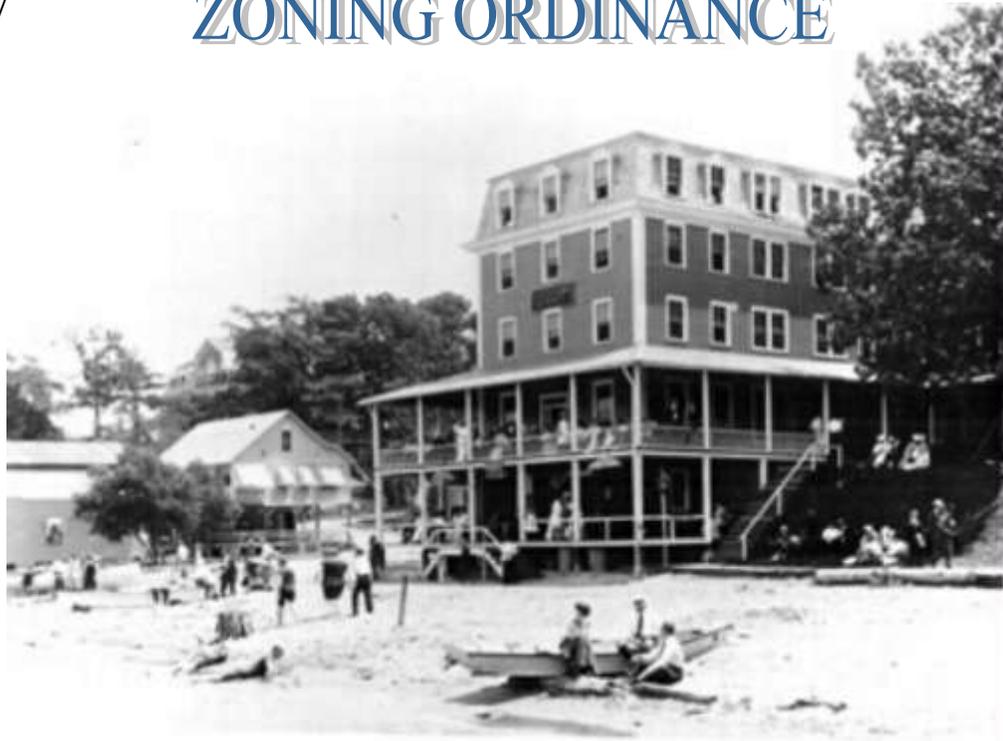


TOWN OF BETTERTON

ZONING ORDINANCE



1906

2006

**ADOPTED JUNE 20, 2006
WITH CRITICAL AREA CONDITIONS 05/04/07
& ORDINANCE CHANGES 06/22/2010**

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ARTICLE I: GENERAL PROVISIONS

Section 1: Short title

This ordinance shall be known as the "Zoning Ordinance for the Town of Betterton, Maryland".

Section 2: Applicability of Provisions

This ordinance shall apply to the incorporated territory of Betterton, Maryland. It is the intent of this ordinance that the extent of its applicability be automatically changed with the provisions hereof or provisions of state law which may effect the applicability of this Ordinance.

Section 3: Intent

- A. This Chapter is intended to promote the orderly development of the Town of Betterton, Maryland in accordance with the Betterton Comprehensive Plan or any of the component parts thereof and in compliance with Article 66B of the Annotated Code of Maryland, as amended. It is also the intent of this Chapter that the extent of its applicability shall be automatically changed in accordance with the provisions hereof or with any provision of State Law which may hereinafter affect the applicability of this Chapter.
- B. The purpose of this Zoning Chapter is to promote the health, safety, order, convenience and general welfare of the citizens of the Town in accordance with present and future needs as expressed in the Betterton Comprehensive Plan and to implement the recommendations of the Betterton Comprehensive Plan. It is the further purpose of this Zoning Chapter to provide for economic and efficient land development, encourage the most appropriate use of land, provide convenient and safe movement of people and goods, control the distribution and density of population to areas where necessary public service can be provided, protect historic and environmental areas, encourage good civic design, and provide for adequate public utilities, facilities, and services.
- C. The objective of this Chapter is to implement the "Visions" contained in the Maryland Growth Management, Resource Protection and Economic Development Act, namely:
 - 1. Development is concentrated in suitable areas;
 - 2. Sensitive areas are protected;
 - 3. In rural areas, growth is directed to existing population centers and resource areas are protected;
 - 4. Stewardship of the Chesapeake Bay and the land is a universal ethic;
 - 5. Conservation of resources, including a reduction in resource consumption, is practiced;
 - 6. Economic growth is encouraged and regulatory mechanisms are streamlined;

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7. Adequate public facilities and infrastructure under the control of the Town are available or planned in areas where growth is to occur; and
 8. Funding mechanisms are addressed to achieve these "Visions."
- D. The regulations and provisions contained in this Zoning Chapter were adopted and became effective on the twentieth day following adoption. Said Adoption having taken place on the Twentieth day of June, 2006, the Ordinance shall be effective on the Tenth day of July, 2006.

Section 4: Compliance with regulations required

No building or land shall hereafter be used and no building or part thereof shall be erected, reconstructed, converted, enlarged, moved, demolished or structurally altered unless it is in conformity with the regulations as set forth in this ordinance. A proposed change of use of land or of the building use must be approved by the Planning Commission to be in compliance with the regulations as set forth in this Ordinance.

Section 5: Location of Buildings on Lots of Record

Every building hereafter erected, reconstructed, converted, moved or structurally altered shall be located on a lot of record, and in no case shall there be more than one (1) main building on one (1) lot, unless otherwise provided for in this Ordinance. Orientation of buildings and their main entrances should face the street except in the case of accessory buildings.

Section 6: Encroachment: Lot Area, Yards, Parking, and Open Spaces

The requirements of this Ordinance for minimum yards, setbacks, height limits, and open spaces applicable to any building or lot area, cannot be used to meet the requirements of any other building or lot area.

Section 7: Time Limits Construction/Usage of Accessory Buildings

An accessory building may only be built on a lot if a main structure exists on the lot or the main structure is under construction. The accessory building may not be constructed on the lot more than six months prior to the beginning of the construction of the main structure. The accessory building may not remain on the lot after construction is finished unless it is included on the building permit as an authorized accessory structure for the main structure."

Section 8: Uses Not Permitted Are Prohibited

For the purpose of this ordinance, permitted uses are listed for the various districts. Uses not specifically listed are prohibited.

Section 9: District Regulation Tables Considered Part of Regulations

Height, area and bulk regulations applicable to each district are contained in a chart or table at the end of the ordinance. The table and all of the notations and requirements which are shown

in it or which accompany it shall be a part of these regulations and have the same force and effects as if all of the notations and requirements were fully set forth or described herein.

Section 10: Pertinent Supplementary Tables, Charts, or Schedules

Whenever reference is made in this ordinance to any other ordinance, chart, table, schedule or regulation which itself is not copied herein, a copy of such ordinance, chart, table, schedule or regulation shall be kept on file in the office of the Town Administrator and available for inspection and reference.

Section 11: Compliance with Stormwater Management/Sediment Control

Nothing contained in this ordinance shall be construed as relieving any person, firm or corporation from compliance with the provisions of the Kent County Stormwater Management and Sediment Control requirements.

Section 12: Termination of Certain Non-conforming Uses

Certain nonconforming uses shall be terminated as provided in Article XI of this Ordinance.

Section 13: Fees

- A. The Town shall establish a schedule of fees, charges and expenses and a collection procedure for applications for zoning appeal cases, zoning and map amendments, permits, site plans, and other matters pertaining to this Chapter. Such schedule shall be posted at the Town. The Town Council may amend the fee schedule by resolution.
- B. These fees may include the cost of the consulting services of an independent engineer, architect, landscape architect, land planner or similar service as may be used to assist the Town in the review of proposed development and improvement plans.
- C. Until all applicable fees, charges, and expenses have been paid in full, no action shall be taken on any application or appeal pertaining to this Chapter

ARTICLE II: DEFINITIONS

Section 1: Word Usage

The following general rules of construction shall apply to the regulations of this ordinance.

- A. The singular number includes the plural, and the plural the singular, unless the context clearly indicates the contrary.
- B. Words used in the present tense include past and future tenses, and the future includes the present.

- C. The word "shall" is always mandatory; the word "may" is permissive.
- D. The words "building or "structure" include the words "any part thereof", and the word "building" includes the word "structure".
- E. Words and terms not defined herein shall be interpreted in accord with their normal dictionary meaning and customary usage.

Section 2: Terms Defined

For the purpose of this ordinance, certain terms and words are hereby defined as follows:

ACCESSORY BUILDING - A subordinate building or a portion of the main building, the use of which is clearly incidental to or customarily found in connection with and, except as otherwise provided in this ordinance, located on the same lot as the main building or principal use of the land.

ACCESSORY DWELLING UNIT – Accessory Dwelling Unit – A residential living unit that provides complete independent living, sleeping, eating, cooking and sanitation on the same parcel/lot as the single family in which it is contained but may have a separate entrance.

ACCESSORY USE - A use which is clearly incidental to or customarily found in connection with and, except as otherwise provided in this ordinance, is located on the same lot as the principal use of the premises. When the term "accessory" is used in this chapter, it shall have the same meaning as "accessory use".

ACCESSORY STRUCTURE - A structure that is detached from the principal structure, located on the same lot and clearly incidental and subordinate to the principal structure; or if there is no principal structure on the lot, a structure that is customarily incidental and subordinate to a principal structure. (Added 5/4/07 CAC Condition)

ADMINISTRATOR - The Town Administrator of Betterton

AFFORESTATION - The establishment of a tree crop on an area from which it has always or very long been absent, or the planting of open areas that are not presently in forest cover.

AGGREGATE AREA OR WIDTH - The sum of two (2) or more designated areas or widths to be measured, limited, or determined under the provisions of this ordinance.

AGRICULTURE – The methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the related activities of tillage, fertilization, pest control, harvesting, and marketing. It also includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses and poultry and handling their by-products.

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ALLEY - A narrow public thoroughfare which provides only a secondary means of access to abutting properties and is not intended for general traffic circulation.

ANADROMOUS FISH - Fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

APARTMENT - A part of a building containing cooking and housekeeping facilities and consisting of a room or suite of rooms intended, designed, and used as a residence by an individual or single family.

APARTMENT HOUSE - See "multiple-family dwelling".

ARTERIAL STREET - A street so designated on the Major Thoroughfare Plan of Betterton.

BASEMENT - That portion of a building between the floor and ceiling which is wholly or partly below grade and has more than one-half of its height below grade.

BED AND BREAKFAST - See Tourist Home

BEST MANAGEMENT PRACTICES (BMPs) - Conservation practices or systems of practices and management measures that control soil loss and reduce water quality degradation caused by nutrients, animal waste, toxic substances, and sediment. Agricultural BMPs include, but are not limited to, strip cropping, terracing, contour stripping, grass waterways, animal waste structures, ponds, minimal tillage, grass and naturally vegetated filter strips, and proper nutrient application measures.

BLOCK FACE – One side of a street between two consecutive intersections. For example, a block-face can be one side of a town block.

BOARD - The Board of Appeals of Betterton.

BONA FIDE INTRAFAMILY TRANSFER - A transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.

BOATHOUSE - A structure over the water or within the buffer or special buffer area used to house a boat. If the structure that houses a boat is outside of the buffer or special buffer area, then it is an accessory building on the property.

BONAFIDE INTRA-FAMILY - A transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.

BUFFER (spelled with a “capital B”) - A naturally vegetated area or vegetated area established and managed to protect aquatic, wetland shoreline, and terrestrial environments

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from man-made disturbances. In the Critical Area, the establishment of a minimum 100-foot Buffer from the mean high water line of tidal waters, the edge of the bank of tributary streams, and the landward extent of tidal wetlands shall be required on a site by site basis as part of the environmental review and site analysis process. The Buffer shall be expanded beyond the minimum width to include certain sensitive areas as per requirements established in this Ordinance. (Added 5/4/07 CAC Condition)

BUFFERYARD - An area, at least 50 feet wide, located between development activity and the water (or edge of wetlands or streams), planted with vegetation consisting of native species and other appropriate plantings. This area shall be maintained primarily for wildlife habitat and water quality and shall not be maintained in a manner that conflicts with these goals such as mowing or applying herbicides. (Added 5/4/07 CAC Condition)

BUFFER MANAGEMENT PLAN - A plan designed for the management of the Buffer tailored for an individual lot or subdivision. It may include, among other things, planting plans, vegetation management and/or provisions for access to the water.

BUILD-TO LINE – An alignment which dictates the front yard setback from a street or public right-of-way, to be followed by buildings or structures fronting thereon. The build-to line does not apply to building projections or recesses.

BUILDABLE AREA - The area of that part of the lot not included within the yards or open spaces herein required.

BUILDABLE WIDTH - The width of that part of a lot not included within the open spaces herein required.

BUILDING - Any structure, having a roof supported by columns or walls, for the housing or enclosure or persons or property of any kind.

BUILDING, COMPLETELY ENCLOSED - Any building having no outside openings other than ordinary doors, windows, and ventilators.

BUILDING HEIGHT - The vertical distance from the grade to the highest point of the coping of a flat roof, or to the deck line or highest point of coping or parapet of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, shed, and gambrel roofs. When the highest wall of a building with a shed roof is within thirty (30) feet of a street, the height of such building shall be measured to the highest point of coping or parapet.

BULK - The size and shape of a building or structure and its relationship to other buildings, to the lot area for a building and to open spaces and yards.

BUSINESS DISTRICT - See "commercial district".

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CANOPY - A detachable, roof like cover, supported from the ground, deck, floor or walls of a building for protection from sun or weather.

CLEARCUTTING– The removal of the entire stand of trees in one cutting with tree reproduction obtained by natural seeding from adjacent stands or from trees that were cut from advanced regeneration or stump sprouts or from planting of seeds or seedlings by man.

CLINIC - A building or portion thereof designed for, constructed for or under construction or alteration for or used by two (2) or more physicians, surgeons, dentists, psychiatrists, physiotherapists or practitioners in related specialties or a combination of persons in these professions, but not including lodging of patients overnight.

