercial sale; and
- (2) A change in circumstances has occurred since the original transfer was made that is not inconsistent with the subtitle and that warrants an exception; or there are other circumstances that are consistent with this Program to maintain land areas necessary to support the protective uses of agriculture, forestry, open space and natural habitats in Resource Conservation Areas and thus warrant an exception.

16. Habitat Protection Areas.

- a. Description. The Habitat Protection Areas Sections of the Town's Critical Area Ordinance address protection of the following four habitats:

- (1) The 110-foot Buffer
- (2) Threatened and endangered species or species in need of conservation.
- (3) Plant and Wildlife Habitat Protection Areas including non-tidal wetlands;
- (4) Anadromous Fish Propagation Waters.

a. Identification. Maps illustrating the general location, extent and configuration of Habitat Protection Areas in the Town are on file in Town Hall. They will be used as a flagging device to assist property owners, developers, any person proposing development activity, Planning Department, Planning Commission and other agencies of the Town government when reviewing development plans. While these maps give a general indication of the area, they do not excuse any property owner or operator from establishing to the satisfaction of the Town Planning Commission, whether or not the property or activity will affect the element of habitat to be protected. At the time of development the applicant will be responsible for providing an on-site analysis and inventory.

17. The 110 foot Buffer.

- a. Definition. The Buffer is an existing, naturally vegetated area or an area established in vegetation and managed to protect aquatic, wetlands, shore like and terrestrial environments from man-made disturbances.
- b. Identification of the Buffer. The establishment of a minimum 110-foot Buffer in width as measured from mean high water line of tidal waters, the edge of bank of tributary streams, and the landward extent of tidal wetlands shall be required.
- c. General Policies. The town adopts the following policies with regard to the functions of the Buffer:
  - (1) Provide for the removal or reduction of sediments, nutrients and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
  - (2) Minimize the adverse effects of human activities on wetlands, shoreline, stream banks, tidal waters and aquatic resources;
  - (3) Maintain an area of transitional habitat between aquatic and upland communities;
  - (4) Maintain the natural environment of streams; and
  - (5) Protect riparian wildlife habitat.
- d. Standards. The following criteria apply to land use activities within the Buffer:
  - (1) The Buffer shall be established at a minimum distance of 110 feet landward from the mean high water line of tidal waters, the edge of the bank of tributary streams and the landward edge of tidal wetlands within the Critical Area.
  - (2) The Buffer shall be determined on a site-by-site basis as part of the environmental review and site analysis and shall be expanded beyond 110 feet to include contiguous sensitive areas of steep slopes, hydric soils or highly erodible soils where development or disturbance may impact streams, wetlands or other aquatic environments. In the case of contiguous slopes of 15 percent or greater, the Buffer shall be

expanded four feet for every one percent of slope or to the top of the slope, whichever is greater in extent.

- (3) New development activities including structures, roads, parking areas and other impervious surfaces, mining and related facilities or septic tanks may not be allowed in the Buffer except for those necessarily associated with water-dependent facilities as set forth in this ordinance.
  - (4) The Buffer shall be maintained in natural vegetation, but may include planted vegetation where necessary to protect, stabilize, or enhance the shoreline. When land proposed for development or converted to new uses, the Buffer shall be established. In establishing the Buffer, management measures shall be undertaken to provide forest vegetation that assures that the Buffer functions as set forth in this section.
- e. Buffer Management Plans. When the Buffer is required to be established on a development site, when a proposed development activity will impact the Buffer or when the removal of trees or vegetation in the Buffer is proposed, the Town will require that the applicant prepare a Buffer Management Plan. The Plan shall show existing vegetation, any vegetation proposed to be removed, and the proposed plantings required for mitigation. The planting plan shall include the size, species, and location of all plantings.
  - f. Planting Agreements. For all projects that require establishment of the Buffer or mitigation plantings that exceed 2,000 square feet or 10 trees, the applicant shall execute a planting agreement with the Town. The planting agreement shall include provisions for the collection of a surety or letter of credit that will permit the Town to accomplish the required planting on the applicant's property or another location selected by the Town should the applicant fail to meet the requirements of the agreement.
  - g. Tree Cutting in the Buffer. The Buffer shall be managed to achieve or enhance the policies stated above. Individual trees may be cut for personal use provided the cutting does not impair water quality or existing habitat value or other functions of the Buffer. Any cutting in compliance with the provisions specified herein shall require a Buffer Management Plan submitted to the Town of North East, reviewed by the Critical Area Circuit Rider and approved by the Zoning Administrator or their designee prior to any clearing or removal of vegetation. A Maryland Certified Tree

Care Expert or a Certified Arborist must perform tree cutting as approved under this provision. Cutting of trees or clearing of vegetation within the Buffer shall be prohibited except that:

- (1) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers or to install or construct a shore erosion protection device or measure or a water-dependent facility, provided that the device, measure or facility has received all necessary state and federal permits and provided that a Buffer Management Plan has been reviewed by the Critical Area Circuit Rider and approved by the Zoning Administrator or their designee.
- (2) Individual trees may be cut for personal use, provided that this cutting does not impair the water quality or existing habitat value or other functions of the Buffer, and provided that the trees are replaced on an equal basis for each tree cut. Planting guidelines for replacement trees are given in Appendix CA-2 of this Ordinance.
- (3) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures or which are in danger of falling and therefore causing the blockage of streams or resulting in accelerated shore erosion. Individual trees removed must be replaced on an equal basis for each tree cut as approved by the Critical Area Circuit Rider.
- (4) Horticultural practices may be used in the Buffer to maintain the health of individual trees.
- (5) Other cutting techniques may be undertaken within the Buffer under the advice and guidance of the Department of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.
- (6) Any other tree trimming or cutting must be performed by a licensed tree expert or arborist.

#### 18. Special Buffer Areas (SBA).

The following provisions apply to new development or redevelopment within 110 feet of tidal waters, tidal wetlands and tributary streams on lots of record as of December 1, 1985. The areas shall have been officially

identified as Special Buffer Areas by the Town, and approved by the Critical Area Commission.

- a. Single Family Detached Residential Area: For single-family, detached residential areas designated as Special Buffer Areas, new development or redevelopment activities on developed lots or parcels will not be permitted in the Buffer unless efforts have been made to minimize Buffer impacts and the development complies with the following standards:
  - (1) The applicant can demonstrate that there is no feasible alternative for the location of the new development or redevelopment activities, including structures, roads, parking areas and other impervious surfaces.
  - (2) New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the local setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 25 feet from the water (or the edge of tidal wetlands).
  - (3) Existing principal or accessory structures in the Buffer may be replaced in the same location. Any increase in impervious area within the Buffer shall comply fully with the requirements of this section.
  - (4) New accessory structures may be permitted in the Buffer in accordance with the following setback requirements:
    - (a) 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;
    - (b) The area of the accessory structures within the Buffer shall be minimized and the cumulative total area of all new and existing accessory structures within the Buffer shall not exceed 500 square feet within 50 feet of the water and 1,000 square feet total; and

- (c) In no case shall new accessory buildings or structures be located less than 25 feet from the water or edge of tidal wetlands.
- (5) Fences shall be reviewed independently for water quality and quantity issues as determined by the Zoning Administrator or their designee.
- (6) Variances to other setback requirements have been considered before additional development within 110 feet of mean high tide is approved.
- (7) No natural vegetation may be removed in the Buffer except that required by the proposed construction. The applicant will be required to maintain any other existing natural vegetation in the Buffer. Any clearing of trees or other removal of vegetation shall be completed consistent with provision set forth above.
- (8) Development does not impact any other habitat protection area other than the Buffer, including non-tidal wetlands, other state and federal permits notwithstanding.
- (9) Special Buffer Area designations shall not be used to facilitate the filling of tidal or non-tidal wetlands that are contiguous to the Buffer to create additional buildable land for new development or redevelopment.
- (10) Mitigation for development or redevelopment in the Special Buffer Area approved under this section shall be implemented as follows:
  - (a) Natural vegetation of an area twice the extent of the footprint of the development activity within the 110-foot Buffer shall be planted on-site in the Buffer or other location as may be determined by the Zoning Administrator or their designee. If it is not possible to carry out offsets or other mitigation within the Critical Area, any planting or other habitat/water quality improvements should occur within the affected watershed.
  - (b) Applicants who cannot comply with the planting requirements may use offsets to meet the mitigation requirements. Offsets may include the removal of an equivalent area of

existing impervious surfaces in the Buffer, the construction of best management practices for stormwater, wetland creation or restoration or other measures, approved by the Zoning Administrator or their designee in consultation with the Critical Area Circuit Rider, that improve water quality or habitat.

- (c) Applicants who cannot comply with either the planting or offset requirements above on-site or off-site within the Critical Area shall pay a fee in lieu of \$2.50 per square foot for the areas to be planted.
- (d) Any required reforestation, mitigation or offset areas must be designated under a development agreement or other instrument and recorded among the land records. Cost of recordation shall be paid by the applicant/owner.
- (e) Monies collected under this section shall be deposited in a separate account and shall be used for plantings or water quality Best Management Practices within the Town's Critical Area and shall not revert to the general fund.

b. Commercial Industrial, Institutional, Recreational and Multi-family Residential Areas: In designated Special Buffer Areas (SBA), new development and redevelopment activities will not be permitted in the Buffer unless efforts have been made to minimize Buffer impacts and the development complies with the following standards:

- (1) The applicant can demonstrate that there is no feasible alternative for the location of the new development or redevelopment activity, including structures, roads, parking areas and other impervious surfaces or septic systems.
- (2) The applicant can demonstrate that efforts have been made to minimize Buffer impacts by locating activities as far as possible from mean high tide, the landward edge of tidal wetlands or the edge of tributary streams, and variances to other local setback requirements have been considered before additional intrusion into the Buffer. Convenience or expense shall not be factors considered when

evaluating the extent of allowable impacts to the Buffer.

- (3) New development, 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) than the zoning district setback or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 25-foot setback shall be maintained on all subsequent development or redevelopment of the property.
- (4) Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the zoning district setback or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. 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.
- (5) Development and redevelopment may not impact any Habitat Protection Areas other than the Buffer, including nontidal wetlands, other state or federal permits notwithstanding.
- (6) No natural vegetation may be removed in the Buffer except that required by the proposed construction.
- (7) Special Buffer Area designation shall not be used to facilitate the filling of tidal or non-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 Special Buffer Area approved under this subsection shall be implemented as follows:
  - (a) A forested or landscaped buffer yard, 25 feet wide shall be established on the project site between the development and the water. This buffer yard shall be densely planted with trees and shrubs in accordance with Table 1.

- (b) On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then appropriate modifications to the width of the planted bufferyard may be made on a case-by-case basis as approved by the Zoning Administrator or their designee in consultation with the Critical Area Circuit Rider.
- (9) In addition to the 25-foot buffer yard on site as described above, one of the following mitigation measures shall be implemented based on the following order of preference:
  - (a) Natural forest vegetation of an area twice the extent of the footprint of the development activity shall be planted within the 110-foot Buffer on-site, or at another location approved by the Planning Commission.
  - (b) Applicants who cannot comply with the planting requirements in (a) above may use offsets to meet mitigation requirements. Offsets include the removal of an equivalent area of existing impervious surfaces in the Buffer, the construction of best management practices for stormwater, wetland creation or restoration or other measures recommended by the Critical Area Circuit Rider and approved by the Zoning Administrator or their designee that improve water quality or habitat. If it is not possible to carry out offsets or other mitigation within the Critical Area, any planting or other habitat/water quality improvements should occur within the affected watershed.
  - (c) Applicants who cannot meet either the planting or offset requirements shall pay a fee in lieu of \$2.50 per square foot for the area to be planted.
  - (d) Any required reforestation/mitigation offset areas must be designated under a development agreement or other instrument and recorded among the land records. Cost of recordation shall be paid by applicant/owner.

- (e) Monies collected under this section shall be deposited in a separate account and shall be used for plantings in the Critical Area and shall not revert to the general fund.

Table 1  
Required Bufferyard Planting

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

- c. Notification Requirements for Projects in SBAs. All new commercial, industrial, institutional, recreational, 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.
- d. Review Process for Projects in SBAs. The Planning Commission shall make written findings documenting that all the Criteria in this section are met including that the disturbance to the Buffer is the least intrusion necessary. These findings shall be available to the Commission upon request.

19. Threatened or Endangered species and Species in Need of Conservation.

- a. Definition. Areas of threatened and endangered species and areas with species in need of conservation are those areas where these species, as designated by the Secretary of the Department of Natural Resources, are found or have historically been found and their surrounding habitats. In this section, the following words have the meanings indicated:
- (1) "Threatened species" means any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural

Resources which appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a "threatened" species pursuant to the Federal Endangered Species Act, 16 USC '1531 et seq., as amended.

- (2) "Endangered species" means any species of fish, wildlife, or plants which have been designated as such by regulation by the Secretary of the Department of Natural Resources. Designation occurs when the continued existence of these species as viable components of the State's resources are determined to be in jeopardy. This includes any species determined to be an "endangered" species pursuant to the Federal Endangered Species Act, cited above.
  - (3) "Species in need of conservation" means those fish and wildlife whose continued existence as a part of the State's resources are in question and which may be designated by regulation by the Secretary of the Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Articles, 10-2A-903 and 4-2A-03, Annotated Code of Maryland.
- b. General policies. The Town shall provide protection for threatened and endangered species, those species in need of conservation and their habitats, which occur in the Critical Area.
  - c. Standards. The Town shall provide for the protection of the known habitats of species in need of conservation and threatened and endangered species and also habitats of these species that may be identified in the future. If a development activity is proposed for a site within the Critical Area, then the Town shall review the proposed activities on a case-by-case basis and seek technical advice from the Department of Natural Resources. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species on a site. If any habitats are identified on a project site, the applicant shall coordinate with the Department of Natural Resources to develop a Habitat Protection Plan to protect and conserve the habitats identified. The applicant shall obtain approval of the habitat Protection Plan from the Planning Commission. This information concerning habitats will be

incorporated into the Town's Resource Inventory Maps for future reference.

- d. Implementation. The owner of any property containing a portion of, or adjacent to, a habitat of a threatened or endangered species or a species in need of conservation, on which a land altering or land development activity, is proposed shall prepare a Habitat Protection Plan, as described in paragraph (g) below. It shall be submitted to and approved by the Town Planning Commission prior to beginning the activity. The Planning Commission will request a review by and comments from the Department of Natural Resources. A land altering activity, shall include, but not be limited to, such activities as subdivision, timbering, sand and gravel mining, clearing new farmlands, the construction of homes or commercial structures.
  - (1) The Town shall maintain a list of landowners who have endangered species on their land. The Town and State policy is to encourage cooperative management agreements with private landowners as the best way to preserve and protect critical habitats for endangered or threatened species. In the long term, however, easements or acquisition of the lands for preservation of these habitats should be sought.
  - (2) Management agreements, easements, and acquisition efforts shall be coordinated with the Maryland Department of Natural Resources and other appropriate public agencies, private organizations and affected landowners.
- e. Public notice. The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the Town and public agencies or private organizations. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.
  - (1) The establishment of Habitat Protection Areas shall not be intended to restrict or affect, beyond any existing local, State or Federal laws or regulations or on private land, any private restrictions, such activities as non-commercial passive recreation (for example, hiking and nature photography),

educational pursuits, scientific observation, or non-commercial hunting, trapping or fishing.

- (2) Development activities in areas of threatened or endangered species in need of conservation may be subject to other provisions and requirements of this program.

20. Plant and Wildlife Habitat and Nontidal Wetlands Protection Plan.

- a. Definitions. In this section, the following words have the meanings indicated:

- (1) "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.
- (2) "Wildlife habitat" means those plant communities and physiographic features that provide food, water and cover, nesting, and foraging or feeding conditions necessary to maintain populations of animals in the Critical Area.

- b. Description. The following plant and wildlife habitats shall be identified in the Critical Area:

- (1) Colonial water bird nesting sites;
- (2) Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and non-tidal wetlands;
- (3) Existing riparian forests (example: relatively mature forests of at least 300 feet in width which occur adjacent to streams, wetlands, or the bay shoreline and which are documented breeding areas);
- (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (example: relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with such areas);
- (5) Other areas which may, in the future, be identified by the State and Federal agencies as important plant and wildlife habitat areas;
- (6) Other plant and wildlife habitats determined to be of local significance; and

- (7) Natural Heritage Areas which have been designated;
  - (8) Non-tidal wetlands.
- c. General policies. The policies of the Town regarding plant and wildlife habitat in the Critical area shall be to:
- (1) Conserve wildlife habitat in the Critical Area;
  - (2) Protect those wildlife habitats that tend to be least abundant or which may become so in the future if current land-use trends continue;
  - (3) Protect those wildlife habitat types which are required to support the continued presence of various species;
  - (4) Protect those wildlife habitat types and plant communities which are determined by the Town to be of local significance;
  - (5) Protect Natural Heritage Areas; and
  - (6) Protect and conserve non-tidal wetlands.
- d. Standards. The Town's Critical Area Program and ordinance will serve to accomplish the goals of the Critical Area Program to protect water quality and wildlife habitat. In addition to the standards set forth in this ordinance for the protection of the Buffer, the following standards shall apply to new development and redevelopment within the Critical Area:
- (1) Any development or significant land use change of property located within the Critical Area of the Town will require a site specific survey to determine the presence of any plant and wildlife habitat areas. The survey shall be submitted along with design plans and a written description of the measures the property owner proposed to take to protect the habitats identified. This information concerning habitats will be incorporated onto the Resource Inventory Maps for future reference.
  - (2) The Town may seek additional information and comments from the Department of Natural Resources and other appropriate agencies and adjacent jurisdictions.

- (3) When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants are advised to review and utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development.
- (4) The Town will encourage the conservation of rough areas, e.g., depressions, swales, non-tidal wetlands or other areas unsuitable for development or agriculture as wildlife cover. Using cluster development, the developer shall leave these areas in natural vegetation or where this is not feasible, replant with native vegetation.
- (5) For development activities in RCA and LDA, wildlife corridors shall be established and used to connect areas left in forest cover with any large forest tracts which are located outside of the area of the property being developed or subdivided. The area left in forest cover (at least 70 percent of the tract in LDAs or RCAs as required by this ordinance) shall be adjacent to larger forest, not left as an isolated island of trees. Planting required as a mitigation measure shall also be adjacent to other habitat.
- (6) Buffer areas for colonial water bird (heron, egret, tern, and glossy ibis) nesting sites shall be established (if such birds are found to exist in the Critical Area) so that these sites are protected from the adverse impacts of development activities and from disturbance during the breeding season.
- (7) New water-dependent facilities shall be located to prevent disturbance to sites of significance to wildlife such as historic, aquatic staging and concentration areas for waterfowl.
- (8) Protection measures, including a buffer area, shall be established where appropriate, for other plant and wildlife habitat sites identified in this ordinance.
- (9) Forested areas required to support wildlife species identified as threatened and endangered, or in need of conservation, shall be protected and conserved by

developing management programs which have as their objective, conserving the wildlife that inhabit or use the areas. Development activities, or the clearing or cutting of trees which might occur in the areas, shall be conducted so as to conserve riparian habitat, forest interior wildlife species and their habitat. Management measures may include incorporating appropriate wildlife protection elements into Timber Harvest Plans, Forest Management Plans, cluster zoning or other site design criteria which provide for the conservation of wildlife habitat. Measures may also include Soil Conservation Plans which have wildlife habitat protection provisions appropriate to the areas defined above, and incentive programs which use the acquisition of easements and other similar techniques.

- (10) When development activities, or the cutting or clearing of trees, occurs in forested areas, to the extent practical, corridors of existing forest or woodland vegetation shall be maintained to provide effective connections between wildlife habitat areas.
- (11) Those plant and wildlife habitats considered to be of local significance by the Town shall be protected. Examples of these are those whose habitat values may not be of statewide significance, but are of importance locally or regionally because they contain species uncommon or of limited occurrence in the jurisdiction, or because the species are found in unusually high concentrations.
- (12) Natural Heritage Areas shall be protected from alterations due to development activities or cutting or clearing so that the structure and species composition of the areas are maintained
  - (a) Development activities or cutting and clearing in Natural Heritage Areas shall be prohibited unless an analysis is performed and measures proposed to mitigate any adverse impacts of the proposed activities. The analysis and mitigation measures shall be prepared by qualified professionals (e.g., ornithologists, zoologists, environmental engineers and planners) at the expense of the applicant and shall address the expected effects on the natural environment within the Natural Heritage Area.

- (b) The analysis shall be submitted to the Town Planning Commission which will then submit it to the State Department of Natural Resources for review and comment. Upon receiving said comment and, if appropriate, upon seeking the advice of expert consultants, the Planning Commission shall find against or in favor of the activities or may make suggestions for changing the analysis and ask the applicant to resubmit the analysis. The initial review between the Planning Commission and State Department of Natural Resources should be completed within sixty (60) days from submission.
- e. Standards for non-tidal wetland protection. In addition to the standards set forth in this ordinance for protection of the Buffer and expansion of the Buffer for hydric soils, the following shall apply to new development and re-development in the Critical Area:
  - (1) Maintain at least a 25-foot buffer around identified non-tidal wetlands where development activities or other activities that may disturb the wetlands or the wildlife contained therein, shall be prohibited unless it can be shown that these activities will not adversely affect the wetland. This requirement is not intended to restrict the grazing of livestock in these wetlands.
  - (2) Protect the hydrologic regime and water quality of identified non-tidal wetlands by providing that development activities or other land disturbances in the drainage area of the wetlands shall minimize alterations to the surface or subsurface flow of water into and from the wetlands and not cause impairment of the water quality or the plant and wildlife and habitat value of the wetland.
  - (3) If an applicant demonstrates that activities or operations that impact non-tidal wetlands are water-dependent or of substantial economic benefit, but will cause unavoidable and necessary impacts to the wetlands, a Mitigation Plan is required. The Plan shall specify mitigation measures that will provide water quality benefits and plant and wildlife habitat equivalent to those of the wetland destroyed or altered and shall be accomplished, to the extent possible, on site or near the affected wetland. In

evaluating a proposal involving wetland impacts, the Planning Commission shall consider the following:

- (a) Avoiding the impact by not taking a certain action or parts of an action;
  - (b) Minimizing impacts by limiting the degree of magnitude of action and its implementation;
  - (c) Remediation for the impact by repairing, rehabilitation, or restoring the affected environments;
  - (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action; and
  - (e) Compensating for the impact by replacing or providing substitute resources or environments.
- (4) For all activities or operations that impact non-tidal wetlands or the non-tidal wetland buffer, the applicant shall seek comments on Mitigation Plans from the Department of Natural Resources, and where appropriate, State departments including the Departments of the Environment and Agriculture, the local Soil Conservation Districts and the U.S. Fish and Wildlife Service. Upon finding that the plan as proposed, or as may be modified to address the comments of these agencies, provides mitigation sufficient to accomplish the objectives of this section, then the proposer shall implement the plan.

f. Public notice. The determination of the existence and extent of these habitats and protection areas shall result from a cooperative effort between the Town and public agencies or private organizations. If the Secretary of the Department of Natural Resources designates additional species by regulation in the future, public hearings, as appropriate, shall be held to consider comments on these areas and the protection measures proposed for these species. The protection measures shall be adopted within 12 months of the date of the Secretary's designation.

- (1) The establishment of Habitat Protection Areas shall not be intended to restrict or affect, beyond any existing local, State or Federal laws or regulations or on private land, any private restrictions, such activities as non-commercial passive recreation (for

example, hiking and nature photography), educational pursuits, scientific observation, or non-commercial hunting, trapping or fishing.

- (2) Development activities in areas of threatened or endangered species in need of conservation may be subject to other provisions and requirements of this program.