CLUB, PRIVATE - Buildings and facilities owned or operated by a corporation, association, person or persons for a social, educational or recreational purpose, but not primarily for profit which inures to any individual and not primarily to render a service which is customarily carried on as a business.**CLUSTER DEVELOPMENT** - A residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.

CODE ENFORCEMENT OFFICER - The officer or other designated authority charged with the administration and enforcement of building construction and property maintenance codes of the Town of Betterton.

COLONIAL NESTING WATER BIRDS – Herons, egrets, terns, and glossy ibis are birds that for the purpose of nesting congregate (that is, “colonize”) in relatively few areas, at which time, the regional populations of these species are highly susceptible to local disturbances.

COMMERCIAL HARVESTING – A commercial operation that would alter the existing composition or profile, or both, of a forest, including all commercial cutting operations done by companies and private individuals for economic gain.

COMMON AREA – Any open space, private road or other land, structure or improvement, which is designed or reserved for the common use or benefit of the owners of two or more lots. “Common area” does not include any public road or other land, structure or improvement owned by the Town or the State of Maryland or any other governmental agency.

COMMUNITY PIERS - Boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

COMPATIBILITY – Provision of exemplary site design, architectural design and high quality materials that are compatible with, and do not negatively alter the character of the existing neighborhood.

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CONSERVATION EASEMENT - A non-possessory interest in land that restricts the manner in which the land may be developed in an effort to conserve natural resources for future use.

CONVALESCENT HOME - A building where regular nursing care is provided for more than one (1) person who is not a member of the family which resides on the premises.

COURT - Any open space which may or may not have direct street access and around which is arranged a single building or a group or related buildings.

CRITICAL AREA - All lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- A. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the state wetlands maps, and all state and private wetlands designated under Title 16 of the Environment Article, Annotated Code of Maryland;
- B. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Article, Annotated Code of Maryland; and
- C. Modification to these areas through inclusions or exclusions proposed by Town of Betterton and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

CRITICAL AREA COMMISSION - The Maryland Chesapeake and Coastal Bays Critical Area Commission.

DENSITY – The number of dwelling units per unit of land. “Gross density” shall mean the number of dwelling units per gross area of development tract. “Net density” shall mean the number of dwelling units per unit of remaining land after subtracting out any land area required by this Ordinance.

DEVELOPER - A person who undertakes development activity as defined in this ordinance; or a person who undertakes development as defined in the criteria of the Commission.

DEVELOPMENT ACTIVITIES - The construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures. Development activities include, among other things, structures, roads, parking areas, and other impervious surfaces, mining and related facilities, clearing, grading and septic systems. For purposes of implementing this policy, development activity does not include subdivision. (Added 5/4/07 CAC Condition)

DEVELOPMENT ENVELOPE - That portion of a parcel of land that includes all individually owned lots, required buffers, impervious surfaces, roads, utilities, stormwater management measures, any areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the Critical Area Criteria.

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DEVELOPED WOODLANDS - Areas one (1) acre or more in size that predominantly contain trees and natural vegetation and that also include residential, commercial, or industrial structures and uses.

DISTRICT - Any section of Betterton in which the zoning regulations are uniform.

- A. **COMMERCIAL DISTRICT** - Any district designated in these regulations as a business or commercial district or special Town Center Overlay District under Articles V or VI of this ordinance or containing the words "business" or "commercial" in its title.
- B. **RESIDENTIAL DISTRICT** - Any district designated in this ordinance as a residential district under Article V or VI of this ordinance.

DISTURBED AREA - The area of a site where natural cover has been removed for construction of buildings, placement of shared facilities, drives, roads, parking areas, etc. and not replaced.

DOCUMENTED BREEDING BIRD AREAS – Any forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

DRAINAGE WAYS - Minor watercourses that are defined either by soil type or by the presence of intermittent or perennial streams or topography that indicates a swale where surface sheet flows join, including: the land, except where areas are designated as floodplain, on either side of and within fifty (50) feet of the centerline of any intermittent or perennial stream shown on the U.S. Geological Service's 7 1/2 minute Quadrangle sheets covering the incorporated areas of Kent County.

DWELLING UNIT IN THE CRITICAL AREA - A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routine associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence. (Added 5/4/07 CAC Condition)

DRIVE-IN - An establishment operated to serve a patron while seated in an automobile parked in an off-street parking space.

DUPLEX – A building on one lot arranged and designed to be occupied by two (2) families living independently of each other. For purposes of this definition a building of two or more stories that is divided horizontally into two dwelling units each of which has an independent entrance either directly or through a common vestibule shall be known as a duplex. A building that is divided vertically by a common wall above and below the finished grade into

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two dwelling units each of which has an independent entrance either directly or through a common vestibule shall be known as a semi-detached dwelling.

DWELLING – Two-Family (also known as Dwelling, Twin Home) – a building designed for or occupied exclusively by two (2) families living independently of each other and consisting of two single family dwelling units, each dwelling unit occupying its own conventional lot and conveyed by deed in fee simple, connected along a common party wall with no interior circulation between the two.

DWELLING UNIT - A room or group of rooms including a kitchen and at least one bathroom occupied or intended to be occupied as separate living quarters by a single family or other group of persons living together as a separate household or by a person living alone. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or caretaker residence.

ECOSYSTEM – A more or less self-contained biological community together with the physical environment in which the community's organisms occur.

ENDANGERED SPECIES - Any species of fish, wildlife, or plants that 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 "endangered" species pursuant to the federal Endangered Species Act, 16 USC. §1531 et. seq., as amended.

ENVIRONMENTAL ASSESSMENT - A comprehensive report that describes the natural features and characteristics of a proposed development site, the changes that will occur as the result of proposed development activities on the site, the anticipated environmental impacts and consequences of the proposed development, and mitigation measures to be taken to minimize undesirable impacts to the environment.

ESSENTIAL SERVICE - Any utility facility needed to provide basic services such as water, sewer, telephone, and cable television to the individual users.

Excess Stormwater Runoff – An increase in stormwater resulting from:

- A. An increase in the imperviousness of the site, including all additions to buildings, roads, and parking lots;
- B. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
- C. Alteration of drainageways, or regrading of slopes;
- D. Destruction of forest; or

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- E. Installation of collection systems to intercept street flows or to replace swales or other drainageways.

FAMILY - An individual or two (2) or more persons who are related by blood or marriage and are living together and occupying a single housekeeping unit with single culinary facilities; or a group of not more than four (4) persons living together by joint agreement and occupying a single housekeeping unit with single culinary facilities on a nonprofit, cost-sharing basis. Domestic servants employed and residing on the premises shall be considered as part of the "family".

FILLING STATION - Any building, structure or land used for the sale, at retail, of motor vehicle fuels, lubricants or accessories or for the servicing of automobiles or repairing of minor parts and accessories, but not including major repair work such as motor replacement, body and fender repair or spray painting.

FISHERIES ACTIVITIES - Commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab-shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

FLOOR AREA:

- A. For commercial and business buildings or buildings containing mixed uses, the sum of the gross horizontal areas of the several floors of a building, measured from the exterior faces of the exterior walls or from the center line of the walls separating two (2) buildings, but not including attic space providing headroom of less than seven (7) feet, basement space not used for retailing, uncovered steps or fire escapes, accessory water towers, or cooling towers, accessory off-street parking spaces and accessory off-street loading spaces.
- B. For residential buildings, the sum of the gross horizontal areas of the several floors of a dwelling, exclusive of garages, basements and open porches, measured from the exterior faces of the exterior walls.

FOREST– A biological community dominated by trees and other woody plants covering a land area. This also includes forests that have been cut but not cleared.

Forest Interior Dwelling Birds – Species of birds that require relatively large forested tracts in order to breed successfully (for example, various species of flycatcher, warblers, vireos and woodpeckers).

FOREST MANAGEMENT – The protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.

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FOREST PRACTICE – The alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

FRONTAGE:

- A. LOT FRONTAGE - The distance for which the front boundary line of the lot and the street line are coincident.
- B. STREET FRONTAGE - All of the property on one (1) side of a street between two (2) intersecting streets (crossing or terminating), measured along the line of the street or if the street is dead-ended, then all of the property abutting on one (1) side between an intersecting street and the dead end of the street.

GARAGE, PRIVATE - A garage designed primarily for motor vehicle storage purposes only.

GRADE - Grade elevation shall be determined by averaging the elevations of the finished ground at all the corners and/or other principal points in the perimeter wall of the building.

GRANDFATHERED – The term describes the status accorded certain properties and development activities that are of record prior to the date of adoption of this Ordinance or provisions of this Ordinance.

GRANDFATHERED PARCEL/LOT - In the Critical Area a parcel or lot that was subdivided into recorded, legally buildable lots where the subdivision received final approval before December 1, 1985. (Added 5/4/07 CAC Condition)

GROWTH ALLOCATION – means:

- A. An area of land calculated as five (5%) percent of the total Resource Conservation Area (excluding tidal wetlands and federally owned land) in the County, a portion of which the Town may convert to more intense management areas to accommodate land development; also
- B. An act of the Mayor and Council, i.e., approving the Growth Allocation, which provides for conversion of a property or properties located in a Resource Conservation Area (RCA) and/or the Limited Development Area (LDA) in the Critical Area Zone to another land management classification which allows an increase in the permitted density or intensity of activity.

GUESTHOUSE - Living quarters within a detached accessory building located on the same premises with the main building and used by temporary guests of the occupants of the premises, such quarters having no kitchen facilities or separate utility meters and not rented or otherwise used as a separate dwelling.

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HABITAT PROTECTION AREA - Those specific plant and wildlife habitat areas as identified and defined in the Betterton Critical Area Program. These areas include but are not limited to: colonial nesting water birds, riparian forests, forest interior dwelling bird habitat, historic waterfowl staging and concentration areas, Natural Heritage Areas, habitats of local significance, Threatened and Endangered Species and Species in Need of Conservation.

HIGHLY ERODIBLE SOILS - Soils with a slope greater than 15 percent; or those soils with a "K" value greater than 0.35 with slopes greater than 5 percent.

HISTORIC WATERFOWL STAGING AND CONCENTRATION AREA - An area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

HOME OCCUPATION - Any occupation or activity which is clearly incidental and secondary to the use of the premises for dwelling purposes, and which is carried on by a member of a family residing on the premises, and in connection with which there is no public display or open storage of materials or generation of substantial volumes of vehicular or pedestrian traffic or parking demand or other exterior indications of the home occupation or variation from the residential character of the building, and in connection with which no more than one person outside the resident family is employed and no equipment used which creates offensive noise, vibration, smoke, dust, odor, heat, or glare. Within the above requirements, a "home occupation" includes, but is not limited to, art studios; dressmaking; professional offices of a lawyer, engineer, architect, accountant, salesman, real estate agent, insurance agent or other similar occupations; or teaching, with musical instruction limited to one (1) or two (2) pupils at a time. However, a "home occupation" shall not be interpreted to include barbershops, beauty parlors, tourist homes, animal hospitals, child-care centers, tearooms or restaurants.

HOSPITAL - A building or group of buildings having room facilities for overnight patients, used for providing services for the in-patient medical or surgical care of sick or injured humans and which may include related facilities, certain service facilities and staff offices; provided, however, that such related facility must be incidental and subordinate to the main use and must be an integral part of the hospital operations.

HOTEL - A building in which lodging or boarding and lodging are provided for more than fifteen (15) persons, primarily transient, or with more than ten (10) guest rooms or rental units offered to the public for compensation. Ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours; as such, it is open to the public in contradistinction to a boarding, rooming, or lodging house or an apartment house, which are herein separately defined. A "hotel" may include restaurants, taverns, clubrooms, public banquet halls, ballrooms, and meeting rooms.

HYDRIC SOILS - Soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition or growth, or both, of plants on those soils.

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IMMEDIATE FAMILY - Father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.

INFILL – The development of vacant, abandoned, passed over or underutilized land within built –up areas of Betterton located in the Infill Development Overlay District (IDOD).

JUNK - Dilapidated automobiles, trucks, tractors, and other such vehicles and parts thereof; dilapidated wagons, trailers and other kinds of vehicles and parts thereof; scrap building materials, scrap contractor's equipment, tanks, casks, cans, barrels, boxes, drums, piping, bottles, glass, old iron, machinery, rags, paper, excelsior, hair, mattresses, beds or bedding; or any other kind of scrap or waste material which is stored, kept, handled, or displayed.

K-VALUE - The soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

LAND CLEARING - Any activity that removes the vegetative ground cover.

LAUNDROMAT - A business that provides washing, drying, and/or ironing machines or dry cleaning machines for hire to be used by customers on the premises.

LOADING SPACE - A space within the main building or on the same lot which provides for the standing, loading, or unloading of trucks and has a minimum area of five hundred forty (540) square feet, a minimum width of twelve (12) feet, a minimum depth of thirty-five (35) feet, and a vertical clearance of at least fourteen and five-tenths (14.5) feet.

LODGING HOUSE - See "rooming house".

LOT - A parcel of land which may include one (1) or more platted lots occupied or intended for occupancy by a use permitted in this ordinance, including one (1) main building, together with its accessory buildings, and the yard areas and parking spaces required by this ordinance, and which has its principal frontage upon a street or upon an officially approved place.

- A. Corner Lot - A lot abutting upon two (2) or more streets at their intersection.
- B. Interior Lot - A lot other than a corner lot.
- C. Through (Double-Frontage) Lot - A lot having a frontage on two (2) approximately parallel streets or places.

LOT AREA - The total horizontal area within the lot lines of the lot.

LOT DEPTH - The average horizontal distance between the front and the rear lot lines.

LOT LINE - The boundary line of a lot.

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LOT WIDTH - The horizontal distance between the side lot lines, measured at the required front yard line.

MAJOR STREET OR HIGHWAY - A street or highway so designated on the Major Thoroughfare Plan of Betterton.

MARINA - A place for docking pleasure boats or providing services to pleasure boats and the occupants thereof, including minor servicing and repair to boats, but only while in the water, sale of fuel and supplies and the provision of lodging, food, beverages, and entertainment as accessory uses. A yacht club shall be considered as a "marina", but a hotel, motel, or similar use where docking of boats and the provision of services thereto is incidental to other activities shall not be considered a "marina", nor shall boat docks accessory to a multiple-family dwelling where no boat-related services are rendered be considered a "marina".

MEAN HIGH WATER LINE - The average level of high tides at a given location.

MOTEL, TOURIST COURT OR MOTOR LODGE - A building or buildings in which lodging or boarding and lodging are provided and offered to the public for compensation; as such, it is open to the public in contradistinction to a boarding or lodging house or a multiple-family dwelling. These buildings are considered the same as hotels, except that the buildings are usually designed to serve tourists traveling by automobile, the ingress and egress to rooms need not be through a lobby or office and parking is usually adjacent to the rooms.

NATURAL HERITAGE AREA – Any communities of plants or animals that are considered to be among the best Statewide examples of their kind, and are designated by regulation by the Secretary of the Department of Natural Resources.

NATURAL VEGETATION - means plant communities that develop in the absence of human activities.

NATURAL FEATURES - Components and processes present in or produced by nature, including but not limited to soil types, geology, slopes, vegetation, surface water, drainage patterns, aquifers, recharge areas, climate, flood plains, aquatic life, and wildlife.

NATURAL FOREST VEGETATION - Vegetation consisting of canopy trees, understory trees, shrubs, and herbaceous plants that are typically found in riparian areas in Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this policy shall be designed to mimic the structure and species composition of natural forests. (Added 5/4/07 CAC Condition)

NEW DEVELOPMENT - A development activity that takes place on a property with pre-development imperviousness less than 15 percent as of December 1, 1985. (Added 5/4/07 CAC Condition)

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NONCONFORMING USE - A use of land or of a building which does not conform with the uses permitted within the zoning district that the land or building is located in.

NONCONFORMING STRUCTURE - A building which does not conform to the sign, height, bulk, area, or yard setback regulations of the district in which it is located.

NON-POINT SOURCE POLLUTION – Pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or ground water seepage rather than by deliberate discharge. Nonpoint source pollution is not generally corrected by “end-of-pipe” treatment, but rather, by changes in land management practices.

NON-TIDAL WETLANDS – Those lands, excluding tidal wetlands regulated under Title 9 of the Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season. These regulations apply to the palustrine class of non-tidal wetlands as defined in “Classification of Wetlands and Deepwater Habitats of the United States” (Publication FWS/OBS 79/31, December 1979) and as identified by site survey at the time of application for a developmental activity. These lands are usually characterized by one or both of the following:

- A. At least periodically the lands support predominantly hydrophytic vegetation;
- B. The substrate is predominantly undrained, hydric soils.

NURSING HOME - See "convalescent home".

OFFSETS - Structures or actions that compensate for undesirable impacts.

OFF-STREET PARKING SPACE - An all-weather, surfaced area not in a street or alley and having an area of not less than two hundred (200) square feet, permanently reserved for temporary storage of one (1) vehicle and connected with a street or alley by a paved driveway

OPEN SPACE – Land and water areas retained in an essentially undeveloped state. Open space may include, but not be limited to, buffers and bufferyards, decorative planting, walkways, active and passive recreation areas, children’s playgrounds, fountains, swimming pools, wooded areas, and watercourses. Open space shall not include driveways, parking lots or other vehicular surfaces, any area occupied by a building, nor areas so located or so small or so circumscribed by buildings, driveways, parking lots, or drainage areas, as to have no substantial value for the purpose stated in this definition.

OPEN WATER - Tidal waters of the State that do not contain tidal wetlands and/or submerged aquatic vegetation.

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PIER - Any pier, wharf, dock, walkway, bulkhead, breakwater, pile 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.

PLACE - An open, unoccupied space, other than a street or alley, permanently reserved as the principal means of access to abutting property.

PREMISES - A lot, together with all buildings and structures thereon.

PRINCIPAL STRUCTURE - For the purpose of establishing setbacks, the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling, excluding utilities and the septic system. (Added 5/4/07 CAC Condition)

PROGRAM AMENDMENT- Any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission to be a program refinement.

PROGRAM REFINEMENT - Any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted program, or that will not significantly affect the use of land or water in the Critical Area. Program refinements may include:

1. A change to an adopted program that results from State Law;
2. A change to an adopted program that affects local processes and procedures;
3. A change to a local ordinance or code that clarifies an existing provision; and
4. A minor change to an element of an adopted program that is clearly consistent with the provisions of this subtitle and all the criteria of the Commission.

PROJECT APPROVALS – The approval of development, other than development by a State government agency, in the Chesapeake Bay Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.

PUBLIC UTILITIES - Uses or structures for the public purpose of power transmission and distribution (but not power generation); fuel transmission and distribution (but not manufacturing or storage); water treatment and distribution; sewage collection and treatment; telephone service facilities (but not utility truck terminal facilities); radio and television facilities (not including broadcasting studios); and rail or highway rights-of-way (not including stations or terminals).

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PUBLIC WATER-Oriented Recreation - Water dependent recreation facilities or activities which are available to the general public.

REDEVELOPMENT – 1) Construction in previously developed areas which may include the demolition of existing structures and building new structures, or the substantial renovation of existing structures. Projects tend to be somewhat larger and more complex than infill projects. 2) The re-use of previously used, non-agricultural land. 3) In the Critical Area a development activity that takes place on a property with pre-development imperviousness of 15 percent or greater as of December 1, 1985. (Added 5/4/07 CAC Condition)

REFORESTATION - The establishment of a forest through artificial reproduction or natural regeneration.

REGULATIONS - The whole body of regulations, texts, charts, tables, diagrams, maps, notations, references, and symbols contained or referenced in this ordinance.

RENTAL UNIT - A dwelling unit intended for rental to transients on a day-to-day or week-to-week basis, but not intended for use or used as a permanent dwelling .

RIPARIAN HABITAT – A habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.

ROOMING HOUSE - A building where, for compensation and by prearrangement for definite periods, lodging, meals, or lodging and meals are provided for three (3) or more persons, but containing no more than five (5) guest rooms or rental units.

SEASONAL AND/OR TEMPORARY USE: A use approved by the Betterton Town Council under a special permit, for a specified period of time of 100 days or less, and which may be permitted without requiring compliance with all the provisions otherwise required for land uses permitted in this ordinance:

The Town Council, at their sole discretion, may approve seasonal or temporary use permits, subject to the following minimum conditions:

1. The seasonal or temporary use is a use permitted in the zoning district for the property on which the use is proposed.
2. The proposed seasonal or temporary use has been reviewed by the Planning Commission and recommended for approval.
3. The seasonal or temporary use does not involve the construction of a permanent structure but is contained and operated in temporary or portable facilities such as tents, trailers or other vehicles

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4. Such uses shall be limited to a period not exceeding 100 days in any calendar year and approval shall be for a period of one year only. A new application shall be required each year.
5. Town Council may establish requirements for parking, loading, screening, hours of operation, provision of sanitary and waste disposal facilities and other measures necessary for the protection of public health, safety and welfare as it may deem necessary.
6. Uses involving food or food service must have the approval of the Kent County Health Department.
7. Temporary use permits may be revoked for violation of the conditions of issuance or for violation of any town ordinances.

SERVANTS' QUARTERS - Living quarters within a portion of a main building or in an accessory building located on the same lot with the main building which is used by servants employed on the premises, such quarters having no separate utility meters and not rented or otherwise used as separate dwellings.

SHORE EROSION PROTECTION – Structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area.

SIGN - For definitions pertaining to "signs", see Article VIII of this Ordinance.

SITE PLAN - A drawing illustrating a proposed development and prepared in accordance with the specifications of Article IV of this Ordinance.

SPECIAL BUFFER AREA - Those areas of the Town officially mapped by the local jurisdiction and approved by the Critical Area Commission as a Special Buffer Area, where it has been sufficiently demonstrated that the existing pattern of residential, industrial, commercial, or recreational development in the Critical Area, prevents the Buffer from fulfilling its intended functions for water quality protection and wildlife habitat conservation.

SPECIES IN NEED OF CONSERVATION – Fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article 10-2A-06 and 4-2A-03.

STEEP SLOPES - Slopes of 15 percent or greater incline.

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STORY - That portion of a building, other than a basement, included between the surface of any floor and the surface of the floor next above it or, if there is no floor next above it, the space between such floor and the ceiling next above it.

SUBSTANTIAL RENOVATION – Improvements to an exterior principal existing structure involving 500 square feet or more of existing or new floor area.

HALF STORY - A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level in which space not more than two-thirds of the floor area is finished for use. A "half-story" containing independent apartments for living quarters shall be counted as a full story.

STREET - A public thoroughfare which affords the principal means of access to abutting property.

STREET LINE - A dividing line separating a lot, tract, or parcel of land and a contiguous street.

STRUCTURAL ALTERATIONS - Any change in the supporting members of a building, such as footings, bearing walls, or partitions, columns, beams, or girders, or any substantial change in the roof or in the exterior walls, except such repair as may be required for the safety of the building.

STRUCTURE - Anything constructed or erected, the use of which requires a more or less permanent location on the ground of an attachment to something having a permanent location on the ground, including but without limiting the generality of the foregoing, signs, swimming pools, fences, backstops for tennis courts, and pergolas.

SWIMMING POOL - Any portable pool or permanent structure containing a body of water eighteen (18) inches or more in depth and two hundred fifty (250) square feet or more of water surface area and intended for recreational purposes, including a wading pool, but not including an ornamental reflecting pool or fish pond or some other type of pool located and designed so as not to create a hazard or be used for swimming or wading.

TEARDOWN – Demolition of a structure.

THREATENED SPECIES - 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 "threatened" species pursuant to the federal Endangered Species Act, 16 U.S.C., 1531 et seq., as amended.

TIDAL WETLANDS - State wetlands that are defined as any land under the navigable waters of the State below the Mean High Water Line, affected by the regular rise and fall of tide, and

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private wetlands defined as any land not considered 'State wetlands' bordering or lying beneath tidal waters, that is subject to regular or periodic tidal action and supports aquatic growth. Private wetlands includes wetlands transferred by the State by a valid grant, lease, patent, or grant confirmed by Article 5 of the Declaration of Rights of the Constitution to the extent of the interest transferred. The term "regular or periodic tidal action" means the rise and fall of the sea produced by the attraction of the sun and moon uninfluenced by the wind or any other circumstance.

Timber Harvest Plan - A plan designed to detail the commercial harvesting by cutting and removing of tree stems from a site for commercial purposes. A registered forester or landscape architect shall prepare these plans.

TOPOGRAPHY - The existing configuration of the earth's surface including the relative relief, elevations, and position of land features.

TOPOGRAPHIC FEATURES - The soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

TOURIST HOME - A building in which lodging or boarding and lodging are provided for not more that thirty (30) persons, primarily transient, or with no more than fifteen (15) guest rooms or rental units offered to the public for compensation. As such, it is open to the public in contradistinction to a rooming, boarding, or lodging house or a multiple-family dwelling, which are herein separately defined.

TOWNHOUSE - A single family dwelling forming one (1) of a group or series of three (3) or more attached single family dwellings separated from one another by party walls and without doors, windows, or other provisions for human passage or visibility through such walls from basement to roof and which have roofs which may extend from one (1) of the dwelling units to another.

TRAILER OR MOBILE HOME - Any vehicle, covered or uncovered, used for living, sleeping, business, or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses, or skirting and which is, has been, or reasonably may be equipped with wheels or other devices for transporting the vehicle from place to place, whether by motive power or by some other means. The term "trailer" shall include "camp car" and "house car".

TRAILER PARK, TRAILER COURT, OR MOBILE HOME PARK - Any site, lot, field, or tract of land upon which is located one (1) or more occupied trailers or which is held out for the location of any occupied trailer. The terms shall include any building, structure, vehicle or enclosure for use as part of the equipment for such park or court.

UNIT - A dwelling space designed for and occupied by a single family and consisting of one (1) or more individuals permanently living together and using certain rooms and housekeeping facilities in common. For example, an apartment building may contain a number of "units".

TRANSITIONAL HABITAT – A plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.

TRANSPORTATION FACILITIES - Anything that is built, installed, or established to provide or support the means of transport from one place to another.

TRIBUTARY STREAMS - Perennial and intermittent streams in the Critical Area that are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions. More detailed studies shall include field delineation and verification.

UNWARRANTED HARDSHIP - That without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

UTILITY TRANSMISSION FACILITIES - Fixed structures that convey or distribute resources, wastes, or both, including, but not limited to, electric lines, water conduits, and sewer lines.

WATER-DEPENDENT FACILITIES:

- A. Those structures or works associated with industrial, maritime, recreational, educational, and fisheries activities that require location at or near the shoreline within the required Critical Area Buffer.
- B. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on water by reason of the intrinsic nature of its operation. These activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other public water-oriented recreation areas and fisheries activities.

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

WATERFOWL BIRDS which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

Wildlife Corridor - Strip of land having vegetation that provides habitat and a safe passageway for wildlife.

WATERWAY - Any body of water, including any creek, canal, river, lake or bay or any other body of water, natural or artificial, except a swimming pool or ornamental pool located on a single lot.

WATERWAY LINE - A line marking the normal division between land and a waterway as established by Maryland State law.

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WILDLIFE CORRIDOR - Strip of land having vegetation that provides habitat and a safe passageway for wildlife.

YARD - An open space, other than a court, on a lot and which is unoccupied and unobstructed from the ground upward, except as otherwise provided in this ordinance.