## 21. Anadromous Fish Propagation Waters.

- a. Definition. Anadromous fish propagation waters are those streams that are tributary to the Chesapeake Bay where spawning of anadromous species (e.g., rockfish or striped bass, yellow perch, white perch, shad and river herring) occurs or has occurred.
- b. Identification. The Town has identified and mapped anadromous fish propagation waters as defined in this section, and these maps are available at Town Hall.
- c. General policies. The policies of the Town with regard to anadromous fish propagation waters shall be to:
  - (1) Protect the instream and streambank habitat of anadromous fish propagation waters;
  - (2) Promote land use policies and practices in the watershed of spawning streams within the Critical Area which will minimize the adverse impacts of development on the water quality of the streams; and
  - (3) Provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.
- d. Standards. Within anadromous fish propagation watersheds, the following measures are required:
  - (1) The installation or introduction of concrete riprap or other artificial surfaces onto the bottom of natural streams shall be prohibited unless it can be demonstrated that water quality and fisheries habitat can be improved.
  - (2) Channelization or other physical alterations which may change the course or circulation of a stream and thereby interfere with the movement of fish, shall be prohibited.

- (3) The Town shall require each development activity that occurs within a watershed draining to anadromous fish propagation waters to fulfill the following objectives:
  - (a) Minimize development activities or land disturbances within the watershed;
  - (b) Maintain, or if practicable, improve water quality in affected streams or other water bodies;
  - (c) Minimize to the extent possible the discharge of sediments into affected streams or other water bodies;
  - (d) Maintain, or if practicable, increase the natural or native vegetation of the watershed and tree canopy over the streams;
- (4) The Town shall ensure coordination and compliance with complementary State laws and regulations:
  - (a) Prohibit the construction or placement of dams or other structures that would interfere with or prevent the movement of spawning fish or larval forms in streams or other designated water bodies. If practical, existing structures shall be removed; and
  - (b) Ensure that the construction, repair or maintenance activities associated with bridges, or other stream crossing or with utilities and roads, which involve disturbance within the buffer or which occur instream, as described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

## 22. Special Buffer Area Mapping Standards (SBA)

The following standards shall apply for the mapping of new Special Buffer Areas:

- a. Only lots of record as of December 1, 1985 are eligible for mapping as Special Buffer Areas (SBAs)
- b. The area being considered for SBA designation shall contain a Buffer that was significantly impacted by

development at the time of program adoption and that prevents the Buffer from fulfilling its functions.

- c. Developed parcels or lots shall contain a Buffer intrusion by the principal structures (excluding utilities or septic systems).
- d. Undeveloped or vacant parcels or lots (i.e., infill) may be designated as a SBA if development within the Buffer can not be avoided based on the size of the parcel or lot, area of the parcel or lot within the Buffer, or the surrounding pattern of development.
- e. If only part of a parcel or lot meets the criteria for designation as a SBA, then only those portions of a parcel or lot shall be designated as a SBA. The portion of the parcel designated as a SBA will be subject to the SBA development restrictions. Portions of the property that are not designated as a SBA shall comply fully with the 110 foot Buffer restrictions.
- f. Any proposal by a jurisdiction for designation of an area as a SBA shall include, at a minimum, the jurisdiction's written findings and supporting reasons which demonstrate the degree to which the proposed SBA does not perform each of the following Buffer functions:
  - (1) Provide for the removal or reduction of sediments, nutrients, and potentially harmful or toxic substances in runoff entering the Bay and its tributaries;
  - (2) Minimize the adverse effects of human activities on wetlands, shorelines, stream banks, and aquatic resources;
  - (3) Maintain an area of transitional habitat between aquatic and upland communities;
  - (4) Maintain the natural environment of streams; and
  - (5) Protect riparian wildlife habitat.

## 23. Forest and Woodland Protection Standards.

- a. General Policies. The following policies for forest and woodland protection recognize the value of forested land for its water quality benefits and for habitat protection while accommodating the utilization of forest resources:

- (1) Maintain and increase the forested vegetation in the Critical Area;
  - (2) Conserve forests and developed woodlands and provide for expansion of forested areas;
  - (3) Provide that the removal of trees associated with development activities shall be minimized and, where appropriate, shall be mitigated; and
  - (4) Recognize that forests are a protective land use and should be managed in such a manner so that maximum values for wildlife, water quality, timber, recreation, and other resources can be maintained, even when they are mutually exclusive.
- b. Identification. The Town has identified and mapped forests and developed woodlands within the Critical Area and has identified and mapped habitat protection areas as described. More detailed evaluation of forest resources on specific sites shall be accomplished as part of the environmental analysis required prior to site plan and subdivision approval.
- c. Policies for the Protection of Riparian and Forest Habitat. The Town adopts the following policies for the protection of riparian habitat:
- (1) Vegetation shall be maintained in its natural condition along all streams to provide wildlife corridors.
  - (2) A minimum 110-foot Buffer shall extend landward from the mean high water line of tidal water, and the edge of tributary streams and tidal wetlands. This area is to be conserved for wildlife protection.
  - (3) Non-tidal wetland forests should be left in a natural state for wildlife and water quality protection.
  - (4) Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species (for example relatively mature forested areas within the Critical Area of 100 acres or more, or forest connected with these areas) shall be conserved.
  - (5) Existing riparian forests (for example, those relatively mature forest of at least 300 feet in width which occur adjacent to streams, wetlands, or the Bay

shoreline) and/or which are documented breeding areas shall be conserved.

- d. Process. If a forest is to be developed or to be harvested, a site-specific field investigation shall be conducted to determine if important sensitive species present and to make sure that appropriate protection measures are incorporated into the development plan or Timber Harvest Plan. When proposing development activities within riparian forests or forest areas utilized as breeding areas by forest interior dwelling birds, applicants are advised to review and utilize the guidance found in the Critical Area Commission publication entitled, *A Guide to the Conservation of Forest Interior Dwelling Birds in the Chesapeake Bay Critical Area*, dated June 2000, and as may be subsequently amended. In addition, the Department of Natural Resources may make specific recommendations based on an evaluation of the site and the proposed development. In general, the following measures are recommended:
  - (1) Minimize forest and woodlands disturbance from off-road vehicles, public use or logging from May through August of each year;
  - (2) Focus all development on the periphery of the forest or woodlands;
  - (3) Retain the forest canopy as well as shrub understory;
  - (4) Retain snag and mature seed trees as dens for woodpeckers and as nests for bald eagles;
  - (5) Discourage the creation of small clearings and expansion of forest edge habitats;
  - (6) Encourage re-establishment of native forests and woodlands; and
  - (7) Adopt harvest techniques to maintain or improve habitat.
- e. Policies for the establishment or replacement of forest. The following policies should be used for afforestation and reforestation:
  - (1) The replacement or establishment of forest or developed woodlands should ensure a diversified

plant community and should include canopy trees, understory trees, shrubs and herbaceous plants.

- (2) Native species should be used for all reforestation and afforestation.

f. Buffer protection standards for timber for personal use. Individual trees may be cut for personal use if the trees cut are replaced on an equal basis and provided the cutting does not impair the water quality or existing habitat value or other functions of the Buffer set forth in that section. Any cutting or removal of natural vegetation as permitted by the provisions specified herein shall require a Buffer Management Plan approved by the Planning Commission or their designee. Cutting or clearing of trees and removal of natural vegetation within the Buffer shall be prohibited except that:

- (1) Cutting of trees or removal of natural vegetation may be permitted where necessary to provide access to private piers, or to install or construct a shore erosion protection device or measure, or a water-dependent facility, providing the device, measure or facility has received all necessary State and Federal permits and the trees are replaced on an equal basis for each tree cut.
- (2) Individual trees may be cut for personal use providing that this cutting does not impair the water quality or existing habitat value or other functions of the buffer as set forth in the policies of this plan and provided that the trees are replaced on an equal basis for each tree cut.
- (3) Individual trees may be removed which are in danger of falling and causing damage to dwellings or other structures, or which are in danger of falling and therefore causing the blockage of streams, or resulting in accelerated shore erosion.
- (4) Horticultural practices may be used to maintain the health of individual trees.
- (5) Other cutting techniques may be undertaken within the Buffer and under the advice and guidance of the State Departments of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

- g. Enforcement. Unauthorized clearing, cutting, or removal of vegetation; unauthorized clearing, cutting, or removal of vegetation in the Buffer; and clearing, cutting or removal of vegetation in excess of the area permitted to be cleared by this ordinance is considered a civil violation of this ordinance and shall result in fines and mandatory planting. The Zoning Administrator, or their designee, shall have the authority to issue a citation and are hereby declared to be the officials with the duty of enforcing these provisions.
- (1) For unauthorized clearing, cutting, or removal of vegetation that does not exceed the area that could be authorized in accordance with this ordinance, fines shall be assessed as set forth in 5-12.6, of this ordinance and reforestation shall be required on an equal area basis if less than 20 percent of the forest cover is removed. For clearing between 20 percent and 30 percent of the existing forest cover, reforestation shall be required at 1.5 times the total surface acreage of forest cleared.
  - (2) For unauthorized clearing, cutting, or removal of vegetation that exceeds the area that could be authorized in accordance with this ordinance, fines shall be assessed as set forth in Section 5-12.6, of this ordinance, and reforestation shall be required at 3 times the total surface acreage of forest cleared.
  - (3) For unauthorized clearing, cutting, or removal of vegetation in the Buffer or another Habitat Protection Area, fines shall be assessed as set forth in the Section 5-12.6 of this ordinance, and reforestation shall be required at 3 times the total surface acreage of forest cleared.
  - (4) When trees or vegetative cover cannot be fully replaced on site because of existing vegetation, existing development, or the size of the parcel, then fees-in-lieu of planting may be collected. Fees shall be assessed at \$2.50 per square foot of required mitigation or \$250.00 per tree.
  - (5) Fines collected from enforcement actions in the Critical Area shall be maintained in a separate account to be used by the Town for reforestation or other habitat enhancing efforts.

24. Agriculture.

The Town of North East does not include any areas that are currently undergoing or are proposed for agricultural use. At such time in the future that an area within the Town would be proposed for this type of use through annexation or a change in current land use, then appropriate modifications would be made to the Town's Program at the same time that the annexation or approval of the change in land use takes place.

25. Surface Mining in the Critical Area.

Surface mining is not allowed in the Town of North East. Should the Town amend their Zoning Ordinance to allow surface mining in any zone within the Critical Area, the Town shall amend its Critical Area Ordinance to include appropriate language.

26. Amendments in Critical Area Overlay District

- a. Program Amendments: The Mayor and Commissioners may from time to time amend the Town Critical Area Regulations. All such amendments shall also be approved by the Critical Area Commission as established in Section 8-1809 of the Critical Area Act. The Town shall comprehensively review their entire Critical Area Program including Critical Area Maps and propose necessary amendments at least every six years. No such amendment shall be considered by the Mayor and Commissioners until a recommendation has been made by the Planning Commission on the program amendment.
- b. Zoning Map Amendments: Except for program amendments or program refinements developed during a six-year comprehensive review, a zoning map amendment may only be granted by the Mayor and Commissioners upon proof of a mistake in the existing zoning. No such amendment shall be considered by the Mayor and Commissioners until a recommendation has been made by the Planning Commission on the map amendment. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:
  - (1) Are wholly consistent with the land classifications in the adopted Program; or
  - (2) Propose the use of growth allocation in accordance with the adopted Program.
- c. Process: When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and recommendation. Upon completing Findings

of Fact, these documents shall be forwarded to the Mayor and Commissioners. The Mayor and Commissioners shall hold a public hearing at which time parties of interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town. The Mayor and Commissioners shall forward the approved amendment request to the Critical Area Commission for final approval.

- d. Program Amendments and Refinements. When the town submits a request for review and approval of changes to any element of the Town's Critical Area Program including, but not limited to, amendments, revisions, and modifications to the Zoning Ordinance, Subdivision Regulations, Critical Area Maps, implementation procedures, and local policies that affect the Town's program, the request shall include all relevant information necessary for the chairman, and as appropriate, the Commission, to evaluate the changes. The chairman, and as appropriate, the Commission shall determine if the request for program changes are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all criteria of the Commission.

In accordance with the Commission's determination of consistency as outlined above, the Commission shall:

- (1) Approve the proposed program amendment or refinement and notify the local jurisdiction;
  - (2) Deny the proposed program amendment or refinement;
  - (3) Approve the proposed program amendment or refinement subject to one or more conditions; or
  - (4) Return the proposed program amendment or refinement to the local jurisdiction with a list of changes to be made.
- e. Comprehensive Reviews. The Town will review its entire Program and propose any necessary amendments to its entire Program, including Critical Area Maps, at least every six years. The anniversary of the date that the Program became effective shall be used to determine when the review shall be completed. Within 60 days after the completion of the review, the Town will send the following information in writing to the Commission:

- (1) A statement certifying that the required review has been accomplished;
- (2) Any necessary request for program amendments, program refinements, or other matters that the Town wishes the Commission to consider;
- (3) An updated resource inventory;
- (4) A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.

27. Variance in the Critical Area Overlay District

- a. Applicability: The Town has established provisions where, owing to special features of a site or other circumstances, implementation of the Critical Area Program would result in unwarranted hardship to an applicant, a variance may be obtained. In considering an application for a variance, the Town shall presume that the specific development activity in the Critical Area, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of the Town's Critical Area Program.
- b. Standards: The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:
  - (1) Special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of the Town's Critical Area Program would result in unwarranted hardship.
  - (2) A literal interpretation of the provisions of the Critical Area Program and related Chapters will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area.
  - (3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by the Town Critical Area Program to other lands or structures within the Critical Area.
  - (4) The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition relating to land or building use, either permitted or non-

conforming on any neighboring property.

- (5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the Critical Area and the grant of the variance will be in harmony with the general spirit and intent of the Critical Area Act and the Town Critical Area Program.
  - (6) Applications for a variance will be made in writing to the Town Board of Appeals with a copy provided to the Critical Area Commission.
- c. Process: After hearing an application for a Critical Area Program variance, the Board of Appeals shall make written findings reflecting analysis of each standard. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established above. The Town shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.
  - d. Findings: Based on competent and substantial evidence, the Town shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established above. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by the applicant, Town, a government agency, or anyone deemed appropriate by the town.
  - e. Conditions and Mitigation: The Board of Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of the Critical Area Program is maintained including, but not limited to the following:
    - (1) Adverse impacts resulting from the granting of the variance shall be mitigated by planting on the site per square foot of the variance granted at no less than a three to one basis or as recommended by the Critical Area Circuit Rider.
    - (2) New or expanded structures or impervious surfaces shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.
  - f. Appeals: Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the town for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of

Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this section.

28. “GA” Growth Allocation Floating Zone District

- a. Purpose and Intent: The “GA” Growth Allocation Floating Zone District is not mapped, but is designated for use areas classified as Resource Conservation Areas (RCA) and/or Limited Development Areas within the Town’s Critical Area Overlay District. The purpose of the Floating Zone District is to permit a change in the land use management classification established in the Critical Area Overlay District on specified sites so that they may be developed to the extent permitted by the underlying zoning classification or the land use management classification. Only projects that have been approved by the Mayor and Commissioners for award of the Critical Area Growth Allocation are eligible for this Floating Zone District. The Town will coordinate with the Cecil County Department of Planning on projects being considered for Growth Allocation.
- b. Related Approvals. Approval of development plans, e.g., site plan, subdivision plat, PRD plans or master plans shall not be construed as approval of the "GA" Growth Allocation Floating Zone District. An applicant may be approved for such plans and not be approved for the "GA" Growth Allocation Floating Zone District.
- c. Guidelines. When locating new Intensely Developed or Limited Developed Areas, the following guidelines shall be used:
  - (1) Locate a new Intensely Developed Area in a Limited Development Area or adjacent to an existing Intensely Developed Area;
  - (2) Locate a new Limited Development Area adjacent to an existing Limited Development Area or an Intensely Developed Area;
  - (3) New Intensely Developed Areas (IDA) shall be at least 20 acres in size unless:
    - (a) They are contiguous to an existing IDA, LDA; or
    - (b) They are a grandfathered commercial or industrial use that existed as of the date of local Program approval. The amount of growth

allocation deduction shall be the equivalent to the area of the entire parcel or parcels subject to the growth allocation request.

- (4) Locate a new Limited Development Area or an Intensely Developed Area in a manner that minimizes impacts to a Habitat Protection Area as defined in COMAR 27.01.09, and in an area and manner that optimizes benefits to water quality;
  - (5) New Intensely Developed Areas should be located where they minimize their impacts to the defined land uses of the Resource Conservation Area;
  - (6) Locate a new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters;
  - (7) New Intensely Developed Areas and Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of the Town for such areas, shall be so designed on the Town Zoning Map and shall constitute an amendment to this program subject to review and approval by the Town Planning Commission, the Town Commissioners and the Critical Area Commission.
  - (8) Growth Allocation located in the RCA shall be coordinated with the County to ensure that no more than 50 percent of Cecil County's Growth Allocation is located within the RCA except as provided for in 8-1808.1 of the Natural Resources Article of the Annotated Code of Maryland.
  - (9) It is the intent that only those development projects that the Planning Commission concludes are good examples of sensitive development in the Critical Area shall be given growth allocation.
  - (10) Conditions of approval may be placed on a project prior to granting Growth Allocation.
- d. Application of Guidelines: When the Town submits a request for the Commission to review and approve the use of growth allocation, the request shall state how the Town has applied the preceding guidelines. The Commission shall ensure that guidelines set forth in this section have been applied in a manner that is consistent with the

purposes, policies, goals and provisions of the Critical Area Law and all Criteria of the Commission.

- e. Process: Applicants for growth allocation shall submit a request for growth allocation accompanied by appropriate plans and environmental reports in accordance with the following:

- (1) All applications for growth allocation shall be submitted to the Zoning Administrator according to the site plan review schedule available from the Town office. Requests shall be accompanied by a concept plan and appropriate environmental reports and/or studies so as to provide sufficient information to permit the Zoning Administrator who shall review the plans with the assistance of the Critical Area Circuit Rider for compliance with these regulations. At a minimum the following information must be provided:
  - (a) An environmental assessment of the site including impacts to Habitat Protection Areas and mitigation for impacts.
  - (b) Delineation of the Critical Area boundary and the 110-foot Buffer around tidal waters, tidal wetlands and tributary streams.
  - (c) The acreage in the Critical Area and the acreage to be considered for Growth Allocation.
  - (d) A discussion on issues of adjacency (e.g., LDAs adjacent to IDAs).

The Zoning Administrator shall transmit said documents to the Planning Commission with comments for review at their next regular meeting. The Planning Commission shall review the application for consistency with the Town's Critical Area regulations and Comprehensive Plan.

- (2) The subdivision history of parcels, designated as RCA, must be provided as part of the growth allocation application. The date of December 1, 1985, is the date used for the original Critical Area mapping and shall be used as a beginning point of analysis.

- (3) The Planning Commission can approve, deny or approve with conditions the application for Growth Allocation. Conditions for approval may be placed on the project to ensure the conservation of sensitive areas and important habitat.
- (4) The Planning Commission shall hold a public hearing on the growth allocation request prior to making a recommendation on the proposal to the Mayor and Commissioners. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town.
- (5) The applicant shall address the Planning Commission's comments and recommendations and may revise the concept plan accordingly. The growth allocation request shall then be forwarded to the Mayor and Commissioners with a recommendation from the Planning Commission including conditions recommended by the Planning Commission.
- (6) The Mayor and Commissioners shall hold a public hearing within sixty (60) days after receipt of the Planning Commission's recommendation. At least fifteen (15) days notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town. The hearing shall include the following:
  - (a) Presentation of the project by the developer or consultant.
  - (b) Planning Commission recommendations;
  - (c) Public comments; and
  - (d) The recommendations of the Critical Area Commission
- (7) The Mayor and Commissioners shall send the approved project to the Cecil County Commissioners to award a portion of the growth allocation designated for the Town to the applicant. The request shall be accompanied by pertinent plans and environmental reports and/or studies. Once approved by the County, a copy of the County's approval shall be sent to the Critical Area Commission with the pertinent plans and environmental report and/or studies. The Critical

Area Commission shall notify the Town regarding the processing of the request as an amendment or refinement to the Town's Critical Area Program. Refinements shall be acted on within 30 days of the Commission's notification to the Town of a completed submission. Amendments shall be acted on within 90 days of the Commission's notification to the Town of a completed submission. When the Town submits a request for the Commission to review and approve the use of growth allocation, the request shall ensure how the local jurisdiction has applied the preceding guidelines. The Commission shall ensure that the guidelines set forth in this section have been applied in a manner that is consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Commission.

- (8) Following approval of the growth allocation request by the Critical Area Commission, the Town Commissioners may implement the change, and the applicant may proceed to the preparation of the final site plan or subdivision plat for recordation.
  - (9) Prior to approving the final site plan or subdivision plat, the Planning Commission or their designee shall ensure that all conditions of approval are incorporated into the final plan, public works agreement, deed covenants, etc.
  - (10) The Town's official Critical Area maps shall be amended to reflect the new land classification, and a copy of the new map shall be provided to the Critical Area Commission.
  - (11) After a project is approved and Growth Allocation awarded, the Growth Allocation so awarded will expire within two (2) years of the approval date if no substantial construction or change of use has taken place in accordance with the plans for which the Growth Allocation was granted unless an extension has been approved.
- f. Standards for Review of Growth Allocation Projects: In addition to the requirements listed above, all projects requesting growth allocation shall be reviewed and evaluated for their conformance with the following factors:
- (1) The amount of forested area and other vegetative cover that is left undisturbed and in a natural state on the site.

- (2) Additional public improvements and the specific nature of such improvements that will be provided with the proposed development (examples of these would include public access facilities to water front areas, trails to the downtown, dedication of lands for public park purposed, etc.).
  - (3) Use of innovative and environmentally sensitive site design and construction design features that minimize the disturbance of natural areas and reduce potential impacts on habitat protection areas. These features could include, but are not limited to:
    - (a) The use of cluster development;
    - (b) The use of innovative stormwater management measures;
    - (c) The use of buffer areas to minimize impacts on existing habitats and wildlife corridors and protect adjacent natural and developed areas from impacts of the proposed development;
    - (d) The use of appropriate landscaping plans and materials to enhance the establishment of vegetated buffer areas on the project site.
- g. Deduction Methodology: The following standards shall be used to determine the area of Growth allocation to be deducted when the designation of a parcel or a portion of a parcel is changed through the Growth Allocation process:
- (1) Subdivision of any parcel of land that was recorded as of December 1, 1985, as classified as RCA where all or part of the parcel is identified by the Town as a Growth Allocation area, shall result in the acreage of the entire parcel not in tidal wetlands counting against the Growth Allocation, unless the development concept outlined in item (b) below is used.
  - (2) In order to allow some flexibility in the use of Growth Allocation when development is only proposed on a portion of the property, the following methodology may be used. On a parcel proposed for the use of Growth Allocation, a single development envelope may be specified, and the acreage of the development envelope rather than the acreage of the entire parcel shall be deducted from the Town's Growth Allocation

if the development envelope meets the following criteria:

- (a) The development envelope shall include individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, on-site sewage disposal measures, any acres subject to human use such as active recreation acres, and any additional acreage needed to meet the development requirements of the criteria. The required buffers refer to a minimum 110-foot Buffer and the 25-foot non-tidal wetlands buffer.
  - (b) Only one development envelope shall be established per parcel of land.
  - (c) If a development envelope is proposed in the RCA, a minimum of 20 acres must remain outside of the development envelope or the acreage of the entire parcel must be deducted. If the original parcel in the RCA is less than 20 acres, then the acreage of the entire parcel must be deducted. If there is a permanently protected Resource Conservation Area (an area protected by easement) adjacent and contiguous to a residue that is less than 20 acres, that will result in a minimum 20 acre residue, then the entire parcel does not have to be deducted.
  - (d) The minimum 20 acre residue outside of the development envelope may be developed at an RCA density unless some type of permanent protection exists that restricts development.
- (3) For Growth Allocation areas proposed in the RCA, a 300-foot naturally vegetated Buffer is strongly encouraged and where it is provided it shall not be deducted even if the Buffer does not meet the 20 acre minimum requirement.