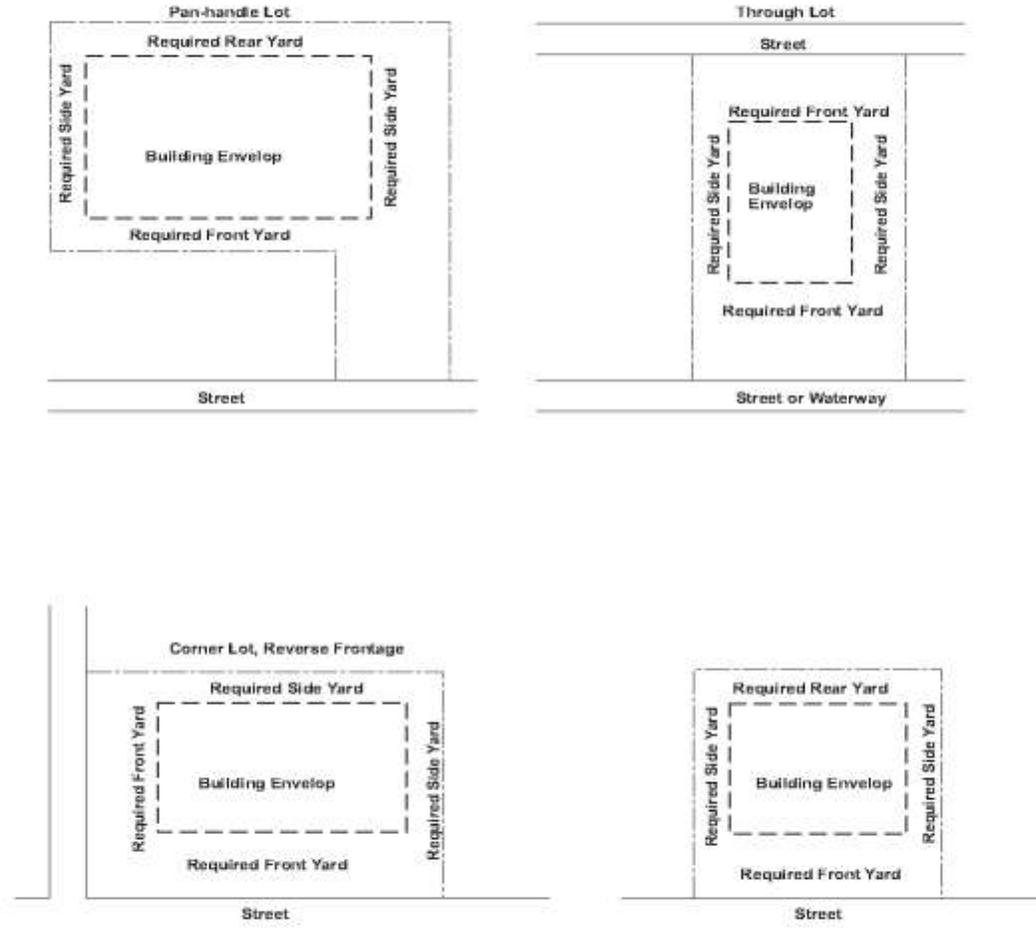
A. **Front Yard** - A yard extending across the front of a lot between the side lot lines and being the minimum horizontal distance between the street line and the main building or any projections or uncovered steps, uncovered balconies, terraces, or uncovered porches.

B. **Rear Yard** - A yard extending across the rear of the lot between the side lot lines and measured between the rear lot line and the rear of the main building or any projection other than steps, unenclosed porches or entranceways.

C. **Side Yard** - A yard between the main building and the side line or the lot and extending from the front yard to the rear yard and being the minimum horizontal distance between the side lot line and the side of the main buildings or any projections thereof.

Diagrams illustrating the location of the front, side, and rear yards, and specific types of lots authorized are as depicted: **FIGURE 1**

FIGURE 1 LOCATION OF FRONT, REAR AND SIDE YARDS



ARTICLE III: ADMINISTRATIVE MECHANISMS

Section 1: Appointment and Terms of Planning Commission Members

There shall be a Planning Commission consisting of seven (7) members , all of whom shall be residents of the Town. All seven (7) members shall be appointed by the Mayor and Town Council. The respective terms of the members and alternates shall be on a staggered basis. Vacancies shall be filled by appointment of the Mayor and Town Council for a term of five (5) years. Members of the Commission shall serve without compensation.

Section 2: Meetings of the Planning Commission

- A. The Planning Commission shall establish a regular meeting schedule and shall meet frequently enough so that it can take action on all complete applications in an expeditious manner. This shall entail at least one regular meeting each month.
- B. The Planning Commission need not conduct its meetings strictly in accordance with the quasi-judicial procedures, but shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.
- C. Minutes shall be kept of all Planning Commission proceedings.
- D. All Planning Commission meetings shall be open to the public, and whenever feasible the tentative agenda for each commission meeting shall be made available in advance of the meeting.
- E. Whenever the Planning Commission is called upon to make recommendations, on any proposal requiring a public hearing, the Town Administrator shall post on or near the subject property one or more notices that are sufficiently conspicuous in terms of size, location, and content to provide reasonably adequate notice to potentially interested persons of the matter that will appear on the Commission's agenda at a specified date and time. Such notice(s) shall be posted at least two weeks prior to the meeting at which the matter is to be considered.

Section 3: Quorum and Voting

- A. A quorum for the Planning Commission shall consist of a majority of the Commission membership (excluding vacant seats). A quorum is necessary for the Commission to take official action.

- B. All actions of the Planning Commission shall be taken by majority vote, a quorum being present.
- C. A roll call vote shall be taken upon the request of any member.
- D. All advisory members shall have all the privileges of membership except the right to vote (e.g., Planning Consultant, Critical Area Circuit Rider).

Section 4: Planning Commission Chairman

- A. The Planning Commission shall elect, by the 31st of January each year, a chairman and vice-chairman who shall serve for one year.
- B. The chairman and vice-chairman may take part in all deliberations and vote on all issues.
- C. At the first meeting each January, the Chairman shall appoint a Recording Secretary to take minutes and keep records of these and other pertinent matters in the Commission’s Minute Book, for the ensuing year.

Section 5: Powers and Duties of Planning Commission

- A. The Planning Commission may:
 - 1. Make studies and recommend to the Town Council plans, goals, and objectives relating to the growth, development and redevelopment of the Town and develop a comprehensive plan in accordance with the provisions of Article 66B of the Annotated Code of Maryland.
 - 2. Develop and recommend to the Town Council policies, administrative procedures, and other means for carrying out plans in a coordinated and efficient manner.
 - 3. Make recommendations to the Town Council concerning proposed zoning amendment requests.
 - 4. Hear and decide applications for land development and approve subdivision plats and site development plans.
 - 5. Make recommendations to the Board of Appeals on special exceptions.
 - 6. Prepare and forward to the Mayor and Council an Annual report in accordance with Article 66B of the Annotated Code of Maryland
- B. The Planning Commission may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Chapter.

- C. The Planning Commission may delegate authority for review and approval actions to the Town Administrator as deemed appropriate.

Section 6: Appointments and Terms of Board of Appeals

- A. There shall be a Board of Appeals consisting of five members to be appointed by the Council. The members shall be individuals who are residents of the Town. No member of the Board of Appeals shall be a member of the Planning Commission. Appointment shall be for a staggered term. If a vacancy occurs by resignation or otherwise, the Council shall appoint a member for the unexpired term. Members of the Board shall serve without compensation.
- B. The Town Council shall designate one alternate member for the Board of Appeals who may be empowered to sit on the Board in the absence of member of the Board. If the alternate is absent, the Council may designate a temporary alternate.

Section 7: Meetings of the Board of Appeals

- A. The Board of Appeals shall establish a regular meeting schedule at the direction of the Town Council and shall meet frequently enough so that it can take action on all complete applications in an expeditious manner.
- B. All meetings of the Board shall be open to the public, and whenever feasible the tentative agenda for each board meeting shall be made available in advance of the meeting.
- C. The Board shall keep records of all proceedings and minutes showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, which shall be immediately filed in the office of the Board and shall be a public record.

Section 8: Quorum

- A. A quorum for the Board of Appeals shall consist of a majority of the regular Board membership (excluding vacant seats). A quorum is necessary for the Board to take official action.
- B. A member who has withdrawn from the meeting without being excused as provided in Section 9 shall be counted as present for purposes of determining whether a quorum is present.

Section 9: Voting

- A. The concurring vote of the majority of the Board membership shall be necessary to reverse any order, requirement, decision, or determination of the Town Administrator

or Planning Commission, as may be the case, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance or to grant any variance.

- B. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has been excused in accordance with Subsection 3, or has been allowed to withdraw from the meeting in accordance with Subsection 4.
- C. A member may be excused from voting on a particular issue by majority vote of the remaining members present under the following circumstances:
 - 1. If the member has a direct financial interest in the outcome of the matter at issue, or
 - 2. If the matter at issue involves the member's own official conduct, or
 - 3. If participation in the matter might violate the letter or spirit of a member's code of professional responsibility, or
 - 4. If a member has such close personal ties to the applicant that the member cannot reasonably be expected to exercise sound judgment in the public interest.
- D. A member may be allowed to withdraw from the entire remainder of a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters to be considered at that meeting.
- E. A motion to allow a member to be excused from voting or excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
- F. A roll call vote shall be taken upon the request of any member.

Section 10: Board of Appeals Officers

- A. The Board of Appeals shall annually elect one of its members to serve as chairman by the 31st of January each year, who will preside over the Board's meetings, and one member vice chairman, who will preside over the board's meetings in the absence of the chairman. The person so designated shall serve in this capacity for a term of one year.
- B. The chairman or any member temporarily acting as chairman may administer oaths to witnesses coming before the Board.

- C. The chairman and vice-chairman may take part in all deliberations and vote on all issues.

Section 11: Powers and Duties of Board of Appeals

- A. The Board of Appeals shall hear and decide:
 - 1. Appeals from any order, decision, requirement, or interpretation made by the Town Administrator or Planning Commission.
 - 2. Applications for Special Exception Uses.
 - 3. Applications for variances as provided.
 - 4. Questions involving interpretations of the zoning map, including disputed district boundary lines and lot lines and questions involving permitted uses in a zoning district.
 - 5. Any other matter the Board is required to act upon by Town Ordinance.
- B. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with the provisions of this Chapter.

Section 12: Appeals

- A. Appeals to the Board of Appeals concerning the interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer, department, board, or bureau of the governing body of the Town affected by any decision of the Town Administrator. Such appeals shall be taken within fifteen days from the date that actual notice is received by the applicant. A written application shall be filed with the Town Administrator specifying the grounds for appeal and shall be accompanied by the filing fee set by the Mayor and Council. The Town Administrator shall transmit to the Board the notice of appeal and any documents constituting the record of the action from which the appeal is taken.
- B. The Board of Appeals shall hold a public hearing within 60 days of the date of the notice of the appeal. Notice of the hearing shall be given via first class mail to the appellant and shall be published in a newspaper of general circulation one time at least fifteen days prior to the hearing. The appellant shall appear in person or by agent or attorney. The Board shall issue a written opinion of its decision within forty five (45) days of the date of the public hearing.
- C. In exercising the above-mentioned powers, the Board of Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have powers of the Town Administrator from whom the appeal is taken.

Stay of proceedings: An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certified to the Board of Appeals after the notice of appeal is filed that by reason of facts set forth in the written certification, a stay would cause, in his or her opinion, imminent peril to life or property. In such a case, the proceedings shall not be stayed unless the Board of Appeals or a court of competent jurisdiction stays the proceedings for good cause shown and through the issuance of a restraining order after notice is given within a reasonable time.

Section 13: Applications for Special Exceptions

- A. A written application for a special exception shall be filed with the Town Administrator accompanied by the filing fee set by the Mayor and Council.
- B. A hearing on the application shall be set for the next meeting of the Board of Appeals after which notice may be given in accordance with Section 25.

Section 14: Powers of the Board of Appeals to Grant a Special Exception

- A. In granting any special exception, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards when made a part of the terms under which the special exception is granted, shall be deemed in violation of this Ordinance.
- B. No special exception shall be approved by the Board of Appeals unless such Board shall find:
 - 1. That the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.
 - 2. That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood.
 - 3. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause substantial depreciation in the property values within the neighborhood.

4. That adequate utilities, water, sewer, access roads, storm drainage and/or other necessary public facilities and improvements have been or are being provided.
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed special exception is not contrary to the objectives of the current Betterton Comprehensive Plan.
7. That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use.
8. Conditions and Guarantees. Prior to the granting of any special exception, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exceptions as is deemed necessary for the protection of the public interest and to secure compliance with Section 15 below.

Section 15: Conditions Attached to Approval of Special Exceptions

Where in these regulations special exceptions are permitted, provided that the Board approves them, and where the Board is authorized to decide appeals or approve certain uses such approval, decision or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

- A. No outside signs or advertising structures, except professional or directional signs.
- B. The limitation of signs as to size, type, color, location or illumination.
- C. The amount, direction and location of outdoor lighting.
- D. The amount and location of off-street parking and loading.
- E. The cleaning or painting of buildings or structures.
- F. A gable roof or other roof types.
- G. Building construction and materials.
- H. Building connected or disconnected with other buildings.
- I. Exits or entrances, doors and windows.
- J. Paving, shrubbery, landscaping or ornamental or screening fences, walls or hedges.
- K. The time of day or night for operating.
- L. A prohibition against structural changes.
- M. Improvements to ingress/egress.
- N. Improvements to street frontage.
- O. The control or elimination of smoke, dust, gas, noise or vibration caused by operations.
- P. Requirements for termination of a use, based on a lapse of time or such other conditions as the Board may specify.
- Q. Such other conditions as are necessary.

Section 16: Application for Variances

- A. A written application for a variance shall be filed with the Town Administrator accompanied by the filing fee set by the Mayor and Council.
- B. A hearing on the application shall be set before the Board of Appeals and notice shall be given in accordance with Section 12.

Section 17: Powers of The Board of Appeals to Grant a Variance

The Board of Appeals shall approve no variance unless such Board shall find:

- A. Such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.
- B. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
- C. That literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
- D. That the special conditions and circumstances do not result from the actions of the Applicant;
- E. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same zone nor will it be detrimental to adjacent properties.
- F. The character of the district will not be changed by granting a variance. No nonconforming use or neighboring lands, structures, or buildings in the same zone, and no permitted use of lands, structures, or buildings in other zones shall be considered grounds for the issuance of a variance.
- G. That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance;
- H. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;

- I. That lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the zone involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said zone.

- J. **Conditions and Guarantees.** Prior to the granting of any variance, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, and operation of the variance as is deemed necessary for the protection of the public interest and to secure compliance with Section 18 below.

Section 18: Conditions Attached to Variance Approvals

Where the Board is authorized to approve variances, such approval, decision, or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

- A. No outside signs or advertising structures except professional or directional signs;
- B. Limitation of signs as to size, type, color, location, or illumination;
- C. Amount, direction, and location of outdoor lighting;
- D. Amount and location of off-street parking and loading space;
- E. Cleaning or painting of buildings or structures;
- F. Gable roof or other roof type;
- G. Building constructions and materials
- H. Buildings connected or disconnected with other buildings;
- I. Exits or entrances, doors and windows;
- J. Paving, shrubbery, landscaping or ornamental or screening fences, walls or hedges;
- K. Time of day or night for operating;
- L. Prohibition against storefronts;
- M. Prohibition against structural changes;
- N. Control or elimination of smoke, dust, gas, noise or vibration caused by operations;
- O. Requirements for termination of a use, based on lapse of time or such other conditions as the Board may specify;
- P. Such other conditions as are necessary.

Section 19: 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.

Section 20: Disapproval of Application

If the application is disapproved by the Board, thereafter the Board shall take no further action on another application for substantially the same proposal, on the same premises, until after one (1) year from the date of such disapproval. If an appeal to the Board is perfected and the public hearing date is set and duly advertised and properly posted and thereafter the applicant withdraws the appeal, he shall be precluded from filing another application for substantially the same proposal on the same premises for one (1) year.

Section 21: Lapse of Special Exception of Variance

After the Board of Appeals has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted, or if the Board does not specify some longer period than one year at the time of approval, then the provisions of these regulations shall thereafter govern.

Section 22: Change of Conditions of Special Exception or Variance

If an applicant requests a change in the conditions of a special exception or variance, he may transmit the same to the Board with the original record without requiring that a new application be filed. Notice in accordance with Section 9-25 shall be required unless the Town Administrator determines that the requested change is minor relative to the original approval.

Section 23: Revocation of Special Exception or Other Permit

A special exception, building permit, or other permit may be revoked by the permit-issuing authority in accordance with the provisions of this section if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed in the permit or special exception. No person or persons may continue to make use of land or buildings or take any action in accordance with any building permit, sign permit, or other permit after such permit has been revoked in accordance with this section.

- A. **Special Exception:** Before a special exception may be revoked, ten (10) days notice of the intent to revoke the special exception shall be given to the recipient via certified mail by the Town Administrator or their designee. The notice shall state the alleged grounds for the revocation. The notice shall state that an appeal of the revocation shall be taken within fifteen days from the date that actual notice is received by applicant. A written application shall be filed with the Town Administrator specifying the grounds for appeal and shall be accompanied by the filing fee set by the Mayor and Council. The Town Administrator shall transmit to the Board the notice of appeal and any documents constituting the record. The Board of Appeals shall hold a public hearing within 60 days of the date of the notice of the appeal. Notice of the hearing shall be given via first class mail to the appellant and shall be published in a newspaper of general circulation one time at least fifteen days prior to the hearing. The appellant shall appear in person or by agent or attorney. The burden of presenting evidence sufficient to authorize the Board of Appeals to conclude that the special exception should be revoked shall be upon the party advocating that position. The Board shall issue a written opinion of its decision within thirty days of the date of the public hearing.
- B. **Building Permit, sign permit or other permit:** A building permit, sign permit, or other permit may be revoked for failure to comply with the specifications and conditions under which such permit was issued. An immediate stop work order may be issued in a case where in the judgment of the Town Administrator, Building Inspector or other enforcement official, continuation constitutes a threat to the health, safety or general welfare of the community. In all other cases, ten (10) days notice of the intent to revoke the permit shall be given to the recipient via certified mail by the Town Administrator or their designee. The notice shall state the alleged grounds for the revocation. The notice shall state that an appeal of the revocation may be taken within fifteen days from the date that actual notice is received by applicant in order to be considered by the Board of Appeals. A written application shall be filed with the Town Administrator specifying the grounds for appeal and shall be accompanied by the filing fees set by the Mayor and Council. The Town Administrator shall transmit to the Board the notice of appeal and any documents constituting the record. The Board of Appeals shall hold a public hearing within 60 days of the date of the notice of the appeal. Notice of the hearing shall be given

via first class mail to the appellant and shall be published in a newspaper of general circulation one time at least fifteen (15) days prior to the hearing. The appellant shall appear in person or by agent or attorney. The burden of presenting evidence sufficient to authorize the Board of Appeals to conclude that the permit should be revoked shall be upon the party advocating that position. The Board shall issue a written opinion of its decision within thirty (30) days of the date of public hearing.

Section 24: Hearing Procedures for Appeals and Applications

- A. Before making a decision on an appeal or an application for a variance, special exception, or a petition from the Planning Commission or Town Administrator to revoke a special exception, the Board of Appeals shall hold a hearing on the appeal or application.
- B. The hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of persons who testify.
- C. The Board of Appeals may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.
- D. The Board may continue the hearing until a subsequent meeting and may keep the hearing open to take additional information up to the point a final decision is made. The Board shall announce the date and hour of continuance of such hearing while in session.

Section 25: Notice of Hearing

The Town Administrator shall give notice of any hearing required by Section 25 as follows:

- A. Notice of the time and place of the public hearing, together with a summary of the proposed regulation, restriction, or boundary, shall be published in at least 1 newspaper of general circulation in the jurisdiction once each week for 2 successive weeks, with the first such publication of notice appearing at least 14 days prior to the hearing.
- B. Notice shall be given to the appellant or applicant or to any other person who makes a written request for such notice by mailing to such persons a written notice before the hearing.

- C. The notice required by this section shall state the date, time, and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

Section 26: Evidence

- A. The provisions of this section apply to all hearings for which a notice is required as set forth in this Ordinance.
- B. All persons who intend to present evidence to the board, rather than arguments only, shall be sworn.
- C. All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based upon reliable evidence. Competent evidence (evidence admissible in a court of law) shall be preferred whenever reasonably available, but in no case may crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable, and the matter at issue is not seriously disputed.

Section 27: Modification of Application at Hearing

- A. In response to questions or comments by persons appearing at the hearing or to suggestions or recommendations by the Board of Appeals, the applicant may agree to modify his application, including the plans and specifications submitted.
- B. Unless such modifications are so substantial or extensive that the Board cannot reasonably be expected to perceive the nature and impact of the proposed changes without revised plans before it, the Board may approve the application with the stipulation that the permit will not be issued until plans reflecting the agreed upon changes are submitted to the planning staff.

Section 28: Record

- A. A tape recording or transcribed record prepared by a legal stenographer shall be made of all hearings required by Section 24, and such recordings shall be kept for at least two years. Accurate minutes shall also be kept of all such proceedings. A, and a transcript will be made only where requested and paid for.
- B. Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made a part of the record of the proceedings and shall be kept by the Town for at least two years.

Section 29: Written Decision

- A. Any decision made by the Board of Appeals regarding an appeal or variance or issuance or revocation of a special exception shall be reduced to writing and served upon the applicant or appellant and all other persons who make a written request for a copy.

- B. In addition to a statement of the Board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusions, as well as supporting reasons or facts, whenever this Article requires the same as a prerequisite to taking action.

ARTICLE IV: ADMINISTRATIVE PROVISIONS

Section 1: Administration and Enforcement

- A. The Town Administrator or their designee shall administer and enforce this Ordinance. He may be provided with the assistance of such other persons as necessary to provide assistance in interpretation of these regulations (e.g. Critical Area Circuit Rider or Town Planning Consultant).

- B. If the Town Administrator shall find that any of the provisions of this Ordinance are being violated, he shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of illegal use of land, buildings, or structures; removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; discontinuance of any illegal work being done; or shall take any other action authorized by this Ordinance to insure compliance with or to prevent violation of its provisions.

Section 2: Certificates of Occupancy

- A. No vacant land shall be occupied or used, except for agricultural uses, until the Town of Betterton shall have issued a certificate of occupancy.

- B. No premises shall be used and no buildings hereafter erected or structurally altered shall be used, occupied or changed in use, except for agricultural uses, until a certificate of occupancy and compliance shall have been issued by the Town of Betterton which states that the building or proposed use of a building or premises complies with the building laws and the provisions of these and other applicable regulation.

- C. Certificates of occupancy and compliance shall be applied for coincident with the application for a building permit and shall be issued within ten (10) days after the erection or structural alteration of such buildings shall have been completed in conformity with the provisions of these and all other applicable regulations. A record of all certificates shall be kept on file in the office of the Administrator.

- D. A certificate of occupancy shall be required for all nonconforming uses. The Zoning Administrator shall be responsible for establishing and maintaining a list of all legal nonconforming uses existing as of the date of adoption of this ordinance. Such list shall be maintained so long as legal nonconforming uses continue to exist.

Section 3: Permit Requirements

- A. No building shall be erected, constructed, structurally altered, moved, demolished, converted, extended or enlarged without the owner or owners first having obtained a building permit therefore from the Town Administrator. Permit shall require conformity with the provisions of this ordinance. When issued, such permit shall be valid for a period of twelve (12) months. All buildings and structures shall comply with the yard and height requirements of this ordinance, whether or not a building permit is required.
- B. No permit for excavation for any building shall be issued before a sediment control permit has been obtained.
- C. Change or alteration of the use of any building, structure, or land shall not be permitted until a permit is obtained from the Town Administrator.
- D. All applications for building and use permits shall include a scaled diagram showing the actual shape and size of the parcel, the location and size of the building or structure, the proposed use of land and buildings, and such information which may be required by the Town Administrator to assure compliance with and to provide enforcement of this ordinance. A careful record of the original copy of such applications and plats shall be kept in the office of the Town Administrator, and a duplicate copy shall be kept at the building at all times during construction for use by the Town Administrator and/or Code Enforcement Officer.

Section 4: Fees

- A. A schedule of fees, charges and expenses and other matters pertaining to this Ordinance shall be established by the Mayor and Council. The Planning Commission may, from time to time, prepare recommended changes in the fee schedule.
- B. The payment of the appropriate fee in advance to the Town Clerk shall be deemed a condition precedent to the consideration of such appeal, conditional use permit or amendment. Fees shall be refunded on request if an application is withdrawn before publication.

Section 5: Interpretation of Provisions, Purpose and Conflict

In interpreting and applying the provisions of this ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare. It is not intended by this ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this ordinance imposes a greater restriction upon the use of buildings or premises or upon height of buildings or requires larger open spaces than are imposed or

required by other resolutions, ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this shall govern. If, because of error or omission in the Zoning District Map, any property in the jurisdiction of this ordinance is not shown being in a zoning district, the classification of such property shall be classified R-1 Single-Family Residential until changed by amendment.

Section 6: Enforcement Officer Designated; Violations and Penalties

A. Powers and duties of enforcement officer.

1. It shall be the duty of Town Administrator through the Code Enforcement Officer to enforce the provisions of this ordinance and to refuse to issue any permit for any building or for the use of any premises which would violate any of the provisions of said ordinance. It shall also be the duty of all officers and employees of the town to assist the enforcement officer by reporting to him any seeming violation in new construction or reconstruction or in the use of land or buildings.
2. In case any building is erected, constructed, reconstructed, altered, repaired or converted or any building or land is used in violation of this ordinance, the Town Administrator is authorized and directed to institute any appropriate action to put an end to such violation.

B. Penalty provisions.

1. Any violation of this article shall be a Class E Municipal Infraction subject to the penalties prescribed in Section 10-302 General Municipal Infraction Penalties Chapter X Code Violations of the Code of Ordinances of the Town of Betterson. Each day a violation continues to exist may be deemed separate offense.
2. A violation of the terms of Article VIII of this ordinance, relating to signs, shall be considered a municipal infraction subject to a penalty as provided in Article X Section 1003 of the Betterson Town Charter.

Section 7: Site Plan Review Required for Certain Uses

Site development plans are required to ensure that development complies with the Comprehensive Plan, Land Use Ordinance, Subdivision Regulations and other agency requirements thereby promoting the health, safety, and general welfare of the Town of Betterson residents.

A. General Requirements

1. Plans requiring site plan review shall be submitted fifteen (15) days prior to the scheduled Planning Commission Meeting. Ten copies of any site plan for review shall be submitted to the Town Administrator, who shall review the plans for compliance with these regulations. He shall transmit said plans to the Planning Commission with his comments along with review comments from the Town Planner and Critical Area Circuit Rider for the next regular meeting.
2. All commercial and industrial development, multi-family dwellings, major and minor subdivisions, conditional uses, public facilities, and quasi-public facilities require Site Plan Review – Sketch/Concept Plan, Preliminary Plan, and Final Plan (See Appendix A for a check list of requirements at each stage).
3. Single family homes, accessory uses, remodeling projects and adaptive reuse projects require Plot Plan Review. These projects have minor impact, require less information, and have a short review and approval process. These may be reviewed and approved by the Town Administrator or their designee. Information regarding application procedures are available in C-1 below and in Town Hall.
4. Site plans both major and minor shall expire after twelve (12) months unless otherwise extended. Site Plans approved prior to the date of adoption of this Ordinance shall expire six (6) months after that date, unless otherwise extended.
5. When the applicant can show that the project is in the process of obtaining permits from a state, local or federal agency and that these permits have been pursued diligently, the Planning Commission shall grant a 12-month extension. A site plan may receive more than one extension.
6. Site Plans under appeal shall be automatically extended for twelve (12) months. A Site Plan may receive more than one extension.

B. Review Procedures

1. Procedures for land subdivision and approval are set forth in the Betterton Subdivision Regulations.
2. Plan Review – The following individuals, departments or agencies will review plans according to their specified area of responsibility:
 - Town Administrator or Planner
 - Planning Commission
 - Town Roads, County Roads and/or State Highway Administration
 - Kent County Soil Conservation Service-Stormwater and Sediment & Erosion Control

- Betterton Director of Public Works
 - Town Engineer
 - Health Department
 - Critical Area Commission
 - Kent County Technical Advisory Committee (TAC)
 - Kent County Forest Conservation
 - Any other state or local agency as requested by the Planning Commission
3. These procedures are to protect the health, safety, convenience and general welfare of the inhabitants of Betterton. Site Plan review regulates the development of structures and sites in a manner which considers the following concerns and, where necessary, requires notification of development proposals to eliminate or minimize potential problems and nuisances. The principal areas of concern are:
- a. The balancing of landowners' rights to use their land, with the corresponding rights of abutting and neighboring landowners to live without undue disturbances (e.g., noise, smoke fumes, dust, odor, glare, stormwater runoff, etc.);
 - b. The convenience and safety of vehicular and pedestrian movement within the site, and in relation to adjacent areas or roads;
 - c. The adequacy of waste disposal methods and protection from pollution of surface or groundwater; and
 - d. The protection of historic and natural environmental features on the site under review, and in adjacent areas.
4. The Planning Commission or reviewing agency, shall review the site plan and supporting documents, taking into consideration the reasonable fulfillment of the objectives listed below:
- a. Conformance with the provisions of all applicable rules and the Comprehensive Plan, Zoning Ordinance and any other applicable state and federal regulations of the Town of Betterton.
 - b. Convenience and safety of both vehicular and pedestrian movement within the site and in relationship to adjoining ways and properties.
 - c. Provisions of the off-street loading and unloading of vehicles incidental to the normal operation of the establishment, adequate lighting, and internal traffic control.
 - d. Reasonable demands placed on public services and infrastructure.
 - e. Availability of water and sewer to support the proposed project.