## APPENDIX CA-1

**ENVIRONMENTAL ASSESSMENT  
FOR THE  
CHESAPEAKE BAY CRITICAL AREA**

**Features/designations to be discussed:**

Critical Area  
Tidal Wetlands  
Nontidal Wetlands  
Hydric Soils  
Highly Erodible Soils  
Slopes over 15%  
100 Year Floodplain  
Submerged Aquatic Vegetation  
Areas of Significant Shore Erosion

**Habitat Protection Areas:**

110-Foot Buffer  
25-foot non-tidal wetland buffer  
Rare, Threatened or endangered Species\*  
Natural Heritage Areas\*\*  
Riparian Forests/Interior Dwelling Bird Habitat\*  
Colonial Water Bird Nesting Site  
Historic Waterfowl Staging Areas  
Anadromous Fish Propagation Water

**Information to be Included:**

Total site Area  
Area within the Chesapeake Bay Critical Area  
Critical Area Designation (IDA, LDA, RCA)  
Critical Area Designation IDA must include the 10% pollutant removal worksheets  
Land Use Designation  
Proposed Use  
Existing Impervious Area  
New Impervious Area  
Existing Forest Area (total and in the Critical Area)  
Proposed Forest or Tree Clearing (total area or number)  
Proposed Critical Area Reforestation (on site/off site)

**Letters are required from the following agencies:**

\* Maryland Department of Natural Resources, Wildlife & Heritage Division, Tawes Office Bldg, 580 Taylor Avenue, Annapolis, MD 21401

\*\* Endangered Species Biologist, U.S. Department of Interior, Fish and Wildlife Service, Chesapeake Bay Field Office, 177 Admiral Cochran Drive, Annapolis, MD 21401

## Guidelines for Mitigation Plantings in the Critical Area

### 1. Amount of Disturbance and Clearing

There are two ways to calculate the amount of disturbance in the Critical Area. Disturbance is based on either the area disturbed or the number of individual trees that will be cut. It is recommended that when an area to be disturbed more closely resembles in a natural forest (i.e., canopy cover with a multi-layer understory) or when structures or other impervious surfaces are placed within the Buffer or a BEA, even if no trees are cleared, you should quantify the disturbance amount in the *area cleared*. On the other hand, if your site more closely resembles a park setting (i.e., scattered trees with little or no understory), it is recommended that you count the *number of trees removed*.

### 2. Plant Spacings and Mitigation Credits for Various Size Trees and Shrubs\*

Credit Square Feet	Plant Size	Plant Spacing
100 sq. ft.	1 tree (2-inch caliper)	10-foot center
400 sq. ft.	1 tree (minimum: 2-inch caliper and either balled and burlapped or container grown) <u>and</u> understory vegetation (minimum 2 small trees or 3 shrubs)	tree: 20-ft. center understory: 10-ft. center
50 sq. ft.	1 tree (seedlings)	7-ft. center
50 sq. ft.	1 shrub	3 - 7 ft. center

\* The Critical Area Commission recognizes natural regeneration as a method for mitigation on appropriate sites. This will be determined on a case-by-case basis. All plantings will require an easement to ensure that these areas remain forested in perpetuity.

### 3. Mitigation Ratios

Choose from the following for the mitigation ratios:

#### Mitigation Ratio for Clearing Outside of Buffer

Clearing of Forest/Woodlands up to 20% 1:1  
 Clearing of Forest/Woodlands up to 30% 1.5:1  
 Clearing of Forest/Woodlands over 30% 3:1  
 Clearing Violation 3:1  
 Other  
 N/A

#### Mitigation Ratio for Disturbance/Clearing Within Buffer

New Development/Redevelopment (non-BEA) 3:1  
 New Development/Redevelopment (BEA) 2:1  
 Shore Erosion Control 1:1  
 Public Shoreline Access 2:1  
 Clearing Violation 3:1  
 Other  
 N/A

### 4. Planting Date

The Planting Date should be either the Spring or Fall season following the approval of the project by the Critical Area Commission.

### 5. Site Visits

Two site visits will be conducted over a period of two years by Critical Area Commission staff. The objective of the site visits is to verify that the plantings have been carried out in accordance with the approved planting plan (i.e., species, number of trees/shrubs, location) and that the plantings are surviving.

~~Section 5-12A. "GA" Growth Allocation Floating Zone Regulations~~  
(REPEALED PER ORDINANCE 2008-03-01)

RESERVED

Section 5-13. “FPM” Flood Plain Management Regulations  
(REPEAL AND ADOPTED ORDINANCE 2015-03-01 effective May 4, 2015)

North East, Maryland Floodplain Management Ordinance-Table of Contents

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## **SECTION 1.0 GENERAL PROVISIONS**

### **1.1 Findings**

The Federal Emergency Management Agency has identified *special flood hazard areas* within the boundaries of the Town of North East. *Special flood hazard areas* are subject to periodic inundation which may result in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. *Structures* that are inadequately elevated, improperly *floodproofed*, or otherwise unprotected from flood damage also contribute to flood losses.

The Town of North East, by resolution, agreed to meet the requirements of the National Flood Insurance Program and was accepted for participation in the program on October 15, 1981. As of that date, or as of October 15, 1981 the initial effective date of the Town of North East's *Flood Insurance Rate Map*, all *development* and *new construction* as defined herein, are to be compliant with these regulations.

### **1.2 Statutory Authorization**

The Maryland General Assembly, in Md. Code Ann., Land Use Article, Title 4, has established as policy of the State that the orderly development and use of land and structures requires comprehensive regulation through the implementation of planning and zoning control, and that planning and zoning controls shall be implemented by local government in order to, among other purposes, secure the public safety, promote health and general welfare, and promote the conservation of natural resources. Therefore, the Mayor and Commissioners of the Town of North East does hereby adopt the following floodplain management regulations.

### **1.3 Statement of Purpose**

It is the purpose of these regulations to promote the public health, safety and general welfare, and to:

- (A) Protect human life, health and welfare;
- (B) Encourage the utilization of appropriate construction practices in order to prevent or minimize flood damage in the future;
- (C) Minimize *flooding* of water supply and sanitary sewage disposal systems;
- (D) Maintain natural drainage;
- (E) Reduce financial burdens imposed on the *community*, its governmental units and its residents, by discouraging unwise design and construction of *development* in areas subject to *flooding*;

- (F) Minimize the need for rescue and relief efforts associated with *flooding* and generally undertaken at the expense of the general public;
- (G) Minimize prolonged business interruptions;
- (H) Minimize damage to public facilities and other utilities such as water and gas mains, electric, telephone and sewer lines, streets and bridges;
- (I) Reinforce that those who build in and occupy *special flood hazard areas* should assume responsibility for their actions;
- (J) Minimize the impact of *development* on adjacent properties within and near *flood-prone* areas;
- (K) Provide that the *flood* storage and conveyance functions of *floodplains* are maintained;
- (L) Minimize the impact of *development* on the natural and beneficial functions of *floodplains*;
- (M) Prevent *floodplain* uses that are either hazardous or environmentally incompatible; and
- (N) Meet community participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations (CFR) at 44 CFR Section 59.22.

#### **1.4 Areas to Which These Regulations Apply**

These regulations shall apply to all *special flood hazard areas* within the jurisdiction of the Town of North East, and identified in Section 1.5.

#### **1.5 Basis for Establishing Special Flood Hazard Areas and BFEs**

- (A) For the purposes of these regulations, the minimum basis for establishing *special flood hazard areas* and *base flood elevations* is the *Flood Insurance Study* for Cecil County, Maryland and Incorporated Areas dated July 8, 2013 and May 4, 2015, or the most recent revision thereof, and the accompanying *Flood Insurance Rate Map(s)* and all subsequent amendments and revisions to the *FIRMs*. The *FIS* and *FIRMs* are retained on file and available to the public at the North East Town Hall.
- (B) Where field surveyed topography or digital topography indicates that ground elevations are below the closest applicable *base flood elevation*, even in areas not delineated as a special flood hazard on the *FIRM*, the area shall be considered as *special flood hazard area*.
- (C) To establish *base flood elevations* in *special flood hazard areas* that do not have such elevations shown on the *FIRM*, the Floodplain Administrator may provide the best available data for *base flood elevations*, may require the applicant to obtain available information from Federal, State or other sources, or may require the applicant to establish *special flood hazard areas* and *base*

*flood elevations* as set forth in Section 3.3, Section 3.4, and Section 3.5 of these regulations.

## **1.6 Abrogation and Greater Restrictions**

These regulations are not intended to repeal or abrogate any existing regulations and ordinances, including subdivision regulations, zoning ordinances, *building codes*, or any existing easements, covenants, or deed restrictions. In the event of a conflict between these regulations and any other ordinance, the more restrictive shall govern.

## **1.7 Interpretation**

In the interpretation and application of these regulations, all provisions shall be:

- (A) Considered as minimum requirements;
- (B) Liberally construed in favor of the governing body; and,
- (C) Deemed neither to limit nor repeal any other powers granted under State statutes.

Notes referencing publications of the Federal Emergency Management Agency refer to the most recent edition of those publications, are intended only as guidance, and do not bind or alter the authority of the Floodplain Administrator to interpret and apply these regulations.

## **1.8 Warning and Disclaimer of Liability**

The degree of *flood* protection required by these regulations is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur, and *flood* heights may be increased by man-made or natural causes. These regulations do not imply that land outside of the *special flood hazard areas* or uses that are permitted within such areas will be free from *flooding* or *flood* damage.

These regulations shall not create liability on the part of the Town of North East, any officer or employee thereof, the Maryland Department of the Environment (MDE) or the Federal Emergency Management Agency (FEMA), for any *flood* damage that results from reliance on these regulations or any administrative decision lawfully made hereunder.

## **1.9 Severability**

Should any section or provision of these regulations be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the regulations as a whole, or any part thereof other than the part so declared to be unconstitutional or invalid.

## SECTION 2.0 DEFINITIONS

Unless specifically defined below, words or phrases used in these regulations shall be interpreted to have the meaning they have in common usage and to give these regulations the most reasonable application.

**Accessory Structure:** A building or *structure* on the same lot with, and of a nature customarily incidental and subordinate to, the principal *structure*. For the purposes of these regulations, an accessory structure shall be used solely for parking of vehicles and limited storage.

**Agreement to Submit an Elevation Certificate:** A form on which the applicant for a permit to construct a building or *structure*, to construct certain horizontal additions, to place or replace a *manufactured home*, to substantially improve a building, *structure*, or *manufactured home*, agrees to have an *Elevation Certificate* prepared by a *licensed* professional engineer or *licensed* professional surveyor, as specified by the Floodplain Administrator, and to submit the certificate:

- (1) Upon placement of the *lowest floor* and prior to further vertical construction; and
- (2) Prior to the final inspection and issuance of the Certificate of Occupancy.

**Alteration of a Watercourse:** For the purpose of these regulations, alteration of a watercourse includes, but is not limited to widening, deepening or relocating the channel, including excavation or filling of the channel. Alteration of a watercourse does not include construction of a road, bridge, culvert, dam, or in-stream pond unless the channel is proposed to be realigned or relocated as part of such construction.

**Area of Shallow Flooding:** A designated Zone AO on the *Flood Insurance Rate Map* with a 1-percent annual chance or greater of *flooding* to an average depth of one to three feet where a clearly defined channel does not exist, where the path of *flooding* is unpredictable, and where velocity flow may be evident; such *flooding* is characterized by ponding or sheet flow.

**Base Building:** The building to which an addition is being added. This term is used in provisions relating to additions.

**Base Flood:** The *flood* having a one-percent chance of being equaled or exceeded in any given year; the base flood also is referred to as the 1-percent annual chance (100-year) *flood*.

**Base Flood Elevation:** The water surface elevation of the *base flood* in relation to the datum specified on the *community's Flood Insurance Rate Map*. In *areas of shallow flooding*, the base flood elevation is the highest adjacent natural grade elevation plus the

depth number specified in feet on the *Flood Insurance Rate Map*, or at least four (4) feet if the depth number is not specified.

**Basement:** Any area of the building having its floor subgrade (below ground level) on all sides.

**Building Code(s):** The effective Maryland Building Performance Standards (COMAR 05.02.07), including the building code, residential code, and existing building code.

**Coastal A Zone:** An area within a *special flood hazard area*, landward of a coastal high hazard area (V Zone) or landward of a shoreline without a mapped coastal high hazard area, in which the principal source(s) of *flooding* are astronomical tides and storm surges, and in which, during *base flood* conditions, the potential exists for breaking waves with heights greater than or equal to 1.5 feet. The inland limit of the Coastal A Zone may be delineated on *FIRMs* as the *Limit of Moderate Wave Action (LiWMA)*.

**Coastal High Hazard Area:** An area of special flood hazard extending from offshore to the inland limit of a primary frontal dune along an open coast and any other area subject to high velocity wave action from storms. *Coastal high hazard areas* also are referred to as “V Zones” and are designated on *FIRMs* as zones VE or V1-30.

**Community:** A political subdivision of the State of Maryland (county, city or town) that has authority to adopt and enforce floodplain management regulations within its jurisdictional boundaries.

**Critical and Essential Facilities:** Buildings and other *structures* that are intended to remain operational in the event of extreme environmental loading from flood, wind, snow or earthquakes. [Note: See Maryland Building Performance Standards, Sec. 1602 and Table 1604.5.] Critical and essential facilities typically include hospitals, fire stations, police stations, storage of critical records, facilities that handle or store hazardous materials, and similar facilities.

**Declaration of Land Restriction (Nonconversion Agreement):** A form signed by the owner to agree not to convert or modify in any manner that is inconsistent with the terms of the permit and these regulations, certain *enclosures below the lowest floor* of elevated buildings and certain *accessory structures*. The form requires the owner to record it on the property deed to inform future owners of the restrictions.

**Development:** Any manmade change to improved or unimproved real estate, including but not limited to buildings or other *structures*, placement of *manufactured homes*, mining, dredging, filling, grading, paving, excavation or drilling operations or storage of equipment or materials.

**Elevation Certificate:** FEMA form on which surveyed elevations and other data pertinent to a property and a building are identified and which shall be completed by a

*licensed* professional land surveyor or a *licensed* professional engineer, as specified by the Floodplain Administrator. When used to document the height above grade of buildings in *special flood hazard areas* for which *base flood elevation* data are not available, the Elevation Certificate shall be completed in accordance with the instructions issued by FEMA. [Note: FEMA Form 086-0-33 and instructions are available online at <http://www.fema.gov/library/viewRecord.do?id=1383>.]

**Enclosure Below the Lowest Floor:** An unfinished or *flood*-resistant enclosure that is located below an elevated building, is surrounded by walls on all sides, and is usable solely for parking of vehicles, building access or storage, in an area other than a *basement* area, provided that such enclosure is built in accordance with the applicable design requirements specified in these regulations. Also see “Lowest Floor.”

**Federal Emergency Management Agency (FEMA):** The Federal agency with the overall responsibility for administering the National Flood Insurance Program.

**Flood or Flooding:** A general and temporary condition of partial or complete inundation of normally dry land areas from:

- (1) The overflow of inland or tidal waters, and/or
- (2) The unusual and rapid accumulation or runoff of surface waters from any source.

**Flood Damage-Resistant Materials:** Any construction material that is capable of withstanding direct and prolonged contact with floodwaters without sustaining any damage that requires more than cosmetic repair. [Note: See NFIP Technical Bulletin #2, “Flood Damage-Resistant Materials Requirements.”]

**Flood Insurance Rate Map (FIRM):** An official map on which the Federal Emergency Management Agency has delineated *special flood hazard areas* to indicate the magnitude and nature of *flood* hazards, to designate applicable flood zones, and to delineate floodways, if applicable. FIRMs that have been prepared in digital format or converted to digital format are referred to as Digital FIRMs (DFIRM).

**Flood Insurance Study (FIS):** The official report in which the Federal Emergency Management Agency has provided *flood* profiles, *floodway* information, and the water surface elevations.

**Flood Opening:** A flood opening (non-engineered) is an opening that is used to meet the prescriptive requirement of 1 square inch of net open area for every square foot of enclosed area. An engineered flood opening is an opening that is designed and certified by a *licensed* professional engineer or *licensed* architect as meeting certain performance characteristics, including providing automatic entry and exit of floodwaters; this certification requirement may be satisfied by an individual certification for a specific

building or issuance of an Evaluation Report by the ICC Evaluation Service, Inc. [Note: See NFIP Technical Bulletin #1, “Openings in Foundation Walls and Walls of Enclosures.”]

**Flood Protection Elevation:** The *base flood elevation* plus two (2) feet of freeboard. Freeboard is a factor of safety that compensates for uncertainty in factors that could contribute to *flood* heights greater than the height calculated for a selected size *flood* and *floodway* conditions, such as wave action, obstructed bridge openings, debris and ice jams, climate change, and the hydrologic effect of urbanization in a watershed.

**Flood Protection Setback:** A distance measured perpendicular to the top of bank of a *watercourse* that delineates an area to be left undisturbed to minimize future *flood* damage and to recognize the potential for bank erosion. Along *nontidal waters of the State*, the flood protection setback is:

- (1) 100 feet, if the *watercourse* has *special flood hazard areas* shown on the *FIRM*, except where the setback extends beyond the boundary of the flood hazard area; or
- (2) 50 feet, if the *watercourse* does not have *special flood hazard areas* shown on the *FIRM*.

**Flood Zone:** A designation for areas that are shown on *Flood Insurance Rate Maps*:

- (1) **Zone A:** *Special flood hazard areas* subject to inundation by the 1-percent annual chance (100-year) *flood*; *base flood elevations* are not determined.
- (2) **Zone AE and Zone A1-30:** *Special flood hazard areas* subject to inundation by the 1-percent annual chance (100-year) *flood*; *base flood elevations* are determined; *floodways* may or may not be determined. In areas subject to tidal *flooding*, the Limit of Moderate Wave Action may or may not be delineated.
- (3) **Zone AH and Zone AO:** *Areas of shallow flooding*, with *flood* depths of 1 to 3 feet (usually areas of ponding or sheet flow on sloping terrain), with or without BFEs or designated *flood* depths.
- (4) **Zone B and Zone X (shaded):** Areas subject to inundation by the 0.2-percent annual chance (500-year) *flood*; areas subject to the 1-percent annual chance (100-year) *flood* with average depths of less than 1 foot or with contributing drainage area less than 1 square mile; and areas protected from the *base flood* by levees.
- (5) **Zone C and Zone X (unshaded):** Areas outside of Zones designated A, AE, A1-30, AO, VE, V1-30, B, and X (shaded).

- (6) **Zone VE and Zone V1-30:** *Special flood hazard areas* subject to inundation by the 1-percent annual chance (100-year) *flood* and subject to high velocity wave action (also see *coastal high hazard area*).

**Floodplain:** Any land area susceptible to being inundated by water from any source (see definition of “Flood” or “Flooding”).

**Floodproofing or Floodproofed:** Any combination of structural and nonstructural additions, changes, or adjustments to buildings or *structures* which reduce or eliminate *flood* damage to real estate or improved real property, water and sanitary facilities, *structures* and their contents, such that the buildings or *structures* are watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. [Note: State regulations at COMAR 26.17.04.11(B)(7) do not allow new nonresidential buildings in *nontidal waters of the State* to be floodproofed.]

**Floodproofing Certificate:** FEMA form that is to be completed, signed and sealed by a *licensed* professional engineer or *licensed* architect to certify that the design of *floodproofing* and proposed methods of construction are in accordance with the applicable requirements of Section 5.5(B) of these regulations. [Note: FEMA Form 086-0-34 is available online at <http://www.fema.gov/library/viewRecord.do?id=1600>.]

**Floodway:** The channel of a river or other *watercourse* and the adjacent land areas that must be reserved in order to pass the *base flood* discharge such that the cumulative increase in the water surface elevation of the *base flood* discharge is no more than a designated height. When shown on a *FIRM*, the floodway is referred to as the “designated floodway.”

**Free-of-Obstruction:** A term that describes open foundations (pilings, columns, or piers) without attached elements or foundation components that would obstruct the free passage of floodwaters and waves beneath *structures* that are elevated on such foundations. [Note: See NFIP Technical Bulletin #5, “Free-of-Obstruction Requirements.”]

**Functionally Dependent Use:** A use which cannot perform its intended purpose unless it is located or carried out in close proximity to water; the term includes only docking facilities, port facilities that are necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities.

**Highest Adjacent Grade:** The highest natural elevation of the ground surface, prior to construction, next to the proposed foundation of a *structure*.

**Historic Structure:** Any *structure* that is:

- (1) Individually listed in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listings on the National Register;
- (2) Certified or preliminarily determined by the Secretary of the Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; or
- (3) Individually listed on the Maryland Register of Historic Places.

**Hydrologic and Hydraulic Engineering Analyses:** Analyses performed by a *licensed* professional engineer, in accordance with standard engineering practices that are accepted by the Maryland Department of the Environment (Nontidal Wetlands & Waterways) and FEMA, used to determine the *base flood*, other frequency floods, *flood* elevations, *floodway* information and boundaries, and *flood* profiles.

**Letter of Map Change (LOMC):** A Letter of Map Change is an official FEMA determination, by letter, that amends or revises an effective *Flood Insurance Rate Map* or *Flood Insurance Study*. Letters of Map Change include:

Letter of Map Amendment (LOMA): An amendment based on technical data showing that a property was incorrectly included in a designated *special flood hazard area*. A LOMA amends the current effective *Flood Insurance Rate Map* and establishes that a specific property or *structure* is not located in a *special flood hazard area*.

Letter of Map Revision (LOMR): A revision based on technical data that may show changes to *flood zones*, *flood* elevations, *floodplain* and *floodway* delineations, and planimetric features. A Letter of Map Revision Based on Fill (LOMR-F), is a determination that a *structure* or parcel of land has been elevated by fill above the *base flood elevation* and is, therefore, no longer exposed to *flooding* associated with the *base flood*. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the *community's* floodplain management regulations.

Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed *flood* protection project or other project complies with the minimum NFIP requirements for such projects with respect to delineation of *special flood hazard areas*. A Conditional Letter of Map Revision Based on Fill (CLOMR-F) is a determination that a parcel of land or proposed structure that will be elevated by fill would not be inundated by the base flood if fill is placed on the parcel as proposed or the structure is built as proposed. A CLOMR does not revise the effective *Flood Insurance Rate Map* or *Flood Insurance Study*;

upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA, to revise the effective *FIRM*.

**Licensed:** As used in these regulations, licensed refers to professionals who are authorized to practice in the State of Maryland by issuance of licenses by the Maryland Board of Architects, Maryland Board of Professional Engineers, Maryland Board of Professional Land Surveyors, and the Maryland Real Estate Appraisers and Home Inspectors Commission.

**Limit of Moderate Wave Action (LiMWA):** Inland limit of the area affected by waves greater than 1.5 feet during the base flood. Base flood conditions between the VE Zone and the LiMWA will be similar to, but less severe than those in the VE Zone.

**Lowest Floor:** The lowest floor of the lowest enclosed area (including *basement*) of a building or *structure*; the floor of an *enclosure below the lowest floor* is not the lowest floor provided the enclosure is constructed in accordance with these regulations. The lowest floor of a *manufactured home* is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).

**Manufactured Home:** A *structure*, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a *recreational vehicle*.

**Market Value:** The price at which a property will change hands between a willing buyer and a willing seller, neither party being under compulsion to buy or sell and both having reasonable knowledge of relevant facts. For the purposes of these regulations, the market value of a building is determined by a *licensed* real estate appraiser or the most recent, full phased-in assessment value of the building (improvement) determined by the Maryland Department of Assessments and Taxation.

**Maryland Department of the Environment (MDE):** A principal department of the State of Maryland that is charged with, among other responsibilities, the coordination of the National Flood Insurance Program in Maryland (NFIP State Coordinator) and the administration of regulatory programs for *development* and construction that occur within the *waters of the State*, including nontidal wetlands, nontidal waters and floodplains, and State and private tidal wetlands (Tidal Wetlands). Unless otherwise specified, “MDE” refers to the Department’s Wetlands and Waterways Program.

**Mixed-use Structure:** Any *structure* that is used or intended for use for a mixture of nonresidential and residential uses in the same structure.

**National Flood Insurance Program (NFIP):** The program authorized by the U.S. Congress in 42 U.S.C. §§4001 - 4129. The NFIP makes flood insurance coverage

available in communities that agree to adopt and enforce minimum regulatory requirements for *development* in areas prone to *flooding* (see definition of “Special Flood Hazard Area”).

**New Construction:** *Structures*, including additions and improvements, and the placement of *manufactured homes*, for which the *start of construction* commenced on or after October 15, 1981, the initial effective date of the Town of North East’s *Flood Insurance Rate Map*, including any subsequent improvements, alterations, modifications, and additions to such *structures*.

**NFIP State Coordinator:** See Maryland Department of the Environment.

**Nontidal Waters of the State:** See “Waters of the State.” As used in these regulations, “nontidal waters of the State” refers to any stream or body of water within the State that is subject to State regulation, including the “100-year frequency *floodplain* of free-flowing waters.” COMAR 26.17.04 states that “the landward boundaries of any tidal waters shall be deemed coterminous with the wetlands boundary maps adopted pursuant to Environment Article, §16-301, Annotated Code of Maryland.” Therefore, the boundary between the tidal and nontidal waters of the State is the tidal wetlands boundary.

**Person:** An individual or group of individuals, corporation, partnership, association, or any other entity, including State and local governments and agencies.

**Recreational Vehicle:** A vehicle that is built on a single chassis, 400 square feet or less when measured at the largest horizontal projection, designed to be self-propelled or permanently towable by a light duty truck, and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

**Special Flood Hazard Area (SFHA):** The land in the *floodplain* subject to a one-percent or greater chance of *flooding* in any given year. Special flood hazard areas are designated by the Federal Emergency Management Agency in *Flood Insurance Studies* and on *Flood Insurance Rate Maps* as Zones A, AE, AH, AO, A1-30, and A99. The term includes areas shown on other flood maps that are identified in Section 1.5.

**Start of Construction:** The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a *structure* on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a *manufactured home* on a foundation. Permanent construction does not include land preparation, such as clearing, grading and filling; nor does it include the installation of streets and/or walkways; nor

does it include excavation for a *basement*, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of *accessory structures*, such as garages or sheds not occupied as dwelling units or not part of the main *structure*. For *substantial improvements*, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of a building, whether or not that alteration affects the external dimensions of the building.

**Structure:** That which is built or constructed; specifically, a walled and roofed building, including a gas or liquid storage tank that is principally above ground, as well as a *manufactured home*.

**Substantial Damage:** Damage of any origin sustained by a building or *structure* whereby the cost of restoring the building or *structure* to its before damaged condition would equal or exceed 50 percent of the *market value* of the building or *structure* before the damage occurred. Also used as “substantially damaged” structures. [Note: See “Substantial Improvement/Substantial Damage Desk Reference” (FEMA P-758).]

**Substantial Improvement:** Any reconstruction, rehabilitation, addition, or other improvement of a building or *structure* the cost of which equals or exceeds 50 percent of the *market value* of the building or *structure* before the *start of construction* of the improvement. The term includes *structures* which have incurred *substantial damage*, regardless of the actual repair work performed. For purposes of this definition, substantial improvements/repairs shall be documented and tracked on a cumulative basis for a period of two (2) years. The term does not, however, include either:

- (1) Any project for improvement of a building or *structure* to correct existing violations of State or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official prior to submission of an application for a permit and which are the minimum necessary to assure safe living conditions; or
- (2) Any alteration of a *historic structure*, provided that the alteration will not preclude the *structure*’s continued designation as a *historic structure*.

[Note: See “Substantial Improvement/Substantial Damage Desk Reference” (FEMA P-758).]

**Temporary Structure:** A *structure* installed, used, or erected for a period of less than 180 days.

**Variance:** A grant of relief from the strict application of one or more requirements of these regulations.

**Violation:** Any construction or *development* in a *special flood hazard area* that is being performed without an issued permit. The failure of a building, *structure*, or other *development* for which a permit is issued to be fully compliant with these regulations and

the conditions of the issued permit. A building, *structure*, or other *development* without the required design certifications, the *Elevation Certificate*, or other evidence of compliance required is presumed to be a *violation* until such time as the required documentation is provided.

**Watercourse:** The channel, including channel banks and bed, of *nontidal waters of the State*.

**Waters of the State:** [See Environment Article, Title 5, Subtitle 1, Annotated Code of Maryland.] Waters of the State include:

- (1) Both surface and underground waters within the boundaries of the State subject to its jurisdiction;
- (2) That portion of the Atlantic Ocean within the boundaries of the State;
- (3) The Chesapeake Bay and its tributaries;
- (4) All ponds, lakes, rivers, streams, public ditches, tax ditches, and public drainage systems within the State, other than those designed and used to collect, convey, or dispose of sanitary sewage; and
- (5) The *floodplain* of free-flowing waters determined by MDE on the basis of the 100-year *flood* frequency.

## **SECTION 3.0            ADMINISTRATION**

### **3.1      Designation of the Floodplain Administrator**

The Zoning Administrator is hereby appointed to administer and implement these regulations and is referred to herein as the Floodplain Administrator. The Floodplain Administrator may:

- (A) Delegate duties and responsibilities set forth in these regulations to qualified technical personnel, plan examiners, inspectors, and other employees.
- (B) Enter into a written agreement or written contract with another Maryland *community* or private sector entity to administer specific provisions of these regulations. Administration of any part of these regulations by another entity shall not relieve the *community* of its responsibilities pursuant to the participation requirements of the National Flood Insurance Program as set forth in the Code of Federal Regulations (CFR) at 44 CFR Section 59.22.

### **3.2      Duties and Responsibilities of the Floodplain Administrator**

The duties and responsibilities of the Floodplain Administrator shall include but are not limited to:

- (A) Review applications for permits to determine whether proposed activities will be located in flood hazard areas.
- (B) Interpret *floodplain* boundaries and provide available *base flood elevation* and *flood* hazard information.
- (C) Review applications to determine whether proposed activities will be reasonably safe from *flooding* and require *new construction* and *substantial improvements* to meet the requirements of these regulations.
- (D) Review applications to determine whether all necessary permits have been obtained from the Federal, State or local agencies from which prior or concurrent approval is required; in particular, permits from MDE for any construction, reconstruction, repair, or alteration of a dam, reservoir, or waterway obstruction (including bridges, culverts, *structures*), any *alteration of a watercourse*, or any change of the course, current, or cross section of a stream or body of water, including any change to the 100-year frequency *floodplain* of free-flowing *nontidal waters of the State*.
- (E) Verify that applicants proposing an *alteration of a watercourse* have notified adjacent communities and MDE (NFIP State Coordinator), and have submitted copies of such notifications to FEMA.
- (F) Advise applicants for *new construction* or *substantial improvement* of *structures* that are located within an area of the Coastal Barrier Resources System established by the Coastal Barrier Resources Act that Federal flood insurance is not available on such *structures*; areas subject to this limitation are shown on *Flood Insurance Rate Maps* as Coastal Barrier Resource System Areas (CBRS) or Otherwise Protected Areas (OPA).
- (G) Approve applications and issue permits to develop in *flood* hazard areas if the provisions of these regulations have been met, or disapprove applications if the provisions of these regulations have not been met.
- (H) Inspect or cause to be inspected, buildings, *structures*, and other *development* for which permits have been issued to determine compliance with these regulations or to determine if non-compliance has occurred or *violations* have been committed.
- (I) Review *Elevation Certificates* and require incomplete or deficient certificates to be corrected.
- (J) Submit to FEMA, or require applicants to submit to FEMA, data and information necessary to maintain *FIRMs*, including *hydrologic and hydraulic engineering analyses* prepared by or for the Town of North East, within six

months after such data and information becomes available if the analyses indicate changes in *base flood elevations* or boundaries.

- (K) Maintain and permanently keep records that are necessary for the administration of these regulations, including:
  - (1) *Flood Insurance Studies, Flood Insurance Rate Maps* (including historic studies and maps and current effective studies and maps) and Letters of Map Change; and
  - (2) Documentation supporting issuance and denial of permits, *Elevation Certificates*, documentation of the elevation (in relation to the datum on the *FIRM*) to which *structures* have been *floodproofed*, other required design certifications, *variances*, and records of enforcement actions taken to correct *violations* of these regulations.
- (L) Enforce the provisions of these regulations, investigate *violations*, issue notices of *violations* or stop work orders, and require permit holders to take corrective action.
- (M) Advise the Board of Appeals regarding the intent of these regulations and, for each application for a *variance*, prepare a staff report and recommendation.
- (N) Administer the requirements related to proposed work on existing buildings:
  - (1) Make determinations as to whether buildings and *structures* that are located in *flood* hazard areas and that are damaged by any cause have been *substantially damaged*.
  - (2) Make reasonable efforts to notify owners of *substantially damaged structures* of the need to obtain a permit to repair, rehabilitate, or reconstruct, and prohibit the non-compliant repair of *substantially damaged* buildings except for temporary emergency protective measures necessary to secure a property or stabilize a building or *structure* to prevent additional damage.
- (O) Undertake, as determined appropriate by the Floodplain Administrator due to the circumstances, other actions which may include but are not limited to: issuing press releases, public service announcements, and other public information materials related to permit requests and repair of damaged *structures*; coordinating with other Federal, State, and local agencies to assist with substantial damage determinations; providing owners of damaged *structures* information related to the proper repair of damaged *structures* in *special flood hazard areas*; and assisting property owners with documentation

necessary to file claims for Increased Cost of Compliance (ICC) coverage under NFIP flood insurance policies.

- (P) Notify the Federal Emergency Management Agency when the corporate boundaries of the Town of North East have been modified and:
  - (1) Provide a map that clearly delineates the new corporate boundaries or the new area for which the authority to regulate pursuant to these regulations has either been assumed or relinquished through annexation; and
  - (2) If the *FIRM* for any annexed area includes *special flood hazard areas* that have *flood zones* that have regulatory requirements that are not set forth in these regulations, prepare amendments to these regulations to adopt the *FIRM* and appropriate requirements, and submit the amendments to the governing body for adoption; such adoption shall take place within six months of the date of annexation and a copy of the amended regulations shall be provided to MDE (NFIP State Coordinator) and FEMA.
- (Q) Upon the request of FEMA, complete and submit a report concerning participation in the NFIP which may request information regarding the number of buildings in the SFHA, number of permits issued for *development* in the SFHA, and number of *variances* issued for *development* in the SFHA.

### **3.3 Use and Interpretation of FIRMs**

The Floodplain Administrator shall make interpretations, where needed, as to the exact location of *special flood hazard areas*, *floodplain* boundaries, and *floodway* boundaries. The following shall apply to the use and interpretation of *FIRMs* and data:

- (A) Where field surveyed topography indicates that ground elevations:
  - (1) Are below the *base flood elevation*, even in areas not delineated as a *special flood hazard area* on a *FIRM*, the area shall be considered as *special flood hazard area* and subject to the requirements of these regulations;
  - (2) Are above the *base flood elevation*, the area shall be regulated as *special flood hazard area* unless the applicant obtains a *Letter of Map Change* that removes the area from the *special flood hazard area*.
- (B) In FEMA-identified *special flood hazard areas* where *base flood elevation* and *floodway* data have not been identified and in areas where FEMA has not identified *special flood hazard areas*, any other flood hazard data available from a Federal, State, or other source shall be reviewed and reasonably used.

- (C) *Base flood elevations* and designated *floodway* boundaries on *FIRMs* and in *FISs* shall take precedence over *base flood elevations* and *floodway* boundaries by any other sources if such sources show reduced *floodway* widths and/or lower *base flood elevations*.
- (D) Other sources of data shall be reasonably used if such sources show increased *base flood elevations* and/or larger *floodway* areas than are shown on *FIRMs* and in *FISs*.
- (E) If a Preliminary *Flood Insurance Rate Map* and/or a Preliminary *Flood Insurance Study* has been provided by FEMA:
  - (1) Upon the issuance of a Letter of Final Determination by FEMA, if the preliminary flood hazard data is more restrictive than the effective data, it shall be used and shall replace the flood hazard data previously provided from FEMA for the purposes of administering these regulations.
  - (2) Prior to the issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data shall be deemed the best available data pursuant to Section 1.5(C) and used where no *base flood elevations* and/or *floodway* areas are provided on the effective *FIRM*.
  - (3) Prior to issuance of a Letter of Final Determination by FEMA, the use of preliminary flood hazard data is permitted where the preliminary *base flood elevations*, *floodplain* or *floodway* boundaries exceed the *base flood elevations* and/or designated *floodway* widths in existing flood hazard data provided by FEMA. Such preliminary data may be subject to change and/or appeal to FEMA.

### **3.4 Permits Required and Expiration**

- (A) It shall be unlawful for any *person* to begin any *development* or construction which is wholly within, partially within, or in contact with any flood hazard area established in Section 1.5, including but not limited to: filling; grading; construction of new *structures*; the *substantial improvement* of buildings or *structures*, including repair of *substantial damage*; placement or replacement of *manufactured homes*, including *substantial improvement* or repair of *substantial damage* of *manufactured homes*; erecting or installing a *temporary structure*, or *alteration of a watercourse*, until a permit is obtained from the Town of North East. No such permit shall be issued until the requirements of these regulations have been met.
- (B) In addition to the permits required in paragraph (A), applicants for permits in *nontidal waters of the State* are advised to contact MDE. Unless waived by

MDE, pursuant to Code of Maryland Regulations 26.17.04, Construction on Nontidal Waters and Floodplains, MDE regulates the “100-year frequency floodplain of free-flowing waters,” also referred to as *nontidal waters of the State*. To determine the 100-year frequency floodplain, hydrologic calculations are based on the ultimate *development* of the watershed, assuming existing zoning. The resulting flood hazard areas delineated using the results of such calculations may be different than the *special flood hazard areas* established in Section 1.5 of these regulations. A permit from the Town of North East is still required in addition to any State requirements.

- (C) A permit is valid provided the actual start of work is within 180 days of the date of permit issuance. Requests for extensions shall be submitted in writing and justifiable cause demonstrated. The Floodplain Administrator may grant, in writing, one or more extensions of time, for additional periods not exceeding 90 days each and provided there has been no amendment or revision to the basis for establishing *special flood hazard areas* and BFEs set forth in Section 1.5.

### **3.5 Application Required**

Application for a permit shall be made by the owner of the property or the owner’s authorized agent (herein referred to as the applicant) prior to the start of any work. The application shall be on a form furnished for that purpose.

#### **(A) Application Contents**

At a minimum, applications shall include:

- (1) Site plans drawn to scale showing the nature, location, dimensions, and existing and proposed topography of the area in question, and the location of existing and proposed *structures*, excavation, filling, storage of materials, drainage facilities, and other proposed activities.
- (2) Elevation of the existing natural ground where buildings or *structures* are proposed, referenced to the datum on the *FIRM*.
- (3) Delineation of flood hazard areas, designated *floodway* boundaries, *flood zones*, *base flood elevations*, and *flood protection setbacks*. *Base flood elevations* shall be used to delineate the boundary of flood hazard areas and such delineations shall prevail over the boundary of SFHAs shown on *FIRMs*.
- (4) Where floodways are not delineated or *base flood elevations* are not shown on the *FIRMs*, the Floodplain Administrator has the authority to require the applicant to use information provided by the Floodplain

Administrator, information that is available from Federal, State, or other sources, or to determine such information using accepted engineering practices or methods approved by the Floodplain Administrator. [Note: See “Managing Floodplain Development in Approximate Zone A Areas: A Guide for Obtaining and Developing Base (100-Year) Flood Elevations” (FEMA 265).]

- (5) Determination of the *base flood elevations*, for *development* proposals and subdivision proposals, each with at least 5 lots or at least 5 acres, whichever is the lesser, in *special flood hazard areas* where *base flood elevations* are not shown on the *FIRM*; if *hydrologic and hydraulic engineering analyses* are submitted, such analyses shall be performed in accordance with the requirements and specifications of MDE and FEMA.
- (6) *Hydrologic and hydraulic engineering analyses* for proposals in *special flood hazard areas* where FEMA has provided *base flood elevations* but has not delineated a *floodway*; such analyses shall demonstrate that the cumulative effect of proposed *development*, when combined with all other existing and anticipated development will not increase the water surface elevation of the *base flood* by more than one foot or a lower increase if required by MDE.
- (7) For encroachments in *floodways*, an evaluation of alternatives to such encroachments, including different uses of the site or portion of the site within the *floodway*, and minimization of such encroachment.
- (8) If fill is proposed to be placed for a purpose other than to elevate *structures*, the applicant shall indicate the intended purpose for the fill.
- (9) For proposed buildings and *structures*, including *substantial improvement* and repair of *substantial damage*, and placement and replacement of manufactured homes, including *substantial improvement* and repair of *substantial damage*:
  - (a) The proposed elevation of the *lowest floor*, including *basement*, referenced to the datum on the *FIRM* and a signed *Agreement to Submit an Elevation Certificate*.
  - (b) The signed *Declaration of Land Restriction (Nonconversion Agreement)* that shall be recorded on the property deed prior to issuance of the Certificate of Occupancy, if the application includes an *enclosure below the lowest floor* or a crawl/underfloor space that is more than four (4) feet in height.

- (c) A written evaluation of alternative methods considered to elevate *structures* and *manufactured homes*, if the location is in *nontidal waters of the State* and fill is proposed to achieve the elevation required in Section 5.4(A) or Section 5.5(A).
- (10) For *accessory structures* that are 300 square feet or larger in area (footprint) and that are below the *base flood elevation*, a variance is required as set forth in Section 7.0. If a variance is granted, a signed *Declaration of Land Restriction (Nonconversion Agreement)* shall be recorded on the property deed prior to issuance of the Certificate of Occupancy.
- (11) For *temporary structures* and temporary storage, specification of the duration of the temporary use.
- (12) For proposed work on existing buildings, *structure*, and *manufactured homes*, including any improvement, addition, repairs, alterations, rehabilitation, or reconstruction, sufficient information to determine if the work constitutes *substantial improvement* or repair of *substantial damage*, including but not limited to:
  - (a) If the existing building or *structure* was constructed after October 15, 1981, evidence that the work will not alter any aspect of the building or *structure* that was required for compliance with the floodplain management requirements in effect at the time the building or *structure* was permitted.
  - (b) If the proposed work is a horizontal addition, a description of the addition and whether it will be independently supported or structurally connected to the *base building* and the nature of all other modifications to the *base building*, if any.
  - (c) Documentation of the *market value* of the building or *structure* before the improvement or, if the work is repair of damage, before the damage occurred.
  - (d) Documentation of the actual cash value of all proposed work, including the actual cash value of all work necessary to repair and restore damage to the before-damaged condition, regardless of the amount of work that will be performed. The value of work performed by the owner or volunteers shall be valued at market labor rates; the value of donated or discounted materials shall be valued at market rates.

- (13) Certifications and/or technical analyses prepared or conducted by a *licensed* professional engineer or *licensed* architect, as appropriate, including:
  - (a) The determination of the *base flood elevations* or *hydrologic and hydraulic engineering analyses* prepared by a *licensed* professional engineer that are required by the Floodplain Administrator or are required by these regulations in: Section 4.2 for certain subdivisions and *development*; Section 5.3(A) for *development* in designated *floodways*; Section 5.3(C) for *development* in flood hazard areas with *base flood elevations* but no designated *floodways*; and Section 5.3(E) for deliberate alteration or relocation of *watercourses*.
  - (b) The *Floodproofing Certificate* for nonresidential *structures* that are *floodproofed* as required in Section 5.5(B).
  - (c) Certification that engineered *flood openings* are designed to meet the minimum requirements of Section 5.4(C)(3) to automatically equalize hydrostatic flood forces.
  - (d) Certification that the proposed elevation, structural design, specifications and plans, and the methods of construction to be used for *structures* in *coastal high hazard areas* (V Zones) and *Coastal A Zones*, are in accordance with accepted standards of practice and meet the requirements of Section 6.3(C).
- (14) For nonresidential *structures* that are proposed with *floodproofing*, an operations and maintenance plan as specified in Section 5.5(B)(3).
- (15) Such other material and information as may be requested by the Floodplain Administrator and necessary to determine conformance with these regulations.

**(B) New Technical Data**

- (1) The applicant may seek a *Letter of Map Change* by submitting new technical data to FEMA, such as base maps, topography, and engineering analyses to support revision of *floodplain* and *floodway* boundaries and/or *base flood elevations*. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant. A copy of the submittal shall be attached to the application for a permit.

- (2) If the applicant submits new technical data to support any change in *floodplain* and designated *floodway* boundaries and/or *base flood elevations* but has not sought a *Letter of Map Change* from FEMA, the applicant shall submit such data to FEMA as soon as practicable, but not later than six months after the date such information becomes available. Such submissions shall be prepared in a format acceptable to FEMA and any fees shall be the sole responsibility of the applicant.

### **3.6 Review of Application**

The Floodplain Administrator shall:

- (A) Review applications for *development* in *special flood hazard areas* to determine the completeness of information submitted. The applicant shall be notified of incompleteness or additional information that is required to support the application.
- (B) Notify applicants that permits from MDE and the U.S. Army Corps of Engineers, and other State and Federal authorities may be required.
- (C) Review all permit applications to assure that all necessary permits have been received from the Federal, State or local governmental agencies from which prior approval is required. The applicant shall be responsible for obtaining such permits, including permits issued by:
  - (1) The U.S. Army Corps of Engineers under Section 10 of the Rivers and Harbors Act and Section 404 of the Clean Water Act;
  - (2) MDE pursuant to COMAR 26.23 (Nontidal Wetlands) and Section 401 of the Clean Water Act;
  - (3) MDE for construction on *nontidal waters of the State* pursuant to COMAR 26.17.04; and
  - (4) MDE pursuant to COMAR 26.24 (Tidal Wetlands).
- (D) Review applications for compliance with these regulations after all information required in Section 3.5 of these regulations or identified and required by the Floodplain Administrator has been received.

### **3.7 Inspections**

The Floodplain Administrator shall make periodic inspections of *development* permitted in *special flood hazard areas*, at appropriate times throughout the period of construction in order to monitor compliance. Such inspections may include:

- (A) Stake-out inspection, to determine location on the site relative to the flood hazard area and designated *floodway*.
- (B) Foundation inspection, upon placement of the *lowest floor* and prior to further vertical construction, to collect information or certification of the elevation of the *lowest floor*.
- (C) Inspection of *enclosures below the lowest floor*, including crawl/underfloor spaces, to determine compliance with applicable provisions.
- (D) Utility inspection, upon installation of specified equipment and appliances, to determine appropriate location with respect to the *base flood elevation*.
- (E) Final inspection prior to issuance of the Certificate of Occupancy.

### **3.8 Submissions Required Prior to Final Inspection**

Pursuant to the *Agreement to Submit an Elevation Certificate* submitted with the application as required in Section 3.5(A)(9), the permittee shall have an *Elevation Certificate* prepared and submitted prior to final inspection and issuance of a Certificate of Occupancy for elevated *structures* and *manufactured homes*, including new *structures* and *manufactured homes*, substantially-improved *structures* and *manufactured homes*, and additions to *structures* and *manufactured homes*.