- f. Protection of abutting properties and Town amenities from any undue disturbances caused by excessive or unreasonable noise, smoke, vapors, fumes, dust, odors, glare, stormwater runoff, etc.
- g. Minimizing the area over which existing vegetation is to be removed. Where tree removal is required special attention shall be given to planting of replacement trees and conformance with the Betterton Forest Conservation Ordinance
- h. The applicant's efforts to integrate the proposed development into the existing landscape through design features such as vegetative buffers roadside plantings and the retention of open space and agricultural land.
- i. The building setback areas and location of parking, architectural compatibility, signage, landscaping of the development, how these features harmonize with the surrounding townscape and the natural landscape.

C. PLAN REQUIREMENTS

- 1. Plot Plans – The following information may be required as determined by the Town Administrator:
 - a. Plat showing existing and proposed topography, location and dimensions of lot, lot and block number and name of subdivision, if any;
 - b. Road name(s) width of abutting right-of-way, centerlines, road widths, and grades;
 - c. Front, side and rear yard widths easements;
 - d. Sediment control measures and limit of work;
 - e. Discharge and storm drainage measures including rights and easements;
 - f. Legal restrictions (such as easement existing covenants zoning boundaries etc.);
 - g. Acreage and boundary of the Critical Area, if any;
 - h. Location of existing and proposed structures, new construction, driveways, other access and distance to all property lines;
 - i. Where applicable, location of any waterway, tidal wetlands (state and private) and non-tidal wetlands;
 - j. Where applicable, existing and proposed impervious surface coverage, existing forest and proposed clearing and the minimum 100-foot Critical Area Buffer.

2. Concept/Sketch Plan

- a. The scale should be 1 inch equals 100 feet or greater detail. The Planning Commission may authorize the use of a different scale or waive the requirement for a scale drawing, if, in the Administrator's opinion, the information shown on the plat can be presented with equal clarity by the use of a different scale or drawing.
- b. The proposed street layout, building setback lines, building location, if known, building height, if known, flood plain limits, steep slopes in excess of 15%.
- c. Vicinity map, with site location clearly marked with north arrow.
- d. Title block that includes names of owners of record and where applicable, names of developer or architect, surveyor, planner, and/or engineer.
- e. Property boundaries and names of adjoining property owners.
- f. Where applicable, the Critical Area boundary, designation, 100 foot or expanded buffer and any known habitat protection areas and buffers.
- g. Existing features, whether natural or manmade, that may influence the design of the project including but not limited to the following:
 - (1) Natural features to be preserved in accordance with these regulations;
 - (2) Slopes in excess of 15% separate from those in excess of 25%;
 - (3) Watercourses and buffers, including both perennial and intermittent streams;
 - (4) Forest stand delineation as per the Betterton Forest Conservation Ordinance and the Natural Heritage Letter from the Maryland Department of the Environment.
 - (5) Existing buildings, parking, and other impervious surfaces;
 - (6) Tidal, state and private, and non-tidal wetlands and buffers;
 - (7) Scenic, cultural and/or historic areas on site.
- h. Proposed use, street layout, parking and loading areas, building setback lines, building location, if known, and recreation and open space areas.
- i. Conceptual stormwater management.

3. Preliminary Plan

- a. The scale should be 1 inch equals 100 feet or greater detail. The Planning Commission may authorize the use of a different scale or waive the requirement for a scale drawing, if, in the Administrator's

opinion, the information shown on the plat can be presented with equal clarity by the use of a different scale or drawing.

- b. A vicinity map at a scale that clearly delineates the proposed project, shows major streets within 1000 feet of the proposed project, and abutting properties.
- c. Title Block that includes names of owners of record and where applicable, names of developer, architect, surveyor, planner, and/or engineer; location by street address, election district, county and state; date of plan and all revisions.
- d. North arrow
- e. Property boundaries
- f. Field run or aerial topography and a boundary survey of the property. The Planning Commission may amend the field topography contour requirements..
- g. The existing classification and the zoning classifications for abutting properties.
- h. The project name, section and lot numbers along with the location by election district.
- i. Each existing easement, covenant, zoning boundary, and right-of-way, including railroad and utility rights-of-way, ditches and stormwater management structures and devices, and the purpose of which these easements, covenants, or right-of-way were established.
- j. Existing features, whether natural or man-made, that may influence the design of the project including:
 - (1) Mapped soil classifications,
 - (2) 100 Year floodplains and flood elevations,
 - (3) Natural features to be preserved, in accordance with these regulations,
 - (4) Watercourses,
 - (5) Slopes in excess of 15% separately from those in excess of 25%,
 - (6) Existing forest or trees,
 - (7) Tidal and non-tidal wetlands and buffers.
 - (8) Scenic or historic structures or areas, on site.
 - (9) Existing buildings,
 - (10) Sewer, water mains, culverts, fire hydrants, power transmission towers, and the approximate location, pipe size, and direction of flow of each underground utility that exist in or is contiguous to the property,
 - (11) Habitat protection areas.

- k. The location width, and name of each existing improved or unimproved street or alley within 200 feet of the proposed project.
- l. The layout of the project with:
 - (1) The approximate dimensions and minimum areas of all lots or buildings;
 - (2) The proposed use;
 - (3) The proposed setbacks;
 - (4) Proposed driveways and parking and loading areas; including the number of spaces for multi-family structures;
 - (5) Proposed building locations; for multi-family structures, height, and number of stories
 - (6) Setbacks from the boundaries, streets, lot lines, and structures for multi-family development;
 - (7) Areas reserved for public use; recreation, open space, utilities, and other easements.
- m. Conceptual and schematic plans for:
 - (1) Water and sewer services;
 - (2) Stormwater management system;
 - (3) Grading and sediment control measures;
 - (4) Landscaping.
- n. A Preliminary Forest Conservation plan as per the Betterton Forest Conservation Ordinance showing natural vegetation to remain, the areas intended for buffering and screening or to be landscaped, and the general location of street trees.
- o. A tabulation of the following:
 - (1) Total acreage;
 - (2) Acreage in 100-year floodplain;
 - (3) Acreage in Critical Area;
 - (4) Acreage in recreation and open space;
 - (5) Acreage of impervious surfaces;
 - (6) The total number of dwelling units or building types;
 - (7) Total area of development envelope;
 - (8) The number and type of multi-family units for each structures and the total number of units with the subtotal of each type;

- (9) The total number of parking and loading spaces, the number of parking and loading spaces in each off-street parking area, and total number of handicap parking spaces;
 - (10) Where applicable, maximum number of employees.
- p. Critical Area boundary with designation and delineation of the 100-foot buffer, if applicable.
 - q. Proof that the required utilities, i.e., electric and telephone are available to the site.
 - r. Statement of provisions for ultimate ownership and maintenance of all parts of the development, including streets, and open space.
 - s. Delineation of development staging, if any.
4. Final Plans
- a. The scale should be 1 inch equals 100 feet or greater detail. The Planning Commission may authorize the use of a different scale if, in the Administrator’s opinion, the information shown on the plat can be presented with equal clarity by the use of a different scale or drawing.
 - b. North arrow, vicinity map, with site location clearly marked.
 - c. Title block that includes:
 - (1) Names of owners of record and where applicable, names of developer, architect, surveyor, planner, and/or engineer;
 - (2) Location by street address, election district, county and state;
 - (3) Date of plan and all revisions.
 - d. Signature blocks for the Planning Commission, and any others deemed necessary by the town.
 - e. Names of adjoining property owners with Liber and Folio, recording reference, and lot numbers of adjoining recorded subdivisions.
 - f. Location and description of all monuments as may be required.
 - g. No distances marked “approximate” except mean high water.
 - h. Where applicable, the Critical Area boundary and minimum 100 foot buffer, stream protection corridor; habitat protection area; Final Forest Conservation Plan; and 100-year floodplain boundary and flood elevation.
 - i. Existing features, whether natural or manmade, that may influence the design of the project including but not limited to the following:

- (1) Natural features to be preserved in accordance with these regulations;
 - (2) Slopes in excess of 15% separate from those in excess of 25%;
 - (3) Watercourses and buffers, including both perennial and intermittent streams;
 - (4) Final Forest Conservation, Retention and/or Reforestation/Afforestation Areas.
 - (5) Tidal, state and private, and non-tidal wetlands;
 - (6) Scenic, cultural and/or historic areas;
 - (7) Existing buildings, parking, and other impervious surfaces.
- j. The exact dimensional layout of the project including buildings, parking, loading spaces, driveways, alleys, use, all easements, etc.
 - k. Registered surveyor's, architect's, and/or engineer's signature and seal, as applicable.
 - l. Landscaping, lighting and signs.
 - m. Renderings and elevations, if applicable
 - n. Deed restrictions, bonds, irrevocable letter of credit, or other surety in a form approved by the Town attorney and accepted by the Betterton Mayor and Council.

Section 8: Site Plan Requirements in the Critical Area District

A. PURPOSE

1. The requirements of this section shall apply to all proposed multi-family dwellings, industrial and commercial buildings and developments, in the Betterton Critical Area District.
2. The purpose of the site plan is to assure detailed compliance with applicable provisions of this ordinance and the Betterton Critical Area Program and to prescribe standards for the design and construction of site improvements. Development in the Critical Area requiring site plan approval shall be permitted only in accordance with all the specifications contained on an approved site plan, and shall not be undertaken until the site plan is approved by the Planning Commission and the Critical Area Commission and all the required construction permits have been obtained subsequent to such approval.
3. Site plans reviewed under this section shall be approved by the Planning Commission in consultation with the Critical Area Circuit Rider.

- B. In addition to information set forth an Environmental Assessment shall be submitted with the Preliminary Site Plan and approved prior to Final Site Plan approval.

Section 9: Changes and Amendments to Site Plans; Conditions for Approval

The procedure for amendment of the boundaries or for a change in the extent of land use for an approved site plan shall be the same as for a new application, except that minor amendments of an approved site plan or of the conditions attached to a conditional use or site plan may be approved by the Planning Commission at a regular meeting after written reports by the Administrator and without a public hearing, provided that such change or amendment:

- A. Does not alter a recorded plat.
- B. Does not conflict with the specific requirements of this ordinance.
- C. Does not change the general character or content of an approved development plan or use.
- D. Applies to an approved condition originating with the Planning Commission and not the Mayor and Council.
- E. Has no appreciable effect on adjoining or surrounding property.
- F. Does not result in any substantial change of major external access points.
- G. Does not increase the approved number of dwelling units or height of buildings.
- H. Does not decrease the minimum specified yards and open spaces or the minimum specified parking and loading spaces.

Section 10: Changes and Amendments Generally

- A. **Initiation of Change:** The Mayor and Council may, from time to time, amend, supplement or change, by ordinance, the boundaries of the districts or the regulations herein established. Any such amendment may be initiated by resolution of the Mayor and Council or by motion of the Planning Commission or by Petition of the owner of any property addressed to the Mayor and Council. Petitions for change or amendment shall be on forms and filed in a manner prescribed by the Planning Commission. No amendment shall be granted within the Critical Area Overlay District without approval of the Critical Area Commission.
- B. **Report from Planning Commission:** Before taking any action on any proposed amendment, supplement or change, the Mayor and Council shall submit the same to the Planning Commission for its recommendations and report. Failure of the Commission to report within sixty (60) days after the date of official submission shall be deemed an approval thereof.

C. Notice and Hearings:

1. The Planning Commission may hold a public hearing on any proposal, amendment, supplement or change before submitting its report to the Mayor and Council. If the Planning Commission holds a public hearing, the notice of the hearing shall consist of a publication, at least fifteen (15) days prior to the hearing, in the newspaper of general circulation, which specifies the time, place and nature of the hearing. In addition, the Commission shall cause the date, time, place and nature of the hearing to be posted conspicuously on the property in accordance with the rules of the Commission. The published and posted notices shall contain reference to the place within the Town where the plans, ordinances or amendments may be examined.
2. Before approving any proposed change or amendment, the Mayor and Council shall hold a public hearing thereon, notice of said hearing to be accomplished by publication in a newspaper as prescribed above.

D. Time Limitation for Reconsideration:

Whenever a petition requesting an amendment, supplement or change has been denied by the Mayor and Council, such petition or one substantially similar shall not be reconsidered sooner than one (1) year after the previous denial.

Section 11: Special Amendment Requirements in the Betterton Critical Area

A. Program Changes. The Town Council may from time to time amend the Town Critical Area Program. Critical Area Program changes include, but are not limited to, amendments, revisions, and modifications to zoning regulations, subdivision regulations, Critical Area Maps, implementation procedures, and local policies that affect the Town's Program. All such amendments, revisions, and modifications shall also be approved by the Critical Area commission as established in Section 8-1809 of the Critical area Law. No such amendments shall be granted without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law Section 8-1809(i) and Section 8-1809(d), respectively. (Added 5/4/07 CAC Condition)

B. 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 requests 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.
(Added 5/4/07 CAC Condition)

B. Zoning Map Amendments: Except for program amendments or program refinements developed during a six-year comprehensive review, a zoning map amendment i.e., Intensely Developed Area (IDA), Limited Development Area (LDA) or Resource Conservation Area (RCA), other than by changing a classification through granting of Growth Allocation, the Mayor and Council shall not approve amendments unless it is found that there was a mistake in the original classification and that the amendment is approved by the Critical Area Commission. 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. The applicant shall be responsible for all costs of advertising, costs of any and all hearings and any expert consultation required by the Planning Commission and/or the Town Council. Upon completing Findings of Fact, these documents shall be forwarded to the Town Council. The Town Council shall hold a public hearing at which 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. After the Town Council approves an amendment, they shall forward their decision and applicable ordinances and resolutions along with the amendment request to the Critical Area Commission for final approval. (Added 5/4/07 CAC Condition.)