## **SECTION 4.0 REQUIREMENTS IN ALL FLOOD HAZARD AREAS**

### **4.1 Application of Requirements**

The general requirements of this section apply to all *development* proposed within all *special flood hazard areas* identified in Section 1.5.

### **4.2 Subdivision Proposals and Development Proposals**

- (A) In all *flood zones*:
  - (1) Subdivision proposals and *development* proposals shall be consistent with the need to minimize flood damage and are subject to all applicable standards in these regulations.
  - (2) Subdivision proposals and *development* proposals shall have utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.
  - (3) Subdivision proposals and *development* proposals shall have adequate drainage paths provided to reduce exposure to flood hazards and to guide floodwaters around and away from proposed *structures*.
  - (4) Subdivision proposals and *development* proposals containing at least 5 lots or at least 5 acres, whichever is the lesser, that are wholly or partially in flood hazard areas where *base flood elevation* data are not provided by

the Floodplain Administrator or available from other sources, shall be supported by determinations of *base flood elevations* as required in Section 3.5 of these regulations.

- (5) Subdivision access roads shall have the driving surface at or above the *base flood elevation*.
- (B) In *special flood hazard areas of nontidal waters of the State*:
  - (1) Subdivision proposals shall be laid out such that proposed building pads are located outside of the *special flood hazard area* and any portion of platted lots that include land areas that are below the *base flood elevation* shall be used for other purposes, deed restricted, or otherwise protected to preserve it as open space.
  - (2) Subdivision access roads shall have the driving surface at or above the *base flood elevation*.

#### **4.3 Protection of Water Supply and Sanitary Sewage Systems**

- (A) New and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems.
- (B) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into systems and discharges from systems into floodwaters.
- (C) On-site waste disposal systems shall be located to avoid impairment to or contamination from them during conditions of *flooding*.

#### **4.4 Buildings and Structures**

New buildings and *structures* (including the placement and replacement of *manufactured homes*) and *substantial improvement* of existing *structures* (including *manufactured homes*) that are located, in whole or in part, in any *special flood hazard area* shall:

- (A) Be designed (or modified) and constructed to safely support flood loads. The construction shall provide a complete load path capable of transferring all loads from their point of origin through the load-resisting elements to the foundation. *Structures* shall be designed, connected and anchored to resist flotation, collapse or permanent lateral movement due to structural loads and stresses, including hydrodynamic and hydrostatic loads and the effects of buoyancy, from *flooding* equal to the *flood protection elevation* or the elevation required by these regulations or the *building code*, whichever is higher.
- (B) Be constructed by methods and practices that minimize flood damage.

- (C) Use *flood damage-resistant materials* below the elevation of the *lowest floor* required in Section 5.4(A) or Section 5.5(A) (for A Zones) or Section 6.3(B) (for V Zones and *Coastal A Zones*).
- (D) Have electrical systems, equipment and components, and mechanical, heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment located at or above the elevation of the *lowest floor* required in Section 5.4(A) or Section 5.5(A) (A Zones) or Section 6.3(B) (V Zones and *Coastal A Zones*). Electrical wiring systems are permitted to be located below elevation of the *lowest floor* provided they conform to the provisions of the electrical part of the *building code* for wet locations. If replaced as part of a *substantial improvement*, electrical systems, equipment and components, and heating, ventilation, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment shall meet the requirements of this section.
- (E) As an alternative to paragraph (D), electrical systems, equipment and components, and heating, ventilating, air conditioning, and plumbing appliances, plumbing fixtures, duct systems, and other service equipment are permitted to be located below the elevation of the *lowest floor* provided they are designed and installed to prevent water from entering or accumulating within the components and to resist hydrostatic and hydrodynamic loads and stresses, including the effects of buoyancy, during the occurrence of flooding to that elevation.
- (F) Have the electric panelboard elevated at least three (3) feet above the BFE.
- (G) If located in flood hazard areas (A Zones) that are not identified as *Coastal A Zones* and *coastal high hazard areas* (V Zones), comply with the specific requirements of Section 5.0.
- (H) If located in *Coastal A Zone*, comply with the specific requirements of:
  - (1) Section 6.0 (*new construction* and placement of new *manufactured homes*); or
  - (2) Section 5.0 (*substantial improvements* (including repair of *substantial damage*) and replacement *manufactured homes*).
- (I) If located in *coastal high hazard areas* (V Zones), comply with the specific requirements of Section 6.0.
- (J) Comply with the requirements of the most restrictive designation if located on a site that has more than one *flood zone* designation (A Zone, designated *floodway*, *Coastal A Zone*, V Zone).

#### 4.5 Placement of Fill

- (A) Disposal of fill, including but not limited to earthen soils, rock, rubble, construction debris, woody debris, and trash, shall not be permitted in *special flood hazard areas*.
- (B) Fill shall not be placed in *Coastal A Zones* or *coastal high hazard areas* (V Zones) except as provided in Section 6.2.
- (C) Fill proposed to be placed to elevate *structures* in flood hazard areas (A Zones) that are not *Coastal A Zones* or *coastal high hazard areas* (V Zones) shall comply with the *floodways* requirements in Section 5.3(A), Section 5.3(B), and Section 5.3(C) and the limitations of Section 5.4(B).

#### 4.6 Historic Structures

Repair, alteration, addition, rehabilitation, or other improvement of *historic structures* shall be subject to the requirements of these regulations if the proposed work is determined to be a *substantial improvement*, unless a determination is made that the proposed work will not preclude the *structure's* continued designation as a *historic structure*. The Floodplain Administrator shall require documentation of a *structure's* continued eligibility and designation as a *historic structure*.

#### 4.7 Manufactured Homes

- (A) New *manufactured homes* shall not be placed or installed in *floodways* or *coastal high hazard areas* (V Zones).
- (B) For the purpose of these regulations, the *lowest floor* of a *manufactured home* is the bottom of the lowest horizontal supporting member (longitudinal chassis frame beam).
- (C) New *manufactured homes* located outside of *floodways* and *coastal high hazard areas* (V Zones), replacement *manufactured homes* in any flood hazard areas, and *substantial improvement* (including repair of *substantial damage*) of existing *manufactured homes* in all flood hazard area, shall:
  - (1) Be elevated on a permanent, reinforced foundation in accordance with Section 5.0 or Section 6.0, as applicable to the *flood zone*;
  - (2) Be installed in accordance with the anchor and tie-down requirements of the *building code* or the manufacturer's written installation instructions and specifications; and
  - (3) Have *enclosures below the lowest floor* of the elevated *manufactured home*, if any, including enclosures that are surrounded by rigid skirting

or other material that is attached to the frame or foundation, that comply with the requirements of Section 5.0 or Section 6.0, as applicable to the *flood zone*.

[Note: See “Protecting Manufactured Homes from Floods and Other Hazards: A Multi-Hazard Foundation and Installation Guide” (FEMA P-85).]

#### **4.8 Recreational Vehicles**

*Recreational vehicles* shall:

- (A) Meet the requirements for *manufactured homes* in Section 4.7; or
- (B) Be fully licensed and ready for highway use; or
- (C) Be on a site for less than 180 consecutive days.

#### **4.9 Critical and Essential Facilities**

*Critical and essential facilities* shall:

- (A) Not be located in *coastal high hazard areas* (V Zones), *Coastal A Zones* or *floodways*.
- (B) If located in flood hazard areas other than *coastal high hazard areas*, *Coastal A Zones* and *floodways*, be elevated to the higher of elevation required by these regulations plus one (1) foot, the elevation required by the *building code*, or the elevation of the 0.2 percent chance (500-year) flood.

#### **4.10 Temporary Structures and Temporary Storage**

In addition to the application requirements of Section 3.5, applications for the placement or erection of *temporary structures* and the temporary storage of any goods, materials, and equipment, shall specify the duration of the temporary use. *Temporary structures* and temporary storage in *floodways* shall meet the limitations of Section 5.3(A) of these regulations. In addition:

- (A) *Temporary structures* shall:
  - (1) Be designed and constructed to prevent flotation, collapse or lateral movement resulting from hydrodynamic loads and hydrostatic loads during conditions of the *base flood*;
  - (2) Have electric service installed in compliance with the electric code; and
  - (3) Comply with all other requirements of the applicable State and local permit authorities.

- (B) Temporary storage shall not include hazardous materials.

#### **4.11 Gas or Liquid Storage Tanks**

- (A) Underground tanks in flood hazard areas shall be anchored to prevent flotation, collapse or lateral movement resulting from hydrostatic loads, including the effects of buoyancy, during conditions of the *base flood*.
- (B) Above-ground tanks in flood hazard areas shall be anchored to a supporting structure and elevated to or above the *base flood elevation*, or shall be anchored or otherwise designed and constructed to prevent flotation, collapse, or lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the *base flood*.
- (C) In flood hazard areas, tank inlets, fill openings, outlets and vents shall be:
- (1) At or above the *base flood elevation* or fitted with covers designed to prevent the inflow of floodwater or outflow of the contents of the tanks during conditions of the *base flood*; and
  - (2) Anchored to prevent lateral movement resulting from hydrodynamic and hydrostatic loads, including the effects of buoyancy, during conditions of the *base flood*.

#### **4.12 Functionally Dependent Uses**

Applications for *functionally dependent uses* that do not conform to the requirements of these regulations shall be approved only by *variances* issued pursuant to Section 7.0. If approved, *functionally dependent uses* shall be protected by methods that minimize flood damage during the *base flood*, including measures to allow floodwaters to enter and exit, use of *flood damage-resistant materials*, and elevation of electric service and equipment to the extent practical given the use of the building.

### **SECTION 5.0 REQUIREMENTS IN FLOOD HAZARD AREAS (A ZONES) THAT ARE NOT COASTAL HIGH HAZARD AREAS (V ZONES) OR COASTAL A ZONES**

#### **5.1 General Requirements**

In addition to the general requirements of Section 4.0, the requirements of this section shall:

- (A) Apply in flood hazard areas that are not identified as *coastal high hazard areas* (V Zones) and *Coastal A Zones*. These flood hazard areas, referred to collectively as “A Zones,” include *special flood hazard areas* along *nontidal waters of the State*, landward of *coastal high hazard areas* (V Zones), and landward of *Coastal A Zones* (if delineated).

- (B) Apply to all *development, new construction, substantial improvements* (including repair of *substantial damage*), and placement, replacement, and *substantial improvement* (including repair of *substantial damage*) of *manufactured homes*.

## **5.2 Flood Protection Setbacks**

Within areas defined by *flood protection setbacks* along *nontidal waters of the State*:

- (A) No new buildings, *structures*, or other *development* shall be permitted unless the applicant demonstrates that the site cannot be developed without such encroachment into the *flood protection setback* and the encroachment is the minimum necessary after consideration of varying other siting standards such as side, front, and back lot line setbacks.
- (B) Disturbance of natural vegetation shall be minimized and any disturbance allowed shall be vegetatively stabilized.
- (C) Public works and temporary construction may be permitted.

## **5.3 Development that Affects Flood-Carrying Capacity of Nontidal Waters of the State**

### **(A) Development in Designated Floodways**

For proposed *development* that will encroach into a designated *floodway*, Section 3.5(A)(7) requires the applicant to submit an evaluation of alternatives to such encroachment, including different uses of the site or the portion of the site within the *floodway*, and minimization of such encroachment. This requirement does not apply to fences that do not block the flow of floodwaters or trap debris.

Proposed *development* in a designated *floodway* may be permitted only if:

- (1) The applicant has been issued a permit by MDE; and
- (2) The applicant has developed *hydrologic and hydraulic engineering analyses* and technical data prepared by a *licensed* professional engineer reflecting such changes, and the analyses, which shall be submitted to the Floodplain Administrator, demonstrate that the proposed activity will not result in any increase in the *base flood elevation*; or
- (3) If the analyses demonstrate that the proposed activities will result in an increase in the *base flood elevation*, the applicant has obtained a Conditional Letter of Map Revision and a Letter of Map Revision from FEMA upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.

**(B) Development that Includes the Placement of Fill in Nontidal Waters of the State**

For proposed *development* that includes the placement of fill in *nontidal waters of the State*, other than *development* that is subject to paragraph (D), a hydraulically-equivalent volume of excavation is required. Such excavations shall be designed to drain freely.

**(C) Development in Areas with Base Flood Elevations but No Designated Floodways**

For *development* in *special flood hazard areas* of *nontidal waters of the State* with *base flood elevations* but no designated *floodways*:

- (1) The applicant shall develop *hydrologic and hydraulic engineering analyses* and technical data reflecting the proposed activity and shall submit such technical data to the Floodplain Administrator as required in Section 3.5(A)(6). The analyses shall be prepared by a *licensed* professional engineer in a format required by FEMA for a Conditional Letter of Map Revision and a Letter of Map Revision upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.
- (2) The proposed *development* may be permitted if the applicant has received a permit by MDE and if the analyses demonstrate that the cumulative effect of the proposed *development*, when combined with all other existing and potential flood hazard area encroachments will not increase the *base flood elevation* more than 1.0 foot at any point.

**(D) Construction of Roads, Bridges, Culverts, Dams and In-Stream Ponds**

Construction of roads, bridges, culverts, dams, and in-stream ponds in *nontidal waters of the State* shall not be approved unless they comply with this section and the applicant has received a permit from MDE.

**(E) Alteration of a Watercourse**

For any proposed *development* that involves *alteration of a watercourse* not subject to paragraph (C), unless waived by MDE, the applicant shall develop *hydrologic and hydraulic engineering analyses* and technical data reflecting such changes, including the *floodway* analysis required in Section 3.5(A), and submit such technical data to the Floodplain Administrator and to FEMA. The analyses shall be prepared by a *licensed* professional engineer in a format required by MDE and by FEMA for a Conditional Letter of Map Revision and a Letter of Map Revision

upon completion of the project. Submittal requirements and fees shall be the responsibility of the applicant.

*Alteration of a watercourse* may be permitted only upon submission, by the applicant, of the following:

- (1) A description of the extent to which the *watercourse* will be altered or relocated;
- (2) A certification by a *licensed* professional engineer that the flood-carrying capacity of the *watercourse* will not be diminished;
- (3) Evidence that adjacent communities, the U.S. Army Corps of Engineers, and MDE have been notified of the proposal, and evidence that such notifications have been submitted to FEMA; and
- (4) Evidence that the applicant shall be responsible for providing the necessary maintenance for the altered or relocated portion of the *watercourse* so that the flood carrying capacity will not be diminished. The Floodplain Administrator may require the applicant to enter into an agreement with the Town of North East specifying the maintenance responsibilities; if an agreement is required, the permit shall be conditioned to require that the agreement be recorded on the deed of the property which shall be binding on future owners.

#### **5.4 Residential Structures and Residential Portions of Mixed Use Structures**

New residential *structures* and residential portions of mixed use *structures*, and *substantial improvement* (including repair of *substantial damage*) of existing residential *structures* and residential portions of mixed use *structures* shall comply with the applicable requirements of Section 4.0 and this section. See Section 5.6 for requirements for horizontal additions.

##### **(A) Elevation Requirements**

- (1) *Lowest floors* shall be elevated to or above the *flood protection elevation*.
- (2) In *areas of shallow flooding* (Zone AO), the *lowest floor* (including *basement*) shall be elevated at least as high above the *highest adjacent grade* as the depth number specified in feet on the *FIRM* plus two (2) feet, or at least four (4) feet if a depth number is not specified.
- (3) *Enclosures below the lowest floor* shall meet the requirements of paragraph (C).

**(B) Limitations on Use of Fill to Elevate Structures**

Unless otherwise restricted by these regulations, especially by the limitations in Section 5.3(A), Section 5.3(B), and Section 5.3(C), fill placed for the purpose of raising the ground level to support a building or *structure* shall:

- (1) Consist of earthen soil or rock materials only.
- (2) Extend laterally from the building footprint to provide for adequate access as a function of use; the Floodplain Administrator may seek advice from the State Fire Marshal's Office and/or the local fire services agency;
- (3) Comply with the requirements of the *building code* and be placed and compacted to provide for stability under conditions of rising and falling floodwaters and resistance to erosion, scour, and settling;
- (4) Be sloped no steeper than one (1) vertical to two (2) horizontal, unless approved by the Floodplain Administrator;
- (5) Be protected from erosion associated with expected velocities during the occurrence of the *base flood*; unless approved by the Floodplain Administrator, fill slopes shall be protected by vegetation if the expected velocity is less than five feet per second, and by other means if the expected velocity is five feet per second or more; and
- (6) Be designed with provisions for adequate drainage and no adverse effect on adjacent properties.

**(C) Enclosures Below the Lowest Floor**

- (1) *Enclosures below the lowest floor* shall be used solely for parking of vehicles, building access, crawl/underfloor spaces, or limited storage.
- (2) *Enclosures below the lowest floor* shall be constructed using *flood damage-resistant materials*.
- (3) *Enclosures below the lowest floor* shall be provided with *flood openings* which shall meet the following criteria: [Note: See NFIP Technical Bulletin #1, "Openings in Foundation Walls and Walls of Enclosures Below Elevated Buildings."]
  - (a) There shall be a minimum of two *flood openings* on different sides of each enclosed area; if a building has more than one *enclosure*

*below the lowest floor*, each such enclosure shall have *flood openings* on exterior walls.

- (b) The total net area of all *flood openings* shall be at least 1 square inch for each square foot of enclosed area (non-engineered *flood openings*), or the *flood openings* shall be engineered *flood openings* that are designed and certified by a *licensed* professional engineer to automatically allow entry and exit of floodwaters; the certification requirement may be satisfied by an individual certification or an Evaluation Report issued by the ICC Evaluation Service, Inc.
- (c) The bottom of each *flood opening* shall be 1 foot or less above the higher of the interior floor or grade, or the exterior grade, immediately below the opening.
- (d) Any louvers, screens or other covers for the *flood openings* shall allow the automatic flow of floodwaters into and out of the enclosed area.
- (e) If installed in doors, *flood openings* that meet requirements of paragraphs (a) through (d), are acceptable; however, doors without installed *flood openings* do not meet the requirements of this section.

## **5.5 Nonresidential Structures and Nonresidential Portions of Mixed Use Structures**

New nonresidential *structures* and nonresidential portions of mixed use *structures*, and *substantial improvement* (including repair of *substantial damage*) of existing nonresidential *structures* and nonresidential portions of mixed use *structures* shall comply with the applicable requirements of Section 4.0 and the requirements of this section. See Section 5.6 for requirements for horizontal additions.

### **(A) Elevation Requirements**

Elevated *structures* shall:

- (1) Have the *lowest floor* (including *basement*) elevated to or above the *flood protection elevation*; or
- (2) In *areas of shallow flooding* (Zone AO), have the *lowest floor* (including *basement*) elevated at least as high above the *highest adjacent grade* as the depth number specified in feet on the *FIRM* plus two (2) feet, or at least four (4) feet if a depth number is not specified; and

- (3) Have *enclosures below the lowest floor*, if any, that comply with the requirements of Section 5.4(C); or
- (4) If proposed to be elevated on fill, meet the limitations on fill in Section 5.4(B).

**(B) Floodproofing Requirements**

- (1) *Floodproofing* of new nonresidential buildings:
  - (a) Is not allowed in *nontidal waters of the State* (COMAR 26.17.04.11(B)(7)).
  - (b) Is not allowed in *Coastal A Zones*.
- (2) *Floodproofing* for *substantial improvement* of nonresidential buildings:
  - (a) Is allowed in *nontidal waters of the State*.
  - (b) Is allowed in *Coastal A Zones*.
- (3) If *floodproofing* is proposed, *structures* shall:
  - (a) Be designed to be *dry floodproofed* such that the building or *structure* is watertight with walls and floors substantially impermeable to the passage of water to the level of the *flood protection elevation* plus 1.0 foot, or
  - (b) If located in an *area of shallow flooding* (Zone AO), be *dry floodproofed* at least as high above the *highest adjacent grade* as the depth number specified on the *FIRM* plus three (3) feet, or at least five (5) feet if a depth number is not specified; and
  - (c) Have structural components capable of resisting hydrostatic and hydrodynamic loads and effects of buoyancy;
  - (d) Have *floodproofing* measures that are designed taking into consideration the nature of flood-related hazards; frequency, depth and duration of *flooding*; rate of rise and fall of floodwater; soil characteristics; flood-borne debris; at least 12 hours of flood warning time from a credible source; and time necessary to implement any measures that require human intervention;
  - (e) Have at least one door above the applicable flood elevation that allows human ingress and egress during conditions of *flooding*;

- (f) Have an operations and maintenance plan that is filed with local emergency management officials and that specifies the owner/occupant's responsibilities to monitor flood potential; the location of any shields, doors, closures, tools, or other goods that are required for implementation; maintenance of such goods; methods of installation; and periodic inspection; and
- (g) Be certified by a *licensed* professional engineer or *licensed* architect, through execution of a *Floodproofing Certificate* that states that the design and methods of construction meet the requirements of this section. The *Floodproofing Certificate* shall be submitted with the construction drawings as required in Section 3.5(A)(13).

## 5.6 Horizontal Additions

- (A) A horizontal addition proposed for a building or *structure* that was constructed after the date specified in Section 1.1 shall comply with the applicable requirements of Section 4.0 and this section.
- (B) In *nontidal waters of the State* that are subject to the regulatory authority of MDE, all horizontal additions shall comply with the applicable requirements of Section 4.0 and this section and:
  - (1) If the addition is structurally connected to the *base building*, the requirements of paragraph (C) apply.
  - (2) If the addition has an independent foundation and is not structurally connected to the *base building* and the common wall with the *base building* is modified by no more than a doorway, the *base building* is not required to be brought into compliance.
- (C) For horizontal additions that are structurally connected to the *base building*:
  - (1) If the addition combined with other proposed repairs, alterations, or modifications of the *base building* constitutes *substantial improvement*, the *base building* and the addition shall comply with the applicable requirements of Section 4.0 and this section.
  - (2) If the addition constitutes *substantial improvement*, the *base building* and the addition shall comply with all of the applicable requirements of Section 4.0 and this section.
- (D) For horizontal additions with independent foundations that are not structurally connected to the *base building* and the common wall with the *base building* is

modified by no more than a doorway, the *base building* is not required to be brought into compliance.

- (E) A horizontal addition to a building or *structure* that is not *substantial improvement*, and is not located in *nontidal waters of the State*, is not required to comply with this section.

[Note: See “Substantial Improvement/Substantial Damage Desk Reference” (FEMA P-758).]

## **5.7 Accessory Structures**

- (A) *Accessory structures* shall be limited to not more than 300 square feet in total floor area.
- (B) *Accessory structures* shall comply with the elevation requirements and other requirements of Section 5.4, the *floodproofing* requirements of Section 5.5(B), or shall:
  - (1) Be useable only for parking of vehicles or limited storage;
  - (2) Be constructed with *flood damage-resistant materials* below the *base flood elevation*;
  - (3) Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
  - (4) Be anchored to prevent flotation;
  - (5) Have electrical service and mechanical equipment elevated to or above the *base flood elevation*; and
  - (6) Have *flood openings* that meet the requirements of Section 5.4(C).

## **SECTION 6.0 REQUIREMENTS IN COASTAL HIGH HAZARD AREAS (V ZONES) AND COASTAL A ZONES**

### **6.1 General Requirements**

In addition to the general requirements of Section 4.0, the requirements of this section shall:

- (A) Apply in flood hazard areas that are identified as *coastal high hazard areas* (V Zones) and *Coastal A Zones* (if delineated).
- (B) Apply to all *development, new construction, substantial improvements* (including repair of *substantial damage*), and placement, replacement, and

*substantial improvement* (including repair of *substantial damage*) of *manufactured homes*.

**Exception:** In *Coastal A Zones*, the requirements of Section 5.0 shall apply to *substantial improvements* (including repair of *substantial damage*), and *substantial improvement of manufactured homes* (including repair of *substantial damage*) and replacement *manufactured homes*.

[Note: See “Coastal Construction Manual” (FEMA P-55).]

## 6.2 Location and Site Preparation

- (A) The placement of structural fill for the purpose of elevating buildings is prohibited.
- (B) Buildings shall be located landward of the reach of mean high tide.
- (C) Minor grading, and the placement of minor quantities of fill, shall be permitted for landscaping and for drainage purposes under and around buildings and for support of parking slabs, pool decks, patios and walkways.
- (D) Site preparations shall not alter sand dunes unless an engineering analysis demonstrates that the potential for flood damage is not increased.

## 6.3 Residential and Nonresidential Structures

New *structures* and *substantial improvement* (including repair of *substantial damage*) of existing *structures* shall comply with the applicable requirements of Section 4.0 and the requirements of this section.

### (A) Foundations

- (1) *Structures* shall be supported on pilings or columns and shall be adequately anchored to such pilings or columns. Pilings shall have adequate soil penetrations to resist the combined wave and wind loads (lateral and uplift). Water loading values used shall be those associated with the *base flood*. Wind loading values shall be those required by applicable *building codes*. Pile embedment shall include consideration of decreased resistance capacity caused by scour of soil strata surrounding the piling.
- (2) Slabs, pools, pool decks and walkways shall be located and constructed to be structurally independent of *structures* and their foundations to prevent transfer of flood loads to the *structures* during conditions of *flooding*, scour, or erosion from wave-velocity flow conditions, and shall

be designed to minimize debris impacts to adjacent properties and public infrastructure.

**(B) Elevation Requirements**

- (1) The bottom of the lowest horizontal structural member that supports the *lowest floor* shall be located at or above the *flood protection elevation*.
- (2) *Basement* floors that are below grade on all sides are prohibited.
- (3) The space below an elevated building shall either be *free-of-obstruction* or, if enclosed by walls, shall meet the requirements of paragraph (D).  
[Note: See NFIP Technical Bulletin #5, “Free-of-Obstruction Requirements.”]

**(C) Certification of Design**

As required in Section 3.5(A)(13), the applicant shall include in the application a certification prepared by a *licensed* professional engineer or a *licensed* architect that the design and methods of construction to be used meet the requirements of paragraph (A), paragraph (B), paragraph (D), and the *building code*.

**(D) Enclosures Below the Lowest Floor**

- (1) *Enclosures below the lowest floor* shall be used solely for parking of vehicles, building access or limited storage.
- (2) *Enclosures below the lowest floor* shall be less than 299 square feet in area (exterior measurement).
- (3) Walls and partitions are permitted below the elevated floor, provided that such walls and partitions are designed to break away under flood loads and are not part of the structural support of the building or *structure*.  
[Note: See NFIP Technical Bulletin #9, “Design and Construction Guidance for Breakaway Walls.”]
- (4) Electrical, mechanical, and plumbing system components shall not be mounted on or penetrate through walls that are designed to break away under flood loads.
- (5) Walls intended to break away under flood loads shall be constructed with insect screening or open lattice, or shall be designed to break away or collapse without causing collapse, displacement or other structural damage to the elevated portion of the building or supporting foundation system. Such walls, framing and connections shall have a design safe

loading resistance of not less than 10 pounds per square foot and no more than 20 pounds per square foot; or

- (6) Where wind loading values of the *building code* exceed 20 pounds per square foot, the applicant shall submit a certification prepared and sealed by a *licensed* professional engineer or *licensed* architect that:
  - (a) The walls and partitions below the *lowest floor* have been designed to collapse from a water load less than that which would occur during the *base flood*.
  - (b) The elevated portion of the building and supporting foundation system have been designed to withstand the effects of wind and flood loads acting simultaneously on all building components (structural and nonstructural). Water loading values used shall be those associated with the *base flood*; wind loading values used shall be those required by the *building code*.
  - (c) In *Coastal A Zones*, in addition to the requirements of this section, walls below the *lowest floor* shall have *flood openings* that meet the requirements of Section 5.4(C)(3).

#### **6.4 Horizontal Additions to Structures**

- (A) A horizontal addition proposed for a building or *structure* that was constructed after the date specified in Section 1.1 shall comply with the applicable requirements of Section 4.0 and this section.
- (B) For horizontal additions, whether structurally connected or not structurally connected, to the *base building*:
  - (1) If the addition combined with other proposed repairs, alterations, or modifications of the *base building* constitutes *substantial improvement*, the *base building* and the addition shall comply with the applicable requirements of Section 4.0 and this section.
  - (2) If the addition constitutes *substantial improvement*, the *base building* and the addition shall comply with all of the applicable requirements of Section 4.0 and this section. [Note: The *base building* is required to comply otherwise it is an obstruction that does not comply with the *free-of-obstruction* requirement that applies to the elevated addition, see Section 6.3(B)(3).]
- (C) A horizontal addition to a building or *structure* that is not *substantial improvement* is not required to comply with this section.

## 6.5 Accessory Structures

- (A) *Accessory structures* shall be limited to not more than 300 square feet in total floor area.
- (B) *Accessory structures* shall comply with the elevation requirements and other requirements of Section 6.3 or, if not elevated, shall:
  - (1) Be useable only for parking of vehicles or limited storage;
  - (2) Be constructed with *flood damage-resistant materials* below the *base flood elevation*;
  - (3) Be constructed and placed to offer the minimum resistance to the flow of floodwaters;
  - (4) Be anchored to prevent flotation;
  - (5) Have electrical service and mechanical equipment elevated to or above the *base flood elevation*; and
  - (6) If larger than 100 square feet in size, have walls that meet the requirements of Section 6.3(D)(3) through (6), as applicable for the *flood zone*; and if located in *Coastal A Zones*, walls shall have *flood openings* that meet the requirements of Section 5.4(C)(3).

## 6.6 Other Structures and Development

[Note: See NFIP Technical Bulletin #5, “Free-of-Obstruction Requirements.”]

### (A) Decks and Patios

In addition to the requirements of the *building code* or the residential code, decks and patios shall be located, designed, and constructed in compliance with the following:

- (1) A deck that is structurally attached to a building or *structure* shall have the bottom of the lowest horizontal structural member at or above the *flood protection elevation* and any supporting members that extend below the design flood elevation shall comply with the foundation requirements that apply to the building or *structure*, which shall be designed to accommodate any increased loads resulting from the attached deck.
- (2) A deck or patio that is located below the *flood protection elevation* shall be structurally independent from *structures* and their foundation systems,

and shall be designed and constructed either to remain intact and in place during *base flood* conditions or to break apart into small pieces that will not cause structural damage to adjacent elevated *structures*.

- (3) A deck or patio that has a vertical thickness of more than 12 inches or that is constructed with more than the minimum amount of fill that is necessary for site drainage shall not be approved unless an analysis demonstrates no harmful diversion of floodwaters or wave runup and wave reflection that would increase damage to adjacent elevated *structures*.
- (4) A deck or patio that has a vertical thickness of 12 inches or less and that is at natural grade or on fill material that is similar to and compatible with local soils and is the minimum amount necessary for site drainage may be approved without requiring analysis of the impact on diversion of floodwaters or wave runup and wave reflection.

#### **(B) Other Development**

Other *development* activities shall be permitted only if located outside the footprint of, and not structurally attached to, *structures*, and only if an analysis demonstrates no harmful diversion of floodwaters or wave runup and wave reflection onto adjacent elevated *structures*. Other *development* includes but is not limited to:

- (1) Bulkheads, seawalls, retaining walls, revetments, and similar erosion control structures;
- (2) Solid fences, privacy walls, and fences prone to trapping debris, unless designed and constructed to fail under *base flood* conditions; and
- (3) Mounded septic systems.

## **SECTION 7.0 VARIANCES**

### **7.1 General**

The Board of Appeals shall have the power to consider and authorize or deny *variances* from the strict application of the requirements of these regulations. A *variance* shall be approved only if it is determined to not be contrary to the public interest and where, owing to special conditions of the lot or parcel, a literal enforcement of the provisions of these regulations, an unnecessary hardship would result.

Upon consideration of the purposes of these regulations, the individual circumstances, and the considerations and limitations of this section, the Board of Appeals may attach such conditions to *variances* as it deems necessary to further the purposes of these regulations.

The Board of Appeals shall notify, in writing, any applicant to whom a *variance* is granted to construct or substantially improve a building or *structure* with its *lowest floor* below the elevation required by these regulations that the *variance* is to the floodplain management requirements of these regulations only, and that the cost of Federal flood insurance will be commensurate with the increased risk, with rates up to \$25 per \$100 of insurance coverage.

A record of all *variance* actions, including justification for issuance shall be maintained pursuant to Section 3.2(K) of these regulations.

## **7.2 Application for a Variance**

- (A) The owner of property, or the owner's authorized agent, for which a *variance* is sought shall submit an application for a *variance* to the Floodplain Administrator.
- (B) At a minimum, the application shall contain the following information: name, address, and telephone number of the applicant and property owner; legal description of the property; parcel map; description of the existing use; description of the proposed use; site map showing the location of flood hazard areas, designated *floodway* boundaries, *flood zones*, *base flood elevations*, and *flood protection setbacks*; description of the *variance* sought; and reason for the *variance* request. *Variance* applications shall specifically address each of the considerations in Section 7.3.
- (C) If the application is for a *variance* to allow the *lowest floor* (A Zones) or bottom of the lowest horizontal structural member (V Zones and *Coastal A Zones*) of a building or *structure* below the applicable minimum elevation required by these regulations, the application shall include a statement signed by the owner that, if granted, the conditions of the *variance* shall be recorded on the deed of the property.

## **7.3 Considerations for Variances**

The Floodplain Administrator shall request comments on *variance* applications from MDE (NFIP State Coordinator) and shall provide such comments to the Board of Appeals.

In considering *variance* applications, the Board of Appeals shall consider and make findings of fact on all evaluations, all relevant factors, requirements specified in other sections of these regulations, and the following factors:

- (A) The danger that materials may be swept onto other lands to the injury of others.
- (B) The danger to life and property due to *flooding* or erosion damage.

- (C) The susceptibility of the proposed *development* and its contents (if applicable) to flood damage and the effect of such damage on the individual owner.
- (D) The importance of the services to the *community* provided by the proposed *development*.
- (E) The availability of alternative locations for the proposed use which are not subject to, or are subject to less, *flooding* or erosion damage.
- (F) The necessity to the facility of a waterfront location, where applicable, or if the facility is a *functionally dependent use*.
- (G) The compatibility of the proposed use with existing and anticipated *development*.
- (H) The relationship of the proposed use to the comprehensive plan and hazard mitigation plan for that area.
- (I) The safety of access to the property in times of flood for passenger vehicles and emergency vehicles.
- (J) The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site.
- (K) The costs of providing government services during and after flood conditions, including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.
- (L) The comments provided by MDE (NFIP State Coordinator).

#### **7.4 Limitations for Granting Variances**

The Board of Appeals shall make an affirmative decision on a *variance* request only upon:

- (A) A showing of good and sufficient cause. Good and sufficient cause deals solely with the physical characteristics of the property and cannot be based on the character of the improvement, the personal characteristics of the owner/inhabitants, or local provision that regulate standards other than health and public safety.
- (B) A determination that failure to grant the *variance* would result in exceptional hardship due to the physical characteristics of the property. Increased cost or inconvenience of meeting the requirements of these regulations does not constitute an exceptional hardship to the applicant.

- (C) A determination that the granting of a *variance* for *development* within any designated *floodway*, or flood hazard area with *base flood elevations* but no designated *floodway*, will not result in increased flood heights beyond that which is allowed in these regulations.
- (D) A determination that the granting of a *variance* will not result in additional threats to public safety; extraordinary public expense, nuisances, fraud or victimization of the public, or conflict with existing local laws.
- (E) A determination that the building, *structure* or other *development* is protected by methods to minimize flood damages.
- (F) A determination that the *variance* is the minimum necessary to afford relief, considering the flood hazard.

## **SECTION 8.0            ENFORCEMENT**

### **8.1      Compliance Required**

- (A) No building, *structure* or *development* shall hereafter be located, erected, constructed, reconstructed, improved, repaired, extended, converted, enlarged or altered without full compliance with these regulations and all other applicable regulations.
- (B) Failure to obtain a permit shall be a *violation* of these regulations and shall be subject to penalties in accordance with Section 8.3.
- (C) Permits issued on the basis of plans and applications approved by the Floodplain Administrator authorize only the specific activities set forth in such approved plans and applications or amendments thereto. Use, arrangement, or construction of such specific activities that are contrary to that authorization shall be deemed a *violation* of these regulations.

### **8.2      Notice of Violation and Stop Work Order**

If the Floodplain Administrator determines that there has been a *violation* of any provision of these regulations, the Floodplain Administrator shall give notice of such *violation* to the owner, the owner's authorized agent, and the *person* responsible for such *violation*, and may issue a stop work order. The notice of *violation* or stop work order shall be in writing and shall:

- (A) Include a list of *violations*, referring to the section or sections of these regulations that have been violated;
- (B) Order remedial action which, if taken, will effect compliance with the provisions of these regulations;

- (C) Specify a reasonable period of time to correct the *violation*;
- (D) Advise the recipients of the right to appeal; and
- (E) Be served in person; or
- (F) Be posted in a conspicuous place in or on the property and sent by registered or certified mail to the last known mailing address, residence, or place of business of the recipients.

### **8.3 Violations and Penalties**

*Violations* of these regulations or failure to comply with the requirements of these regulations or any conditions attached to a permit or *variance* shall constitute a misdemeanor. Any *person* responsible for a *violation* shall comply with the notice of *violation* or stop work order. Failure to comply with any of the requirements shall upon conviction thereof be fined not more than \$400.00 and in addition shall pay all costs and expenses involved in the case. Each day a *violation* continues shall be considered a separate offense. Nothing herein contained shall prevent the Town of North East from taking such other lawful action as is necessary to prevent or remedy any *violation*.

## **SECTION 9.0 SUBSEQUENT AMENDMENTS AND EFFECTIVE DATE**

### **9.1 Subsequent Amendments**

All ordinances or parts of ordinances that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency. This ordinance shall be amended as required by the Federal Emergency Management Agency, Title 44, Code of Federal Regulations. All subsequent amendments to this ordinance are subject to the approval of the Federal Emergency Management Agency and the Maryland Department of the Environment.

### **9.2 Effective Date**

ADOPTED by Ordinance 2015-03-01 this 8th day of April, 2015 and shall become effective on May 4, 2015, which is the date established by FEMA.

Section 5-14 "PRD" Planned Residential Development District Regulations

## 1. Purposes:

The provisions of this article are enacted in order that the purposes of the ordinance be furthered in an era of increasing urbanization and of growing demand for housing of all types and design; to ensure that the provisions of this ordinance which are concerned in part with the uniform treatment of dwelling type, bulk, density and open space within each zoning district, shall not be applied to the improvement of land by other than lot by lot development in a manner that would distort the objectives of this ordinance; to encourage innovations in residential development and renewal so that the growing demand for housing may be met by greater variety in type, design and layout of dwellings and by the conservation and more efficient use of open space ancillary to said dwellings; so that greater opportunities for better housing and recreation may extend to all citizens and residents of this Town; and in order to encourage a more efficient use of land and of public services and to reflect changes in the technology of land development so that economies secured may ensure to the benefit of those who need homes; and, in aid of these purposes, to provide a procedure which can relate the type, design and layout of residential development to the particular site and the particular demand for housing existing at the time of development in a manner consistent with the preservation of the property values within existing residential areas, and to ensure that the increased flexibility of regulations over land development authorized herein is carried out under such administrative standards and procedures as shall encourage the disposition of proposals for land development without undue delay.

## 2. Administration:

The administration of the procedures for application for and approval of Planned Residential Developments shall be vested in the Mayor and Commissioners of the Town of North East. The Board shall, however, refer all tentative and final development plans for such developments to the Planning Commission for their review and comment.

## 3. Conditions for Planned Residential Development:

The following are prerequisite conditions for consideration of a Planned Residential Development:

- a. Any tract of land so developed shall be in one ownership or in the case of multiple ownership of the tract it shall be developed according to a single plan with common authority and common responsibility.
- b. In order to qualify as a Planned Residential Development, development shall provide for a minimum of twenty-five (25) dwelling units.

- c. All of the tract must lie within the “R-3” Residential District in the Town.

4. Use Regulations:

The uses permitted in a Planned Residential Development shall be limited to:

- a. Dwelling units in detached, semi-detached, attached or multi-family structures, or any combination thereof. Attached dwelling units shall be townhouses and shall be arranged in clusters, not in rows, so as to provide common areas between and around groups of houses subject to provision of an adequate agreement for ownership and maintenance of the common areas between and around such townhouses as hereinafter provided.
- b. Accessory uses to include a related or commercial use located within the Planned Residential Development shall be vested in the Mayor and Commissioners of the Town of North East.
- c. Open space set aside under the provisions of this Article which may be used in whole or in part in any of the following ways, or any manner similar thereto:
  - (1) Boating and fishing.
  - (2) Golf course.
  - (3) Hiking and horseback riding.
  - (4) Parks.
  - (5) Play fields.
  - (6) Playgrounds.
  - (7) Picnic areas.
  - (8) Skating rinks.
  - (9) Swimming pool.
  - (10) Tennis courts
  - (11) Woodland
  - (12) Lakes

5. Density:

The following standards shall govern the density of dwelling units on the land within a Planned Residential Development:

- a. In the "R-3" District, no more than six (6) dwelling units may be erected for each acre of land in the total tract under consideration.
- b. At least twenty five per cent (25%) of the total land in the tract shall be set aside as open space for the use and benefit of the residents of the development or the Town as hereinafter provided.
- c. In the case of a Planned Residential Development proposed to be developed over a period of years, a variation in each section to be developed from the density of use established for the entire Planned Residential Development may be permitted. A greater concentration of density of land use within some section or sections of development may be allowed whether it be earlier or later in the development than others. The approval of such greater concentration of density of land use for any section to be developed shall be offset by a smaller concentration in any completed prior stage or by an appropriate reservation of common open space on the remaining land by a grant of easement or by covenant in favor of the Town, provided that such reservation shall, as far as practicable, defer the precise location of such common open space until an application for final approval is filed, so that flexibility of development, which is a prime objective of this Article, can be maintained.

6. Area and Bulk Regulations:

Within the limits of overall density of use established in Section 5-4 (5); flexibility in the arrangement of housing on individual lots and in clusters of single family, duplex, townhouses, and apartments may be permitted subject to the following requirements:

- a. In the "R-3" District where single family homes are situated on individual lots the height, area and bulk requirements shall be as follows:

	Detached and Semi Detached	Townhouses	Multi-Family
Maximum Height	3 stories or 45 feet	3 stories or 45 feet	3 stories or 45 feet
Minimum Lot Specifications			
Area (total)			
	1 family – 4,200 2 family – 3,000 square feet per unit	2,000 per unit	3,000 sq. ft per unit
Width	1 family – 42 feet 2 family - 30 feet per unit	20	Na
Depth	100	80	100
Coverage	na	60%	60%
Minimum Yard Specifications			
- Front Yard Depth	20	20	20
- Side Yard Width (two required unless otherwise specified)	1, 2, 2 1/2 story: 5 feet (1) 3 story: 10 feet (2)	10 feet (end units only)	15 feet
- Rear Yard Depth	30 (3)	20(3)	20(3)
Maximum Number of Units per Buildings	Na	6	12
Maximum Number of Dwelling Units per Acre	1 and 2 family - 8	10	12

Footnotes:

(1) The two required side yards shall total 15 feet and neither shall be less than five (5) feet.

(2) The dwelling units of a two-family dwelling may be sold separately if separate utility systems are provided. Each dwelling unit of a two-family dwelling must comply with the minimum lot area per dwelling unit.

(3) Rear yards shall be designed to be adjacent to open areas. Where this is not possible rear yard depth shall be increased.

- b. Where dwelling units are arranged in clusters of single family, duplex, townhouses, and apartments, dwelling units shall be constructed as rental units or for sale as condominium units. Sufficient areas of common land shall be established between and around dwelling units so that the maximum density of dwelling units within any section of cluster housing is twelve (12) units per acre. Such common areas shall be considered yard areas for these dwelling units and shall not be used in the calculation of open space as provided by Section 5-14; 5.(b) of this ordinance. The developer shall make adequate provision for the maintenance of

building and land within the common area set aside for such clusters. Such provision shall be subject to the approval of the Board and shall be contained in deed restrictions providing among other things that the owners of dwellings in such cluster developments by acceptance of a deed agree for themselves, their heirs, and assigns, to pay special assessments which may be levied from time to time by the Town and which shall be sufficient to maintain the buildings and common areas in the event that in the opinion of the Board such buildings and common areas are not being properly maintained.

- c. Where single family, duplex, townhouses, or apartments are arranged in clusters, these structures shall have a setback of not less than twenty (20) feet from any road right-of-way. Each dwelling unit shall contain at least one thousand (1,000) square feet of habitable floor area.
7. Open Space:
- a. Areas set aside for open space shall be suitable for the designated purpose and in any event shall be consistent with the plan policy for future land use in the Town. Any such area shall contain no structure other than a structure related to outdoor recreational use. Consideration shall be given to the arrangement and location of open spaces to take advantage of physical characteristics of the site and to place open spaces within easy access and view of dwelling units. In addition, open space shall be designed to provide for both active and passive forms of recreation and shall utilize and occupy areas throughout the site. Open space may utilize but shall not be confined to only those areas unsuitable for building purposes.
  - b. Any land set aside as open space, of such a size as may be capable of future subdivision under the regulations of this ordinance, shall be made subject to a deed restriction or agreement in form acceptable to the Board and duly recorded in the Office of Clerk of Circuit Court in and for Cecil County eliminating the possibility of such further subdivision by transfer of development rights to the Town or by any method approved by the Board in approving the plan. Open space shall not include driveways, parking lots, or other vehicular surfaces, any area occupied by a building or areas so located or so small or so circumscribed by buildings, driveways, parking lots or drainage areas as to have no substantial value for its purpose.
  - c. Board may, at any time and from time to time, accept the dedication of land or any interest therein for public use and maintenance, but Board need not require, as a condition of approval of a Planned Residential Development, that land proposed to be set aside for common open space be dedicated, or

made available to public use. In the event the open space is not dedicated or made available to public use, the landowner shall provide for and establish an organization for the ownership and maintenance of the common open space, such organization shall not be dissolved nor shall it dispose of the common open space, by sale or otherwise (except to an organization conceived and established to own and maintain the common open space), except by dedication of the same to the public. The plan to provide for the ownership and maintenance of common open space shall include a method reasonably designed to give adequate notice to property owners within the Planned Residential Development in the event of the sale or other disposition of open space lands and in the event of assumption of the maintenance of open space lands by the Town as hereinafter provided.

8. Application for Tentative Approval for Planned Residential Development:
  - a. An application for tentative approval of a Planned Residential Development shall be filed by or on behalf of the owner or owners of the land.
  - b. Plans for tentative approval shall be prepared to show the following:
    - (1) The location, size and topography of the site and nature of the landowner's interest in the land proposed to be developed;
    - (2) The density of land use to be allocated to parts of the site to be developed;
    - (3) The location and size of the common open space and the form of organization proposed to own and maintain the common open space;
    - (4) The use and the approximate height, bulk and location of buildings and other structures;
    - (5) The feasibility of proposals for the disposition of the sanitary waste and storm water and provision of public water supply;
    - (6) The substance of covenants, grants of easements or other restrictions proposed to be imposed upon the use of land, buildings and structures including proposed easements or grants for public utilities;
    - (7) The provisions for parking of vehicles and the location and width of proposed streets and public ways;

- (8) The required modifications in the land use regulations otherwise applicable to the subject property;
  - (9) In the case of development plans which call for development over a period of years, a schedule showing the proposed time within which applications for final approval of all sections of the Planned Residential Development are intended to be filed and this schedule must be updated annually, on the anniversary of its approval, until the development is completed and accepted.
- c. The application for tentative approval of a Planned Residential Development shall include a written statement by the landowner setting forth the reasons why, in his opinion, a Planned Residential Development would be in the public interest and would be consistent with the Comprehensive Plan for the development of the Town.