D. Program Amendments and Refinement. 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, the Zoning Ordinance, Subdivision Regulations, Critical Area Maps, 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 refinement or amendment to the Town with a list of changes to be made.

ARTICLE V: ZONING DISTRICTS AND MAPS

Section 1: Districts Established

- A. In order to regulate and restrict the location and use of buildings and land for trade, residence and other purposes and to regulate and restrict the location, height and size of buildings hereafter erected or structurally altered, the size of yards and other open spaces and the density of population, the following zoning districts are hereby established:

Residential Districts

- R-1 Single-Family Residential District
- R-2 Single-Family Residential District
- R-3 Two-Family and Multi-Family Residential District

Business and Commercial Districts

- B-1 Neighborhood Business District
- C-1 Commercial Marine District
- TC-1 Town Center Overlay District

Special Districts

- CAZ-1 Critical Areas Overlay District
- GA Growth Allocation Floating Zone District
- IDOD Infill Development Overlay District
- PN Planned Neighborhood Floating Zone District

- B. For the purpose of reference hereafter in this ordinance, unless specifically provided to the contrary, the term "residential district" shall include all single family and multiple family districts; the term "commercial district" shall include all commercial and business districts.

Section 2: Adoption of Zoning District Map

The district classification of the territory within the Incorporated Town of Betterton shall be as shown on the map designated as the Zoning District Map, Betterton, Maryland, which has been dated, signed by the Mayor and attested by the Town Council upon adoption. This Zoning District Map and all notations, dimensions, references, and symbols shown thereon: pertaining to such districts shall be as much a part of this ordinance as if fully described herein and shall be filed as part of this ordinance by the Town Clerk. Said map shall be available for public inspection in the office of the Town Clerk. Such map shall be marked "Original Copy, not to be altered or removed from the office of the Town Clerk, except on court "subpoena". This map, together with subsequent applicable amendments, shall be conclusive as to the current zoning status of land.

TOWN OF BETTERTON

Zoning Ordinance with Critical Area Commission Conditions of Approval 5/4/07

And Ordinance changes 6/22/10

Printed 12/9/2010

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- A. No later than 30 days after April 30 of the year of adoption of this ordinance, prints of the Zoning District Map, clearly showing the zoning district boundaries and zoning district names and designations for the Incorporated Town of Betterton shall be made available to the public. In each calendar year thereafter, if there have been any changes in the permitted uses, zoning district boundaries, zoning regulations, or district classifications during the preceding calendar year, such map shall be revised no later than April 30 to reflect all such changes as of December 31 of the preceding year.

Section 3: Annual Revisions and Distribution of Zoning Map

- A. Any person desiring a copy of said zoning text or Zoning District Map shall pay a fee for each copy thereof to the Town Clerk. Such fees shall be applied to defray the cost of the revising and printing of the Zoning District Map.

Section 4: Informational Copies of Zoning Map

- A. Informational copies of the Zoning District Map shall be made available for inspection at the Town Office and at other such locations as may be necessary or convenient. These maps shall be revised, as described above, to show changes in zoning district boundaries as officially approved. New streets, highways, subdivisions, major governmental installations, public lands, and other major features shall be shown.
- B. Drafting errors or omissions may be corrected, but no changes in zoning district boundaries may be made other than to show amendments properly adopted by the Mayor and Council.

Section 5: Periodic Review of Regulations and Map

At least every five (5) years, and subsequent to amendments of the Comprehensive Plan, the Planning Commission shall review the zoning regulations and the Zoning District Map to determine whether it is advisable to amend the regulations or the map, or both, to bring them in accord with the objectives of the Comprehensive Plan of the town; to take advantage of new techniques or to encourage improved building practices which may have been developed and which may have application in Betterton; to correct deficiencies or difficulties which may have developed in administration; or for such other reasons as the Commission may determine. The Commission shall submit reports on their findings to the Mayor and Council. In the preparation of these reports, the Commission shall consult with officials in the Town, review the Comprehensive Plan and the administration of this ordinance, and consult with such other persons as they believe may contribute to the review.

Section 6: Interpretation of District Boundaries

- A. A district name or letter-number combination shown on the Zoning District Map indicates that the regulations pertaining to the district designated by that name or

letter-number combination extend throughout the whole area in the Town bounded by the district boundary lines within which such name or letter-number combination is shown or indicated, except as otherwise provided by this section.

- B. Where uncertainty exists with respect to the boundaries of the various districts as shown on the Zoning District Map, which accompanies and is made a part of these regulations, the following rules shall apply:
1. In cases where a boundary line is given a position within a street or alley,
 - easement, canal, or navigable or non navigable stream, it shall be
 - deemed to be in the center of the right-of-way of the street, alley,
 - easement, canal, or stream, and if the actual location of such street, alley,
 - easement, canal or stream varies slightly from the location as shown on the Zoning District Map, then the actual location shall control.
 2. In cases where a boundary line is shown as being located a specific
 - distance from a street line or some other physical feature, this distance shall control.
 3. Where the district boundaries, as shown on the Zoning District Map,
 - approximately coincide with the lot lines, the lot lines shall be construed to be the district boundary lines, unless otherwise indicated.
 3. In cases where district boundaries, as shown on the Zoning District Map, do not coincide or approximately coincide with street lines, alley lines, or lot lines, and no dimensions are shown, the location of such district boundary lines shall be determined by the use of the scale appearing on the map.

ARTICLE VI: DISTRICT REGULATIONS AND TABLE
Table of District Regulations

TABLE OF DISTRICT REGULATIONS

Height, area, and bulk requirements for the various districts shall be as indicated in the chart below, together with other height, area, and bulk requirements contained in this Ordinance.

Use Regulations in Article VI	District	MAXIMUM HEIGHT		Let Area Per Dwelling Unit In Square Feet	Total Minimum Lot Size Required	MINIMUM LOT REQUIREMENTS			MINIMUM YARD REQUIREMENTS			
		Feet	Stories			Width of Lot in Feet	Depth of Lot in Feet	Depth of Front Yard in Feet	Width of Each Side Yard in Feet (2 required)	Aggregate Width of Side Yards in Feet	Depth of Rear Yard in Feet	
1	R-1 Single-Family Residential	35	2-1/2	21,700 (1/2 acre)(1)	21,700	100	100	30	15	35	20	
2	R-2 Single-Family Residential	35	2-1/2	10,800 (1/4 acre)(2)	10,800	75	100	30	10	30	30	
3	R-3 Multiple-Family Residential	40	3	1-Family 7,200	7,200	70						
				2-Family 4,800	10,000	60(3)						
				Multiple Family 4,356	15,000	60(3)						
				Town-Houses 4,356	10,000	18(2)						
4	B-1 Neighborhood Business	35	2-1/2	For Dwellings 10,800 Other Buildings	10,800	75	100	30	10	30	30	
5	C-1 Commercial Medium	40	3	For Dwellings Same as R-3 Other Buildings	None	None	None	None	None	None	None	

Footnotes:

- (1) Lot areas shall average at least 21,700 square feet (one-half acre) in subdivisions of two or more lots.
- (2) Lot areas shall average at least 10,000 square feet in subdivisions of two or more lots.
- (3) See Article VII for regulations pertaining to two-family dwellings, townhouses, and multiple family dwellings.
- (4) There shall be a side yard not less than 20 feet in width on the side of a lot adjoining a residential district, and there shall be a rear yard not less than 20 feet in depth on the rear side of a lot adjoining a residential district.

Abbreviations:

A dash (-) indicates no applicable regulations.

Section 1: R-1 Single-Family Residential District.

- A. Purpose - The purpose of this district is to provide for low-density residential development and such 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.
- B. Permitted Uses - A building or land shall be used only for the following purposes:
1. Detached single-family dwellings.
 2. Public parks and playgrounds.
 3. Public libraries.
- C. Permitted Accessory Uses - Accessory uses shall be permitted as follows:
1. A farm of twenty-five (25) acres or more along with the accessory buildings needed to operate the farm. No building shall be used or erected for housing animals or fowl and no other storage facility, such as, accessory fertilizer and chemical storage, an assembly or repair building, or petroleum product storage facility, shall be located within 200 feet from any property line.
 2. Accessory farm buildings include; barns, silos, tool-rooms, shops, bins, sheds, and tanks.
 3. A single-family dwelling for persons permanently employed on the premises.
 4. Boat Docks.
 4. Utility buildings as accessory structures in the side or back yards.
 5. Private garages.
 6. Home occupation which is clearly subordinate to the residential use of the dwelling and subject to the following provisions:
 - a. A home occupation shall be incidental to the use of a dwelling unit for residential purposes and shall be conducted only by members of the family residing in the dwelling unit, plus no more than one nonresident assistant or employee.
 - b. No more than one home occupation shall be permitted within any single dwelling unit.
 - c. A home occupation shall be carried on wholly within the principal building. There shall be no outdoor storage of materials or products on the premises.
 - d. There shall not be conducted on the premises the business of selling stocks or merchandise, supplies, or products, provided that orders previously made by telephone or at a sales party may be filled on the

premises. That is, direct sales of products off display shelves or racks are not allowed, but a person may pick up an order placed earlier as described above.

- e. The home occupation shall not cause any significant effect associated with the home occupation, such as increased noise, excessive lighting, or offensive odor, which is incompatible with the characteristics of the residential zone. There shall be no illegal discharge of any materials, fluids, or gases into the sewer system or any other manner of discharging such items in violation of any applicable government code.
 - f. No traffic shall be generated by such home occupation in greater volumes than would be normally expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
 - g. A home occupation shall limit any external evidence of an occupation to one identification sign not to exceed two square feet in area.
8. The keeping of small animals, insects, reptiles, fish or birds for personal enjoyment and not as a business. (Not poultry, pigs, pot bellied pigs, hogs, cows, horses, or other farm, cloven hoofed or other animals that are a threat to humans by biting or constricting.)
9. The resident or owner of the lot may have the following vehicles or conveyances parked outside on their lot. Vehicles or conveyances stored inside a garage or other structure and not visible from the outside shall not be considered in these calculations:

In addition to personal autos and (1 ton or less) small trucks, they may have no more than 3 of the following conveyances, as listed hereinafter

- a. The storage of trailer-able boats in the side or rear-yard of a residential lot but not in the front yard..
- b. The construction of one boat in the side or rear-yard of a residential lot but not in the front yard.
- c. The storage of one regular trailer, camping trailer/motor home that is legally tagged to the resident of the property, in the side or rear-yard of a residential lot but not in the front yard.
- d. Accessory off-street parking for one (1) boat on a trailer during the normal operating season, which may be in a front yard. .
- e. Temporary parking for not more than 30 consecutive days of a “for sale” vehicle or transportation item.

- f. Temporary parking for not more than 10 consecutive days of construction equipment, either on the ground or on a trailer, during a period while construction, under a duly issued Town permit, is being performed on the property.
- g. Parking, anywhere on a lot, of any other vehicles, conveyances or construction or maintenance equipment shall be only permitted by special exception. Such special exception may be granted where a determination has been made by the Board of Appeals that such parking will not be a detriment to adjacent properties or the neighborhood and where appropriate screening, paving and other requirements have been established. Special exceptions in such cases shall be limited to the following:
 - i.) The parking of one owner/operated school bus in the side or rear-yard of a residential lot used solely for the transportation of school children.
 - ii.) The parking, of one (1) commercial vehicle of more than one (1) ton used by the occupant of the dwelling in the course for their employment or business.

10. Swimming pools and game courts, lighted or unlighted for the use of occupants and their guests:

- a. That is not located closer than six (6) feet to a rear lot line or ten (10) feet to an interior side lot line.
- b. A walk space at least three (3) feet wide shall be provided between pool walls and protective fences or barrier walls for in-ground pools and as provided for by the manufacturer for above ground pools;
- c. Every swimming pool shall be protected by a safety fence or barrier approved by the Town Administrator.

11. Temporary stands for seasonal sale of produce raised on the premises.

12. An ornamental fence or wall not more than three and one-half feet in height may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. Ornamental fences or walls may project into or enclose other required yards, provided that such fences and walls do not exceed a height of seven (7) feet.

D. General Requirements for Yards and Open Space

1. Whenever a lot abuts upon a public alley, one-half of the alley width may be considered as a portion of the required yard.
2. Where these regulations refer to side streets, the Planning Commission and/or the Administrator shall be guided by the pattern of development in the vicinity of the lot in question in determining which of two (2) streets is the side street.
3. Every part of a required yard shall be open to the sky, except as authorized by this Article and except that the ordinary projections of sills, belt courses, window air-conditioning units, chimneys, cornices, and ornamental features may project to a distance not to exceed twenty-four (24) inches into a required yard.

E. FRONT YARD DEPTH

1. Where an official line has been established for the future widening or opening of a street or major thoroughfare upon which a lot abuts, the depth of a front or side yard shall be measured from such official line to the nearest line of the building.
2. On through lots, the required depth of a front yard shall be provided on each street.
3. Open, unenclosed porches, decks, platforms, or paved terraces not covered by roofs or canopies and which do not extend above the level of the first floor of the building may extend or project into the front or side yard not more than six (6) feet.
4. Where twenty-five (25) percent or more of the street frontage or where twenty-five (25) percent or more of the street frontage within four hundred (400) feet of the property in question is improved with buildings that have a front yard, with a variation of six (6) feet or less, that is greater or less than the required front yard in the district, no building shall project beyond the average front yard so established; provided, however, that a depth of front yard of more than fifty (50) percent in excess of the depth of the required front yard in the district in which the lot is located shall not be required. Where forty (40) percent or more of the street frontage is improved with buildings that have no front yard, no front yard shall be required for the remainder of the street frontage.

F. SIDE YARD REQUIREMENTS

1. In the case of attached dwelling units, the entire structure shall be considered as a single building with respect to side yard requirements.