9. Public Hearings:

- a. Within sixty (60) days after the filing of an application for tentative approval of a Planned Residential Development pursuant to this Article, a public hearing pursuant to public notice on said application shall be held by the Board, in the manner for the enactment of an amendment to this ordinance. The Mayor, or, in his absence, the Vice-Mayor, of the Board may administer oaths and compel the attendance of witnesses. All testimony by witnesses at any hearing shall be given under oath and every party of record at a hearing shall have the right to cross-examine adverse witnesses.
- b. A verbatim record of the hearing shall be caused to be made by the Board whenever such records are requested by any party to the proceedings; but the cost of making and transcribing such a record shall be borne by the party requesting it and the expense of copies of such record shall be borne by those who wish to obtain such copies. All exhibits accepted in evidence shall be identified and duly preserved or, if not accepted in evidence, shall be properly identified and the reason for the exclusion clearly noted in the record.
- c. The Board may continue the hearing from time to time, and may refer the matter back to the Planning Commission for a further report, provided, however, that in any event, the public hearing or hearings shall be concluded within sixty (60) days after the date of the first public hearing.

10. The Findings:

- a. The Board, within thirty (30) days following the conclusion of the public hearing provided for in this Article, shall, by official written communication, to the landowner, either:

- (1) Grant tentative approval of the development plan as submitted;
- (2) Grant tentative approval subject to specified conditions not included in the development plan as submitted; or
- (3) Deny tentative approval to the development plan.

Failure to so act within said period shall be deemed to be a grant of tentative approval of the development plan as submitted. In the event, however, that tentative approval is granted subject to conditions, the landowner may, within thirty (30) days after receiving a copy of the official written communication of the Board, notify such Board of his refusal to accept all said conditions, in which case, the Board shall be deemed to have denied tentative approval of the development plan. In the event the landowner does not, within said period, notify the Board of his refusal to accept all said conditions, tentative approval of the development plan, with all said conditions, shall stand as granted.

- b. The grant or denial of tentative approval by official written communication shall include not only conclusions but also findings of fact related to the specific proposal and shall set forth the reasons for the grant, with or without conditions or for the denial, and said communication shall set forth with particularity in what respects the development plan would or would not be in the public interest including but not limited to findings of fact and conclusions on the following:

- (1) In what respects the development plan is or is not consistent with the Comprehensive Plan for the development of the Town;
- (2) The extent to which the development plan departs from zoning and subdivision regulations otherwise applicable to the subject property, including but not limited to density, bulk and use, and the reasons why such departures are or are not deemed to be in the public interest;
- (3) The purpose, location and amount of the common open space in the Planned Residential Development, the reliability of the proposals for maintenance and conservation on the common open space as related to the proposed density and type of residential development;

- (4) The physical design of the development plan and the manner in which said design does or does not make adequate provision for public services, provide adequate control over vehicular traffic, and further the amenities of light and air, recreation and visual enjoyment;
  - (5) The relationship, beneficial or adverse, of the proposed Planned Residential Development to the neighborhood in which it is proposed to be established; and
  - (6) In the case of a development plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents of the Planned Residential Development in the integrity of the development plan.
- c. In the event a development plan is granted tentative approval, with or without conditions, the Board may set forth in the official written communication the time within which an application for final approval of the development plan shall be filed or, in the case of a development plan which provides for development over a period of years, the periods of time within which applications for final approval of each part thereof shall be filed. Except upon the consent of the landowner, the time so established between grant of tentative approval and an application for final approval shall not be less than three (3) months, and, in the case of developments over a period of years, the time between applications for final approval of each part of a plan shall not be less than twelve (12) months.

#### 11. Status of Plan After Tentative Approval:

- a. The official written communication provided for in this Article shall be certified by the Administrator and shall be filed in his office, and a certified copy shall be mailed to the landowner. Where tentative approval has been granted, the same shall be noted on the zoning map.
- b. Tentative approval of a development plan shall not qualify a plat of the Planned Residential Development for recording nor authorize development or the issuance of any construction authorization. A development plan which has been given tentative approval as submitted, or which has been given tentative approval with conditions which have been accepted by the landowner (and provided that the landowner has not defaulted or violated any of the conditions of the tentative approval), shall not be modified or revoked nor otherwise impaired by action of the Town pending an application or applications for final approval, without the consent of the landowner, provided an application for final approval is filed in the case of development over a period of years, provided

applications are filed, within the periods of time specified in the official written communication granting tentative approval.

- c. In the event that a development plan is given tentative approval and thereafter, but prior to final approval, the landowner shall elect to abandon said development plan and shall so notify the Town in writing, or in the event the landowner shall fail to file application or applications for final approval within the required period of time or times, as the case may be, the tentative approval shall be deemed to be revoked and all that portion of the area included in the development plan for which final approval has not been given shall be subject to those ordinances otherwise applicable thereto as they may be amended from time to time, and the same shall be noted on the zoning map and in the records of the Secretary of the Town.

## 12. Application for Final Approval

- a. An application for final approval may be for all the land included in a development plan or, to the extent set forth in the tentative approval, for a section thereof. Said application shall be made to the Town and within the time or times specified by the official written communication granting tentative approval. The application shall include any drawings, specifications, covenants, easements, performance bond and such other requirements as may be specified by this ordinance, as well as any conditions set forth in the official written communication at the time of tentative approval. A public hearing on an application for final approval of the development plan, or part thereof, submitted for final approval, is in compliance with the development plan theretofore given tentative approval and with any specified conditions attached thereto.
- b. Plans submitted for final approval of all or a portion of a Planned Residential Development shall be prepared in accordance with the requirements for final subdivision plans as specified in the Town of North East Subdivision Regulations as amended.
- c. The design of streets, sewers, water lines, storm drainage, sidewalks, and all public improvements shall be in strict accordance with the design standards of the aforesaid ordinance.
- d. The Town of North East Ordinance as amended shall govern the construction and acceptance of all public improvements including the provisions or requirements of performance and maintenance bonds.
- e. In the event the application for final approval has been filed together with all drawings, specifications and other documents in support thereof, and as required by this ordinance and the official

written communication of tentative approval, the Town shall, within sixty (60) days of such filing, grant such development plan final approval.

- f. In the event the development plan as submitted contains variations from the development plan given tentative approval, the Town may refuse to grant final approval and shall, within ninety (90) days from the filing of the application for final approval, so advise the landowner in writing of said refusal, setting forth in said notice the reasons why one or more of said variations are not in the public interest. In the event of such refusal, the landowner may either:
  - (1) Re-file his application for final approval without the variations objected, or
  - (2) File a written request with the Town that it hold a public hearing on his application for final approval.
  - (3) If the landowner wishes to take either such alternate action, he may do so at any time within which he shall be entitled to apply for final approval, or within sixty (60) additional days, if the time for applying for final approval shall have already passed at the time when the landowner was advised that the development plan was not in substantial compliance. In the event the landowner shall fail to take either of these alternate actions within said time, he shall be deemed to have abandoned the development plan. Any such public hearing shall be held pursuant to public notice within sixty (60) days after request for the hearing is made by the landowner, and the hearing shall be conducted in the manner prescribed in this Article for public hearings on applications for tentative approval. Within sixty (60) days after the conclusion of the hearing, the Town shall by official written communication either grant final approval to the development plan or deny final approval. The grant or denial of final approval of the development plan shall, in cases arising under this section, be in the form and contain the findings required for an application for tentative approval set forth in this Article.
- g. A development plan, or any part thereof, which has been given final approval shall be so certified without delay by the Town and shall be filed of record forthwith in the Office Clerk of the Court in and for Cecil County before any development shall take place in accordance therewith. Upon the filing of record of the development plan the zoning and subdivision ordinances otherwise applicable to the land included in such plan shall cease to apply thereto except as herein noted. Pending completion within a reasonable time of said Planned Residential Development

or of that part thereof, as the case may be, that has been finally approved, no modification of the provisions of said development plan, or part thereof, as finally approved, shall be made except with the consent of the landowner.

- h. In the event that a development plan, or section thereof, is given final approval and thereafter the landowner shall fail to commence and carry out the Planned Residential Development within twelve (12) months after final approval has been granted, no development shall take place on the property included in the development plan until after said property is resubdivided and is reclassified by enactment of an amendment to this ordinance in the manner prescribed for such amendments. If after development in accordance with a final plan is started the landowner shall abandon such plan or the section thereof and shall so notify the Town in writing, the Town may require that the property be re-subdivided and reclassified as provided above or if any portion of a Planned Residential Development is substantially completed in accordance with final plans submitted and approved by the Town, the Town shall have the option of recording the master plan and requiring subsequent construction to be within the framework of the plan unless substantial hardship can be demonstrated.
13. Enforcement and Modification of Provisions of the Plan:

To further the mutual interest of the residents of the Planned Residential Development and of the public in the preservation of the integrity of the development plan, as finally approved, and to insure that modifications, if any, in the development plan shall not impair the reasonable reliance of the said residents upon the provisions of the development plan, nor result in changes that would adversely affect the public interest, the enforcement and modification of the provisions of the development plan as finally improved, whether those are recorded by plat, covenant, easement, or otherwise shall be subject to the provisions of the law.

Section 5-15. “IDOD” Infill Development Overlay District Regulations  
[REPEALED PER ORDINANCE 2012-09-01]

RESERVED

Section 5-16. "HCOD" Highway Corridor Overlay District Regulations

## 1. Purpose

- a. The purpose of establishing this overlay district is to protect and/or enhance the aesthetic and visual character of the Town of North East and to provide for and promote orderly growth of the same. The Highway Corridor Overlay District regulations are intended to supplement the regulations of the underlying zoning districts and to provide for the harmony and compatibility of development along the major highway corridors that serve as gateways to the community. When other provisions of this Ordinance are more restrictive, they shall apply. All development within this District shall be subject to the procedures, standards, and guidelines specified in the following sections, in addition to those standards pertaining to the particular base zoning district in which the development occurs. In cases of conflict, the more restrictive standards and/or requirements shall apply. In particular, the purpose of the Highway Corridor Overlay District is as follows:
  - (1) To encourage and better articulate positive visual experiences along the Town's major existing and proposed highways.
  - (2) To provide for the continued safe and efficient use of these roadways.
  - (3) To maintain natural beauty and scenic, cultural, and positive visual character of the corridor, particularly distinctive views, vistas, and visual continuity.
  - (4) Minimize intersection and site access points.
- b. These purposes will be accomplished through evaluation of proposed developments within this overlay zoning district by the Planning Commission which shall review the location, character and appearance of new development in a positive manner. It is the purpose of such review to determine, in a cooperative fashion with the applicant, whether a proposed plan meets the guidelines and other standards of this zoning district.
- c. The Highway Corridor Overlay Zoning District shall include all lands within 500 feet of each side of the center line of the following rights-of-way: U.S. 40, I-95, and MD 272 north of North East Creek. In addition, the district shall include all of such parcels that fall within the 500 foot line in order that the district shall be expanded to follow the parcel property boundaries of all parcels that are subject to a particular site plan review. The approximate

boundary of the overlay district shall be clearly delineated and labeled on the site plan. [AMENDED PER ORDINANCE 2010-02-01]

## 2. Affected Development

- a. All development plan applications, including applications for construction authorization, site plan review and subdivision approval, for development located in the Highway Corridor Overlay District shall be reviewed by the Planning Commission for compliance with this Section. All changes subject to approval by the Commission shall receive such approval before proceeding. Large scale multi-phased projects shall be reviewed and approved subject to a master site plan. The preliminary and final site plans shall indicate the phasing concept for overall development. Each phase shall require separate review and approval by the Planning Commission for consistency with the master site plan as well as satisfactory progress or completion of prior phases. [AMENDED PER ORDINANCE 2010-02-01]
- b. Applications for development plan approval on properties already developed, for example an application for a construction authorization for an addition to an existing building, shall be required to comply with the provisions of this Section, to the extent possible, as determined by the Planning Commission. For the purposes of this Section, the term “to the extent possible” shall not preclude the Planning Commission from requiring existing pavement be removed to enable establishment of visual enhancement buffer yards, that entrances/exits and site traffic circulation be modified to improve channelization of traffic and reduction and/or consolidation of entrances/exits on major highways, or removal and/or replacement of existing signs and associated lighting.
- c. Development Activity Permitted Within The District.
  - (1) Any alteration of existing conditions of the land, uses or structures within the Highway Corridor Overlay District requiring a construction authorization from the Town from the date of enactment of this section shall henceforth be done as provided for by this section or by other sections of this Article.
  - (2) The overlay district regulations are supplementary to the permitted uses and requirements for the appropriate underlying zoning district as contained in Article 5.
- d. Development activity prohibited within the district. Uses prohibited in the underlying zoning district are also prohibited in the overlay district.

### 3. Tree Protection

The following regulations supplement, but do not supersede the Forest Conservation Ordinance adopted by the Town of North East on February 4, 2000 and as amended.

- a. Development of land for different uses and intensity of uses will often times necessitate the removal of trees to accommodate roads, parking, buildings, and facilities. It is the expressed intent of this Section that every effort be made through the design, layout, and construction of development projects to incorporate and save as many trees as possible.
- b. No person shall cut, destroy, move, or remove any living, disease-free tree of any species having a trunk with a diameter of eight (8) inches or larger, in conjunction with any development of land governed by this Ordinance unless and until such removal or destruction has been approved under the provisions of this Ordinance. Trunk diameter is measured 4.5 feet above the ground, and is referred to as "diameter at breast height (dbh)".
- c. No person shall cut or clear land of trees for the sole purpose of offering land for sale.
- d. The clear-cutting of trees is prohibited. The term "clear-cutting" as used herein shall mean the cutting of more than 75 percent of the trees six inches in trunk diameter or larger. Clear-cutting pursuant to an approved development plan shall require the planting of replacement trees as indicated in the detailed landscape plan accompanying the development application.
- e. A survey of all trees shall be made and submitted in conjunction with the preliminary development site plan. All trees proposed for removal shall be clearly noted and marked with surveyor's flagging on site to facilitate field review by Town Staff and/or Town Consultant(s). [AMENDED PER ORDINANCE 2010-02-01]

### 4. Retention of and/or Creation of a Minimum Visual Buffer along Highway Corridor Right-of-Ways

- a. Each approved application for development shall provide a minimum visual buffer between the right-of-way line of the subject roadway and all proposed structures and parking areas. The purpose of the minimum visual buffer is to soften the appearance of structures and parking lots from the road, to screen vehicular headlight glare on and off site, and to lessen spill-over light from on-site lighting. The buffer shall be continuous, except as set forth in b. below, and be no less than the requirements for Bufferyard B contained in Article 12 and Appendix A. The Planning Commission may require additional depth or density of planting at

its discretion pursuant to findings that such increases are in the public interest and support the purposes of this section. The depth of the bufferyard shall be measured from the existing right-of-way line or from the new right-of-way line should the application under consideration be required to or voluntarily provide a dedication of or easement for proposed roadway purposes. The minimum Bufferyard depth shall not occur at the high activity areas of a project. These areas include, but are not limited to, building entrances, drop-offs, and drive-thrus. [AMENDED PER ORDINANCE 2010-02-01]

To determine the average depth of the minimum visual buffer, measurements shall be taken at intervals not greater than ten (10) feet parallel to the property or right-of-way line. Side buffer areas required by other sections of this Ordinance and deep, narrow land areas shall not be used when calculating the minimum visual buffer. Where lagoons and drainage swales occur in the minimum visual buffer because of natural land forms or drainage patterns, additional buffer depth and vegetation shall be required to augment the screening effect. Detailed graphics, exemplary photographs, or renderings may be required by the Planning Commission to clarify and improve its understanding of the buffer issues involved. [AMENDED PER ORDINANCE 2010-02-01]

- b. The intent of the minimum visual buffer is to leave the naturally occurring buffer vegetation intact for its softening effect. This buffer may be enhanced or created, where such vegetation is insufficient or non-existent, with trees and shrubs of a variety of species appropriate to Town character. If the minimum visual buffer already has trees of protected size and species as noted herein, their preservation is required. Where masses of native shrubs are present, their preservation with minimum disturbance is strongly encouraged. While complete screening of a project is not required, sufficient plant material shall be installed to accomplish the softening effect required in a. above. In order to maintain the screening effect, existing vegetation shall not be limbed-up from the ground more than five (5) feet to the lowest branches. However, if understory planting is planned, existing vegetation may, with the approval of the Zoning Administrator, be limbed-up to a height that will provide adequate sunlight to those plants. Minimum height and caliper of new trees shall be consistent with provisions of the tree protection requirements in Section 3 above. Minimum height of new shrubs used to create the minimum visual buffer shall be three feet. These plantings shall be shown on a master landscape plan meeting the requirements of Section 12-8.

## 5. Exemptions from Buffer Requirements

Exemptions, whether partial or total, from the bufferyard provisions of this section may be granted by the Planning Commission if it can be sufficiently demonstrated that such bufferyard will have a deleterious visual effect upon an existing situation or that through the preservation of existing trees or other unique natural vegetative resource, particular effort on the part of a developer in protecting the existing natural environment warrants the relaxation of bufferyard requirements of this section. The following outlines those anticipated situations where the bufferyard requirement may be relaxed or removed.

- a. Protection of existing visual environment. In the following cases where the characteristics of the existing visual environment would be detracted from by the provision of a required bufferyard:
  - (1) Views and Vistas of existing buildings which exhibit a high degree of aesthetic value serving to heighten the visual experience, serve as important points of spatial identification, contain value as important historical resources.
  - (2) Views and Vistas of existing natural landscape/topographical features of a particular locale which correspond to certain high points affording panoramic views, views to settlement clusters, views of water, valleys, and other elements of the physical landscape.
  - (3) Views and Vistas to existing recreational/open space areas, whether natural or man-made, which serve to contribute to the overall visual environment. Uses such as golf-courses, local parks, cemeteries.
  - (4) Views and Vistas to which give the observer an awareness of a locations inherent character related to views of farmland, pastures, water activities, such as docks or other maritime activities specific to the area.
- b. Protection of proposed visual environment. In the following cases, where a proposed development intended to further enhance or protect the existing visual environment would be visually affected by the required bufferyard:
  - (1) A proposed development which by virtue of the characteristics of its structures indicates innovation of design, represents a focal point, and/or establishes a particular identifying element for the locale. [AMENDED PER ORDINANCE 2010-02-01]

- (2) A proposed development which exhibits innovative site landscaping, or which combines in the use of the site open recreational areas such as described above. [AMENDED PER ORDINANCE 2010-02-01]
  - c. Retention of existing natural attributes of the site. In this case, significant steps must be taken by a developer to preserve significant tree stands, topographic characteristics, even in the event that such elements are in locations where they are not wholly visible. The intent is to provide incentives to retain the features of the existing natural environment rather than encourage its destruction, and then to remedy the situation with new plantings.
  - d. Management of existing and proposed resources. In order to encourage management programs for visual natural resources, so that the continuation of such resource is assured, bufferyard requirements may be reduced or waived.
6. Permitted Activity in Minimum Visual Buffer
- a. No existing vegetation of any type, size, or origin shall be altered or removed unless it satisfies the tree protection requirements of Section 3.
  - b. Within the minimum visual buffer there shall be no development, clearing, grading, or construction activity, except for the following:
    - (1) Roadway and/or driveway access to the portion of the site not in the minimum visual buffer provided that it is approximately perpendicular to right-of-way.
    - (2) Provision for water, sanitary sewer, storm drainage, electrical, telephone, natural gas, cable, etc. service lines provided they are approximately perpendicular to the right-of-way. In the event that utilities must be installed approximately parallel to the road right-of-way, an equal amount of buffer may be required to substitute for the area of vegetation removal. Permission for easement and right-of-way disturbance and clearing for such services shall be more favorably considered when such activity is consolidated with vehicular access routes.
    - (3) Pedestrian and bicycle paths designed to provide continuous connection along the road corridor, provided that they can be constructed without materially reducing the screening and visual softening capacity of the vegetation buffer.

- (4) Lighting fixtures only for approved signs or if, for safety reasons, they cannot be placed outside the buffer and then only when electric utility lines serving these fixtures and necessary easements can be established and constructed without reducing the screening and visual softening capacity of the vegetation buffer.
- (5) Signs shall be in accordance with the sign regulations in Article 7. A reasonable effort should be made to locate all signage outside of the buffer.
- (6) Clear sight distances at the permitted entrances and exits to any development as needed to provide for reasonable traffic safety, in accordance with accepted traffic engineering practices.

## 7. Architectural Review

- a. Guidelines. The compatible relationship of architecture along highway corridors is of public concern. The intent of the architectural review is not to stifle innovative architectural design but to assure respect for, and reduce incompatible and adverse impacts on, the visual experience from the roadway. To accomplish this, the Planning Commission shall use the following guidelines in reviewing proposed structures, site improvements, signs, and streetscape improvements:
  - (1) Proposed development shall avoid excessive or unsightly grading, indiscriminate earth moving or clearing of property, and removal of trees and vegetation that could cause disruption of natural water courses or disfigure natural land forms.
  - (2) Proposed development shall be located and configured in a visually harmonious manner with the terrain and vegetation of the parcel and surrounding parcels. Structures shall impede, as little as reasonably practical, scenic views from the main road or from existing structures and the natural environment. Structures shall not dominate, by excessive or inappropriate height or mass, any general development, adjacent building, or natural landscape in an incompatible manner.
  - (3) The architectural design of structures and their materials and colors shall be visually harmonious with the overall appearance, history, and cultural heritage of the Town, with natural land forms and existing vegetation and with other development plans approved by the Town. Specific consideration shall be given to compatibility with adjacent

properties where such projects demonstrate the Town's character.

- (a) Large work area doors or open bays shall not open toward or face the highway.
- (b) Heating, ventilating, and air conditioning equipment, duct work, air compressors, other fixed operating machinery shall be either screened from view or located so that such items are not visible from the public rights-of-way within or adjacent to the site. Large trash receptacles, dumpsters, utility meters, above-ground tanks, satellite dishes, antennas, etc., shall be similarly treated, as practicably as possible. [AMENDED PER ORDINANCE 2010-02-01]
- (c) Mobile homes and office-type mobile units shall be screened from view from the highway and equipped with skirting on all sides.
- (d) All development, including those in which the principal facade is oriented to the interior of the lot, shall be designed so that all facades visible from the roadway or from adjacent sites shall be completed in an aesthetically consistent manner with the front façade. [AMENDED PER ORDINANCE 2010-02-01]
- (e) No temporary structures are permitted except those used in conjunction with and during construction projects.
- (f) Fencing along the highway right-of-way is discouraged, but, if used, such fencing shall be of quality materials (brick, stone, wood) and shall be landscaped to minimize visibility from the highway.
- (g) Long monotonous facade designs including, but not limited to, those characterized by unrelieved repetition of shape or form or by unbroken extension of line shall be avoided.
- (h) Materials with similar texture and appearance as appropriate to the Town's character.
- (i) Generally, no more than three colors per building should be used. Semi-transparent stains are recommended for application on natural wood finishes.
- (j) The location and dimensions of signs shall be indicated and shall maintain compatibility with architectural features of the building.

- (k) Architectural lighting shall be recessed under roof overhangs or generated from concealed source, low level light fixtures.
  - (l) Building massing should reflect proportion and scale appropriate to the existing Town design.
  - (m) Pedestrian lighting shall be designed and constructed to ensure light is directed toward people's feet and kept out of direct line of sight.  
[AMENDED PER ORDINANCE 2010-02-01]
- (4) The landscape plans for the proposed development shall provide visually harmonious and compatible setting for structures on the same lot and on adjoining or nearby lots and shall blend with the surrounding landscape. Natural appearing landscape forms are strongly encouraged; formal plans and the appearance of straight hedges are discouraged. Landscaping shall be required between buildings and sidewalks, parking lots and driveways. The scale of the proposed landscaping shall be in proportion to the building.
- (5) Site lighting shall be of low-intensity from a concealed source, shall be of a clear white light that does not distort colors, and shall not spill over into adjoining properties, buffers, roadways, or in any way interfere with the vision of on-coming motorists.
- (6) To the extent that they relate to aesthetic considerations, the design and construction techniques of the proposed development shall respond to energy consumption and environmental quality considerations such as heat loss, heat gain, air emission, and runoff water quality. Green technologies, such as pervious paving, bi-directional grading for interior water channeling and absorption, and integrated use of water gardens, shall be fundamental components of the landscape design. [AMENDED PER ORDINANCE 2010-02-01]
- (7) Streetscape Improvements and External Changes.
- (a) Streetscape improvements include those architectural or functional facilities or structures that occur on site but are not part of the building and that encourage and facilitate human interaction with the environment. Examples include, but are not limited to the following: decorative light fixtures, fountains, sculpture, benches and tables, planters, retaining walls, pedestrian and bicycle paths, bicycle parking structure, trash receptacles and enclosures,

vendor areas, bollards, and fences. These improvements shall be designed to be consistent with all guidelines listed above, and shall be reviewed for aesthetic functionality and compatibility with the Town's character. Inclusion of and general nature and character of such improvements will be located and presented on the preliminary site plan submission. [AMENDED PER ORDINANCE 2010-02-01]

- (b) Decorative, low-level intensity, non-concealed source lighting that defines vehicular and/or pedestrian ways may be acceptable if part of a lighting master plan. It is strongly discouraged as general lighting for a development. The master plan must show the relationship of the fixtures and the light patterns to each other, to the project site, to unit development, and to the highway corridors.
  - (c) External changes to streetscape improvements and existing structures and sites subject to review by the Planning Commission shall be consistent with all guidelines and standards in this section. External changes of a minor nature include external color and structural material changes, parking lot additions and alterations, relocation of accessory structures, and similar minor changes as determined by the Zoning Administrator.
- (8) Signs, permanent.
- (a) Reserved. [DELETED PER ORDINANCE 2011-03-01]
  - (b) The Planning Commission shall review the appearance and features of signs proposed in the Highway Corridor Overlay District in conjunction with site plan approval and the Administrator's approval shall be given only after the Commission's approval is granted. Replacement signs will not be required to be reviewed by the Planning Commission unless the location of a ground sign has been changed from the original approval granted. [AMENDED PER ORDINANCE 2011-03-01]
  - (c) All signs shall meet all requirements of Article 7.
  - (d) The amount of information on signs shall be no more than is necessary to provide reasonable identification of the name of the business to the passerby. While corporate logos that are part of a business name or business identification are authorized within Article 7, color, size, and subject matter are reviewed under subsection (1).

- (e) An integrated sign system design shall be required for all new Master Planned Communities (MPC), commercial and residential subdivisions, office complexes, malls and shopping centers within the Highway Corridor District. The establishment of integrated sign systems for existing developments is strongly encouraged. These systems shall be reviewed for materials, colors, shapes, sizes, compatibility with architecture, and establishment of unity of design for the development. Individual signs shall be reviewed for conformance with such sign systems, whether newly established or existing.
  - (f) Materials, colors, and shapes of proposed signs shall be compatible with the related building(s). Size and proportions shall not be a dominant feature of the site and shall be judged by sizes and proportions of signs on adjacent and nearby properties that are compatible with the Town's character.
  - (g) Spot-lighting of signs shall be restricted to not more than one 150-watt light per side for sign faces up to 40 square feet and nor more than two 150-watt lights per sign faces over 40 square feet. The sign base and/or proposed landscaping shall be designed to shield the light from on-coming motorists and to conceal the light fixture.
- (9) Signs, temporary.
  - (a) Temporary signs within the Highway Corridor Overlay District shall comply with the design guidelines set forth in this section for colors and materials and with Article 7 and shall be reviewed for such compliance by a committee of staff members including the Zoning Administrator.
  - (b) In the case of multiple principals (for example, owner, developer, architect, engineer, contractor, or real estate or leasing agent), all information shall be contained on a single sign not to exceed the maximum size and height allowed in Article 7.
  - (c) Temporary signs within the corridor shall not be lighted.
- b. Following project completion, all design features required by the Town or shown on approved plans shall be maintained in good condition by all subsequent owners of the property. Changes proposed shall require approval by the Commission.

## 8. Waivers of Corridor Requirements

The Planning Commission may waive one or more of the specific requirements of the Special Overlay District upon a showing by the applicant that these corridor regulations impose an undue hardship due to the peculiar configuration, topography, or location of the tract, or that the proposed project demonstrates the use of highly innovative architectural, site planning, or land use techniques. The Commission may approve any waiver to the minimum extent necessary to allow the project to be constructed. The applicant for any such waiver shall have the burden of showing that the proposed project, with such waiver granted, will be as good or better than a project developed in compliance with the District regulations in terms of environmental protection, aesthetic enhancement, land use compatibility, and traffic considerations. The grant or denial of a waiver by the Commission pursuant to this section may be appealed to the Board of Appeals.

## 9. Planning Commission Review

- a. **Applicability.** All development proposed in the Highway Corridor Overlay District and other applicable projects shall submit an application to the Zoning Administrator for review by the Planning Commission. Such application shall be reviewed for consistency with the guidelines and standards found in this Article and according to the submission and review requirements in this article. When a project lies within the jurisdiction of a private architectural review committee (ARB), the Planning Commission shall receive such (ARB)'s written notice of action prior to review.
- b. **Requirement of Complete Application; Minimum Items for Preliminary Site Plan Review.** All applications for this review shall be complete according to the requirements of this article before being reviewed by the Zoning Administrator for conformance with all standards and guidelines of this Article. No application for review shall be reviewed until the minimum items of submission required by this article have been submitted in a format acceptable to the Zoning Administrator. [AMENDED PER ORDINANCE 2010-02-01]
- c. **Application Content.** Applications submitted for review shall be considered complete if they conform to all provisions of Article 10, in addition to the information directly related to those additional provisions to be addressed as part of the special overlay district review including:
  - (1) tree survey and protection as described in Section 3;
  - (2) the boundaries of the Highway Corridor Overlay Zoning District;

- (3) required Bufferyard according to Section 4;
  - (4) signage;
  - (5) building elevations;
  - (6) proposed streetscape drawings;
  - (7) any additional information for consideration of performance criteria; and
  - (8) comments from the Cecil County Technical Advisory Committee, as appropriate.
- d. Prior to review, written notice of action by the applicable private (ARB) shall be submitted to the Administrator.

#### 10. Plan Review Procedures of Application for Corridor Review

All applications for special Highway Corridor District review shall be submitted and reviewed according to the procedures set forth in this section.

- a. Complete applications shall be submitted not less than twenty-one (21) days before the Commission meeting at which the applicant wishes to be reviewed.
- b. The Commission shall act on an application within sixty (60) days of its being found complete by the Zoning Administrator.
- c. Applicants shall be informed in writing of the outcome of their review. The Commission shall direct its determination and findings to the Zoning Administrator and the applicant in writing not more than ten (10) working days after taking action.
- d. Upon review of a project within the jurisdiction of a private (ARB), the Commission may accept, modify, or deny the (ARB's) action.
- e. In addition to those items required elsewhere in this article, an application for development plan approval shall be considered complete by the Zoning Administrator only when the Commission's final approval with written recommendations and findings shall be received by the Zoning Administrator, except when the sixty (60) day period for action has been exceeded.

Section 5-17. “MPC” Master Planned Community Floating Zone District Regulations

1. Purpose. The “MPC” Master Planned Community Floating Zone District is a floating zoning district that may be created to fulfill the purposes stated for the “R-4” Mixed-use Residential District. This means that while provisions and regulations are made to govern any development within a “MPC” District, no such district will be pre-mapped on the Zoning Map. The “MPC” District is intended to permit master planned, mixed use developments in accordance with this section and Section 6-31.
2. Approving Authority. The administration of the procedure for application for and approval of a “MPC” Master Planned Community Floating Zone District shall be vested in the Mayor and Commissioners.
3. The following uses may be permitted by the Mayor and Commissioners in a “MPC” that meets the requirements of Section 6-31.
  - a. Residential uses, including town houses, multiple-family dwellings, apartments and hotels.
  - b. Commercial apartments provided no apartment is situated at the street level and all apartment units meet applicable building and livability codes.
  - c. Bed and breakfast, country inn.
  - d. Governmental buildings.
  - e. Colleges and schools, public or private, having a curriculum and conditions under which teaching is conducted equivalent to a public school, and institutions of higher learning
  - f. Libraries, museums, art galleries, art centers, and similar uses (including associated educational and instructional activities).
  - g. Food stores, grocery stores, mini-markets and supermarkets.
  - h. Offices for professional or business purposes, including but not limited to medical, law, real estate, insurance and manufacturer's representatives' offices.
  - i. Craft or specialty shops
  - j. Dressmaking, tailoring, decorating, shoe repairing, repair of household appliances and bicycles, dry cleaning and pressing and bakery, with sales of bakery products on the premises and other uses of a similar character, provided that no use permitted in this item shall occupy more than 2,500 square feet of floor space.

- k. Retail stores, including appliance stores, book stores, furniture stores, gift shops, hardware stores, jewelry shops, wearing apparel, photographic art supply stores, antique, pet and florist shops, and greenhouses in connection with such shops.
  - l. Personal service uses, including barber shops, beauty parlors, photographic or artists' studios, messengers, taxicabs, newspaper or telegraphic service stations, dry cleaning receiving stations and other personal service uses of a similar character.
  - m. Business services, including computer repair and postal services.
  - n. Retail establishments in a group of multiple-family dwellings.
  - o. Retail establishments in an office building.
  - p. Financial institutions, banks, including drive-in banks.
  - q. Shops for the sale, service or repair of home appliances, office machines, electrical equipment and television and radio equipment.
  - r. Restaurants, standard.
  - s. Drinking Places, e.g., taverns, pubs, bars, dance halls, nightclubs, cocktail lounges subject to Section 6-15.
  - t. Health club, spa.
  - u. Funeral parlors, undertaking establishments, and mortuaries.
  - v. Live-work space.
4. Procedure for Approval of a “MPC” Floating Zone District Amendment and MPC Plan Approval
- a. Purpose. The purpose and intent of the “MPC” Floating Zone District amendment process is to permit specific and detailed mapping of areas for “MPC” to provide for the creation of carefully planned, well-designed residential, commercial and/or mixed use communities at appropriate locations.
  - b. MPC District Design Standards. Applicants shall be guided throughout the review process by the *MPC Design Guidelines*. Because it is recognized that design professionals, including architects, landscape architects, and land planners, are trained to strive for creative excellence, the design standards and criteria are not intended to restrict creative solutions or to dictate all design details. The *MPC Design Guidelines* serve as a tool for the Town planning staff by providing a checklist of elements to be

considered. The Standards also inform the design professionals of items that should be considered or included from the outset of the design process.

- c. Preliminary Application. Preliminary application for a floating zone amendment for a “MPC” District and MPC Plan approval shall be made to the Mayor and Commissioners. Preliminary applications shall include:
  - (1) A written petition for location of a “MPC” District and approval of a MPC Plan, signed by the owners, and contract purchasers, if any, of the property that is the subject of the petition.
  - (2) A narrative describing the following:
    - (a) Statement of present and proposed ownership of all land within the development;
    - (b) Overall objectives of the proposed MPC and a statement of how the proposed MPC corresponds to and complies with the goals and objectives of the Zoning Ordinance, the proposed “MPC” District, and the Comprehensive Plan;
    - (c) Method of providing sewer and water service and other utilities, such as, but not limited to, telephone, gas, and electric services;
    - (d) Storm drainage areas and description of stormwater management concepts to be applied;
    - (e) Method of and responsibility for maintenance of open areas, alleys, recreational amenities, and parking areas;
    - (f) School availability and school population impact analysis;
    - (g) General description of architectural and landscape elements, including graphic representations; and
    - (h) If petitioner desires to develop the property in phases, a preliminary phasing plan, indicating:
      - (i) The phase(s) in which the project will be developed, indicating the approximate land area, uses, densities, and public facilities to be developed during each phase.

- (ii) If different land use types are to be included within the MPC, the plan should include the mix of uses anticipated to be built in each phase.
- (3) A Concept MPC Plan, which includes:
  - (a) Boundary survey of the area subject to the application;
  - (b) Graphic and tabular presentation of proposed site development information that clearly depicts the following:
    - (i) Total acreage of subject property and identification of all adjoining landowners;
    - (ii) Description of proposed land uses, including residential, commercial, institutional, and recreational;
    - (iii) Maximum number of dwelling units, approximate densities of residential areas and anticipated population;
    - (iv) Land area and locations generally allocated to each proposed use;
    - (v) Location of proposed roads, public open space, any sensitive resource areas (environmental or cultural), and public facilities; and
    - (vi) Topography.
- d. Referral of Preliminary Application to Planning Commission. If the Mayor and Commissioners find that the Preliminary Application for a MPC District map amendment and MPC Plan approval is generally consistent with the Comprehensive Plan and the standards of the "MPC" District, the Preliminary Application shall be "conditionally approved" and referred to the Planning Commission for review in accordance with paragraph e below. "Conditional approval" as used herein means only that the Mayor and Commissioners have made a preliminary finding that the proposal is generally consistent with the Comprehensive Plan and this Zoning Ordinance. "Conditional approval" shall authorize the Planning Commission and Town staff to continue to analyze the proposal subject to all applicable review processes and procedures. No development may occur until:

- (1) a floating zone district has been applied to the property by legislative action of the Mayor and Commissioners;
  - (2) a MPC Plan is approved for the floating zone district by the Mayor and Commissioners; and
  - (3) a construction authorization has been issued, following, if applicable, final subdivision plat and/or site plan approval by all agencies with jurisdiction.
- e. MPC Plan Submittal to the Planning Commission. After the Mayor and Commissioners conditionally approves the preliminary application and Concept MPC Plan, the petitioner shall submit the following to the Planning Commission for review and recommendations to the Mayor and Commissioners:
- (1) Graphic MPC Plan Requirements:
    - (a) MPC Plan that includes the following individual sheets: Single sheets shall not exceed 36" x 48". Plans should be presented at a scale no smaller than 1" = 400' such that the entire site may be shown on a single sheet.
      - (i) Conditionally approved Concept MPC Plan;
      - (ii) Boundary Survey, including identification of adjacent property owners;
      - (iii) Existing condition information, including (information may be displayed on more than one sheet for clarity):
        - [1] Topographic survey (minimum 1' contour interval);
        - [2] Soils;
        - [3] Forested areas and tree lines;
        - [4] Wetlands, hydric soils, streams and water features;
        - [5] Steep slopes;
        - [6] Easements and deed restrictions;
        - [7] Roads, driveways and right-of-ways;
        - [8] Existing buildings; and

- [9] Existing land uses
- (iv) Proposed open space, protected areas, public and private parks;
- (v) Pedestrian and vehicular master plan showing dominant street configuration and pedestrian walking and biking alignments;
- (vi) Detailed plan of at least one (1) phase, showing:
  - [1] Road alignments;
  - [2] Lot configuration;
  - [3] Commercial area plan, if applicable;
  - [4] Public and private open space(s);
  - [5] Perspective streetscape (typical for represented phase);
  - [6] Examples of proposed residential and commercial architecture;
  - [7] Plan view, perspective and elevations of private and/or public community facilities; and
  - [8] Plan view, perspective and elevations of entrance to MPC, including gateway improvements, if applicable.
- (b) Phasing plan, including:
  - (i) The general boundaries or location of each phase. Although the Phasing Plan shall include the information required by [2] and [3] below (in narrative, tabular or graphical form), it is not required to depict the location of the land uses, densities or public facilities within each phase.
  - (ii) The phase(s) in which the project will be developed, indicating the approximate land area, uses, densities, and public facilities to be developed during each phase.

- (iii) If different land use types are to be included within the MPC, the plan should include the approximate mix of uses anticipated to be built in each phase.
- (2) Studies and reports by qualified professionals
  - (a) Traffic study that evaluates traffic impacts on proposed entrances on existing public (state, county and town) roads and major existing intersections in an area determined by the Planning Commission that may be impacted by traffic generated by the proposed project;
  - (b) Nontidal wetlands delineation;
  - (c) Endangered species study prepared by qualified professionals; and
  - (d) Historical and archeological survey.
- (3) The applicant's proposed MPC Design Standards, which shall generally conform to the elements of the *MPC Design Guidelines*. The MPC Design Standards should provide specific detail regarding:
  - (a) Site design standards in designated neighborhood and/or commercial areas, including: permitted uses, building types, frontage, setbacks and lot sizes, building heights, parking, street widths and cross-sections, sidewalks, lighting, and road geometry.
  - (b) Building standards for designated neighborhood and/or commercial areas, including: size and orientation, building facades, regulated architectural elements (windows, trim, etc.), rooflines, architectural styles, fencing, parking, and signage.
  - (c) Landscape, buffer and environmental standards, including: location and scope, materials, and scheduling.
- (4) Project Scheduling Information, including: anticipated hearings, approvals, construction start, phasing, anticipated absorption, and completion of key site elements. (Note: This information is understood to be representative of a best estimate and will be used by the Town planning agencies as a tool for long-range planning activities, but shall not be binding.)

- (5) The MPC Plan shall also include a management statement regarding the anticipated ownership, construction, operation, and maintenance of:
    - (a) Sanitary and storm sewers, water mains, culverts, and other underground structures;
    - (b) Streets, road, alleys, driveways, curb cuts, entrances and exits, parking and loading areas, and outdoor lighting systems; and
    - (c) Parks, parkways, walking paths, cycleways, playgrounds, and open spaces.
  - (6) The MPC Plan shall comply with requirements of this section and the requested floating zone district and may be accompanied by such other written or graphic material that may aid the decisions of the Planning Commission and Mayor and Commissioners.
  - (7) The Mayor and Commissioners may establish additional and supplemental requirements for the MPC Plan during its consideration of the Preliminary Application, if the Mayor and Commissioners determine such requirements are necessary to enable the Mayor and Commissioners to evaluate the particular floating zone district amendment request.
- f. Planning Commission Review and Recommendation – Floating Zone District Amendment and MPC Plan.
- (1) The Planning Commission shall review the floating zone district amendment request and MPC Plan for compliance with the requirements of this Ordinance and consistency with the Comprehensive Plan and the MPC Design Guidelines.
  - (2) The Planning Commission shall evaluate the degree to which the floating zone district request and MPC Plan incorporates and/or addresses the MPC Design Guidelines and furthers the goals and objectives of the Comprehensive Plan.
  - (3) The Planning Commission may make reasonable recommendations to the petitioner regarding changes to the MPC Plan proposal, which, in the judgment of the Commission, shall cause the proposal to better conform to the requirements of the Comprehensive Plan, the MPC Design Guidelines and the goals and objectives of this Ordinance. The petitioner may resubmit the MPC Plan to

the Planning Commission in consideration of the Commission's comments.

- (4) If after four (4) MPC Plan submissions, the MPC Plan has not received a favorable recommendation from the Planning Commission, the Commission shall make a negative recommendation to the Mayor and Commissioners setting forth its reasons as to why the MPC Plan should not be approved.
  - (5) The Planning Commission shall consider and comment on the findings required of the Mayor and Commissioners by paragraph G(2) and shall make a favorable or negative recommendation to the Mayor and Commissioners.
  - (6) The Planning Commission shall return the MPC Plan, with any revisions, together with written comments and recommendations, and its floating zone district comments, to the Mayor and Commissioners for action pursuant to the floating zone district and MPC Plan approval process.
- g. Mayor and Commissioners Approval of Floating Zone District and MPC Plan.
- (1) The Mayor and Commissioners shall review the MPC Plan and other documents, together with such comments and recommendations as may have been offered by the Planning Commission.
  - (2) The Mayor and Commissioners may approve or disapprove the proposed floating zone district map amendment and associated MPC Plan, and shall follow the procedures set forth in Article 10 for the approval of a floating zone district. Concurrently with the location of a floating zone district, the Mayor and Commissioners may approve the MPC Plan, which, in addition to the provisions of MPC District floating zone, shall govern the subdivision and/or development of the property. In approving the MPC District floating zone district map amendment, the Mayor and Commissioners shall make findings of fact, including, but not limited to the following matters: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the areas, and the relationship of the proposed amendment to the Comprehensive Plan. The Mayor and Commissioners may approve the MPC District map amendment if it finds that the proposed floating zone district amendment is:
    - (i) consistent with the Comprehensive Plan;

- (ii) consistent with the stated purposes and intent of the MPC District;
    - (iii) complies with the requirements of this Ordinance; and
    - (iv) is compatible with adjoining land uses.
  - (3) After approval of a floating zone district amendment by the Mayor and Commissioners, two (2) complete copies of the approved MPC Plan shall be filed with the Town Clerk. One (1) additional complete copy of the approved MPC Plan shall be filed with the Planning Commission for reference during its subsequent review and approval of subdivision plats and/or site plans.
  - (4) When a MPC is to be constructed in phases, final subdivision plat(s) shall not be required for a phase until such time as applications have been filed for a Federal, State, or local permit for construction of that particular phase.
  - (5) As part of the final MPC Plan approval, the Mayor and Commissioners shall approve a date for initiation of the proposed development.
  - (6) In the event that a floating zone district amendment is approved by the Mayor and Commissioners without subdivision and approval of an associated MPC Plan, the subject property may not be subdivided until the owner complies with the MPC review and approval provisions of this Ordinance, and may not be developed except in conformance with a site plan or subdivision plat as required by and in conformance with this Ordinance.
- h. Additional Required Procedures.
- (1) The administrative procedures for approval of a site plan for property located within the MPC District are set forth in this Ordinance. Site plans and/or subdivision plats shall conform to the approved MPC Plan, including the MPC design standards.
  - (2) The administrative procedures for approval of a subdivision located within the MPC District shall be those of the Subdivision Ordinance. Final subdivision plats shall conform to the approved MPC Plan.
  - (3) Any development, site plan or subdivision approval for land in a MPC District shall be consistent with the provisions of the MPC District, and the specific MPC plan applicable to

the property, as approved or amended by the Mayor and Commissioners.

i. Amendment of MPC Plan.

The procedure for amendment of an approved MPC Plan shall be the same as for a new application, except that minor amendments of a MPC Plan may be approved by the Planning Commission at a regular meeting.

Using the guidelines set forth below, the Town Administrator shall determine whether the proposed amendment is a “minor amendment”. An amendment shall be deemed a “minor amendment”, provided that such amendment:

- (1) Does not conflict with the applicable purposes and land use standards of this Ordinance;
- (2) Does not prevent reasonable access of emergency vehicle access or deprive adjacent properties of adequate light and air flow;
- (3) Does not significantly change the general character of the land uses of the approved MPC Plan;
- (4) Does not result in any substantial change of major external access points;
- (5) Does not increase the total approved number of dwelling units or height of buildings; and
- (6) Does not decrease the minimum specified setbacks, open space area, or minimum or maximum specified parking and loading spaces.

The phrase "minor amendments" includes, but is not limited to, changes to: the location, number or types of uses within the MPC or any phase(s) thereof, subject to (3), above; internal road locations or configurations; the number, type or location of dwelling units, subject to (5), above; and the location of public amenities, services or utilities.

Any amendment of a MPC Plan that adversely impacts upon the delivery or the Town’s cost of public utilities, public services, public infrastructure, or otherwise adversely affects amenities available to the public or the public health and safety shall not be considered “minor” and shall be deferred to the Mayor and Commissioners to be considered as a new application.

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