2. Where a building in a commercial district is subject to the height, area, and bulk requirements applicable to residential development under Article VII of this Ordinance, the side yard requirements for residential development shall be applied only to the lowest floor which contains more than twenty-five (25) percent of its area used for dwelling purposes. All floors shall be subject to side yards required by these regulations for commercial buildings adjacent to residential districts.
3. For the purpose of the side yard regulations, a group of businesses or commercial buildings separated by common or party walls shall be considered as one (1) building occupying one (1) lot.4. The minimum width of side yards for schools, libraries, churches, community houses, and other public and semipublic buildings in residential districts shall be twenty-five (25) feet, except where a side yard is adjacent to the C-1 Commercial District, in which case the width of that yard shall be as required for the district in which the building is located, such requirements being indicated in the Table of District Regulations included in this Ordinance.

G. REAR YARD PROJECTIONS

Open or lattice enclosed fire escapes, outside stairways and balconies opening upon fire towers and the ordinary projects of chimneys and flues may project into the required rear yard for a distance of not more than five (5) feet, but only where the same are so placed as not to obstruct light and ventilation.

H. CORNER VISIBILITY REQUIREMENTS

No sign, fence, wall, hedge, planting, or other obstruction to vision extending to height in excess of three (3) feet above the established street grade, shall be erected, planted or maintained within the area of the corner lot that is included between the lines of the intersecting streets and a straight line connecting them at points twenty (20) feet distant from the intersection of the street lines.

I. CORNER LOT – FRONT AND SIDE YARD REQUIREMENTS

On a corner lot in any district, the side yard width adjacent to the side street shall be at least equal to the minimum front yard depth required for the district; provided, however, that the buildable width of a lot of record at the time of the passage of this ordinance shall not be reduced to less than twenty-eight (28) feet.

J. ADDITIONAL REQUIREMENTS

1. Orientation of buildings and their main entrances should face the street except in the case of accessory buildings.
2. Requirements for lot area per dwelling unit do not apply to living quarters which are accessory to a permitted use and which have no cooking facilities in individual rooms or apartments.
3. Except as herein provided, no accessory building shall project beyond the required front yard line on any street.
4. Accessory buildings which are not part of the main building, although they may be connected by a breezeway, may be constructed in a rear yard, provided that such accessory building does not occupy more than thirty (30) percent of the area of the required rear yard and provided that it is not located closer than five (5) feet to the rear lot line nor closer than three (3) feet to a side lot line.
5. The area of the main structure on a lot may not exceed 25% of the total lot area.

K. Bulk Requirements including height and area requirements - Requirements for minimum lot area, yards, and open spaces and maximum height are contained in the Table of District Regulations included in this Ordinance.

L. Permitted Signs - Subject to the general sign regulations of Article VIII of this Ordinance.

M. Conditional Uses - For a listing of conditional uses and regulations for conditional uses see Article X of this Ordinance.

N. Additional Regulations - The regulations contained in this Article are supplemented or modified by regulations contained in other Articles of this ordinance, especially for the following:

1. Article III: Board of Appeals; Special Exception and Variance Approvals
2. Article IX: Off-Street Parking and Loading Regulations

Section 2: R-2 Single-Family Residential District

A. Purpose - The purpose of this district is to provide for single-family residential development on smaller lots, together with such accessory uses as may be necessary or are normally compatible with residential surroundings. The district is located to include existing development of this character and contains vacant land considered appropriate for such development in the future.

- B. Permitted Use - A building or land shall be used for any use permitted in the R-1 Single Family Residential District.
- C. Permitted Accessory Uses - Permitted accessory uses shall include any accessory use permitted in the R-1 Single-Family Residential District.
- D. Bulk Requirements including height and area requirements - Requirements for minimum lot area, yards, and open spaces and maximum height are contained in the Table of District Regulations included in this Ordinance. In addition to those requirements the area of the main structure on a lot may not exceed 25% of the total lot area.
- E. Permitted Signs - Subject to the general sign regulations of Article VIII of this Ordinance.
- F. Additional Regulations - The regulations contained in this Article are supplemented or modified by regulations contained in other Articles of this ordinance, especially the following:
 - 1. Article III, Board of Appeals; Special Exception and Variance Approvals.
 - 2. Article IX, Off-Street Parking and Loading Regulations
 - 3.

Section 3: R-3 Two-Family and Multiple Family District

- A. Purpose - The purpose of this district is to provide for two-family dwelling developments, two-family dwellings mixed with single-family dwellings, townhouses and multiple-family dwellings, together with those accessory uses as may be necessary or are normally compatible with residential surroundings. The district is located to include existing developments of this character and contains structures presently in single-family dwelling use which are appropriate for conversion to two-family and multiple-family dwellings or some other use as permitted in this district. Population density and the height of buildings are low enough to be compatible with adjoining areas of single-family residential development.
- B. Permitted Uses - A building or land shall be used only for the following purposes, provided they comply with the Table of District Regulations on lot size and yard set backs.
 - 1. Any use permitted in the R-1 and R-2 Single-Family Residential District.

2. Two-family dwellings

- a. Each dwelling unit of a two-family dwelling must comply with the minimum lot area per dwelling unit specified in the Table of District Regulations included at the end of this Ordinance.
- b. The dwelling units and individual lots of two-family dwellings may be sold separately if separate utility systems are provided and if separate lots for all dwelling units in a building are created at the same time and in conformance with the applicable regulations and standards governing the subdivision of land.

4. Townhouses

- a. The townhouse building shall comply with minimum lot requirements contained in the Table of District Regulations included at the end of this ordinance. Each dwelling unit of a townhouse building need not be located on a lot complying with requirements for minimum lot area per dwelling unit in the table provided that it meets the following:
 - (1) The average for all dwelling units in the building equals or exceeds the minimum requirements and;
 - (2) No lot is created with a lot area of less than three thousand (3,000) square feet.
- b. The dwelling units and individual lots of townhouses may be sold separately if separate utility systems are provided and if separate lots for all dwelling units in a building are created at the same time and in conformance with the applicable regulations and standards governing the subdivision of land.
- c. For the purpose of the side yard regulations, a townhouse building shall be considered as one (1) building on one (1) lot, with side yards required for end units only, in accordance with the Table for District Regulations included at the end of this ordinance. Any side yard adjacent to the line of a lot occupied by a detached single-family dwelling or a lot in a single-family residential district shall not be less than twenty-five (25) feet.
- d. The facades of dwelling units in a townhouse shall be varied by changed front yards of not less than three (3) feet and variations in materials or design so that no more than two (2) abutting units will have the same front yard depth or the same or essentially the same architectural treatment of facades and rooflines.

- e. Unless otherwise restricted by district regulations, not more than four (4) dwelling units shall be included in any (1) one townhouse building.
- f. If non public areas for the common use and enjoyment of occupants of townhouses or multiple-family dwellings are provided, but are not in individual ownership by such occupants, they shall be maintained in a satisfactory manner without expense to the general public. The Planning Commission shall seek any advice necessary to ensure compliance with this provision.
- g. Required off-street parking space of two (2) spaces per dwelling unit shall be provided for all townhouses and multiple-family dwellings.
- h. A site plan complying with the requirements of Article IV of this ordinance shall accompany an application for approval of either a townhouse or multiple-family dwelling development.

4. Multiple-family dwellings.

Same conditions as stated above for townhouses.

C. Location, configuration, or erection of buildings

- 1. More than one (1) main building may be located on a lot or tract in the following circumstances:
 - a. Institutional buildings.
 - b. Public or semipublic buildings.
 - c. Multiple-family dwellings.
 - d. Commercial buildings.
 - e. Homes for the aged.
 - f. Townhouses
- 2. The provisions of this exception shall not be construed to allow the location or erection of any building or portion of a building outside of the buildable area of the lot.
- 3. In the event that a lot may be occupied by a group of two (2) or more related buildings to be used for residential purposes, there may be more than one (1) main building on the lot when such buildings are arranged around a court, provided that said court, between buildings that are parallel, shall have a minimum width of thirty (30) feet for one-story buildings, forty (40) feet for two-story buildings, and fifty (50) feet for buildings of three stories or more, and in no case may such buildings be closer to each other than fifteen (15) feet.
- 4. Where a building surrounds a court by more than fifty (50) percent, the minimum width of the court shall be at least thirty (30) feet for one-story buildings, forty

(40) feet for two-story buildings, and fifty (50) feet for buildings of three stories or more.

- D. Permitted Accessory Uses - Permitted accessory uses shall be as follows:
1. Any accessory use permitted in the R-1 Single-Family Residential District.
 2. An office for the administration of a multiple-family development located in a main building containing ten (10) or more dwelling units.
 3. A laundry room for the use of the occupants of a multiple-family dwelling development.
 4. Requirements for lot area per dwelling unit do not apply to rental units in a hotel, motel, motor lodge, or tourist home or to rooms in a rooming, boarding or lodging house or bed and breakfast. The area of the main structure on a lot may not exceed 25% of the total lot area.
- E. Bulk Requirements including height and area requirements – Requirements for minimum lot area, yards, and open spaces and maximum height are contained in the Table of District Regulations included at the end of this Ordinance.
- F. Permitted Signs - Subject to the general sign regulations of Article VIII of this Ordinance.
- G. Additional Regulations - The regulations contained in this Article are supplemented or modified by regulations contained in other Articles of this ordinance, especially the following:
1. Article III, Board of Appeals; Special Exception and Variance Approvals.
 2. Article IX, Off-Street Parking and Loading Regulations

Section 4: B-1 Neighborhood Business District

- A. Purpose - The purpose of this district is to provide primarily for retail shopping and personal service uses, to be developed either as a unit or in individual parcels, to serve the incidental needs of the Town residents. To enhance the general character of the district and its compatibility with its residential surroundings, signs are limited to those accessory to businesses conducted on the premises, and the number, area, and types of signs are limited.
- B. Permitted Uses - A building or land shall be used only for the following purposes:

1. Any use permitted in the R-3 Multiple-Family Residential District.
2. Barbershops and beauty parlors.
3. Delicatessen businesses with accessory catering services.
4. Food stores of five thousand (5000) square feet or less.
5. Laundromats and self-service dry-cleaning establishments.
6. Municipal and government service buildings.
7. Filling station.
8. Medical clinic provided all parking is adequately screened from adjacent properties and the street.
9. Motel provided:
 - a. Buildings cover less than twenty-five (25) percent of total area of lot and parking areas and buildings are set back fifty (50) feet from the street.
 - b. Off-street parking shall be provided in compliance with the requirements of Article IX of this Ordinance. Where other facilities such as restaurants, bars, and areas of public assembly or recreation are provided, off-street parking shall be provided as required for each of these uses.
 - c. A motel shall be limited to two (2) stories in height.
10. Neighborhood retail businesses which supply household commodities on the premises, such as a local corner grocery or drug store, bakery, butcher, hardware, wine and cheese, notions, and the like, but not including convenience stores and large grocery stores. All retail sales shall be conducted wholly within a building.
11. Small restaurant, excluding drive-in and quick service restaurants, provided:
 - a. Seating is limited to one hundred (100).
 - b. Trash is stored in areas designed and constructed to hide trash storage from the street and adjacent properties, to prevent waste paper from blowing around the site and adjoining properties, and to permit safe, easy removal by truck or hand.
 - c. Exterior lighting is designed so it does not cast direct light or glare upon the street or adjacent properties.
 - d. Landscaping and fencing minimize the visual impact and potential conflict with adjacent properties or public ways.

- e. Exterior changes to the site and structure are minimized. exterior additions should not exceed twenty-five (25) percent of the existing floor area.
 - f. Food service is approved by the Kent County Health Department.
- C. Permitted Accessory Uses - Permitted accessory uses shall be as follows:
- 1. Any accessory use permitted in the R-3 Multiple Family Residential District.
 - 2. Automatic ice distribution stations or other drive-in automatic vending machine stations. Groups of vending machines shall be contained in a completely enclosed building.
 - 3. Automobile parking lots and garages, but not used car lots or other lots used for automobile sales or storage.
 - 4. Filling station pumps and pump islands may occupy the required yards, provided that they are not less than fifteen (15) feet from the street lines and the bulk storage of flammable liquids is underground.
- D. Permitted Signs - Subject to the general sign regulations of Article VIII of this Ordinance.
- E. Additional Regulations - The regulations contained in this Article are supplemented or modified by regulations contained in other Articles of this Ordinance, especially the following:
- 1. Article III, Board of Appeals; Special Exception and Variance Approvals.
 - 2. Article X, Conditional Uses.
 - 3. Article IX, Off-Street Parking and Loading Regulations.

Section 5: C-1 Commercial Marine District

- A. Purpose - The purpose of this district is to provide for and to preserve water front land in appropriate locations for a variety of commercial and miscellaneous services which generally are intended for less intensive commercial marine activities related to tourism, vacationers, sport fishing, and pleasure boating and which uses are not characterized by extensive warehousing, frequent heavy trucking, open storage of materials or the nuisance factors of dust, odor, and noise associated with more intensive commercial applications. Multiple family dwellings are permitted since the district is near the Town center and utilities are available.
- B. Permitted Uses - A building or land shall be used only for the following purposes:

1. Any permitted use in the B-1 Neighborhood Business District.
2. Boat docks, slips, piers, wharves, anchorages, and moorings for pleasure boats and yachts or for boats for hire to carry passengers or for excursion, sight seeing, pleasure or fishing trips.
3. Automobile parking lots but not for used car lots or other lots used for automobile sales, service or storage.
4. Bed and breakfasts, hotels, and motels.
5. Bakeries occupying no more than two thousand (2000) square feet of floor area, provided that all products on the premises shall be sold at retail in the premises.
6. Barber shops and beauty parlors.
7. Bicycle sales and repair shops and rentals.
8. Catering and delicatessen businesses.
9. Marinas and yacht clubs.
10. Private clubs, lodges, and meeting halls.
11. Restaurants.
12. Stores and shops for the conduct of retail businesses, including the sale of accessories, antiques, apparel, beverages, books, pharmaceuticals, fabrics, food, general merchandise, hardware, hobby supplies, jewelry, office supplies, sporting goods, stationary, and similar stores and shops.
13. Studios for artists, photographers, teachers, sculptors, and musicians.
14. Medical and professional office space.
15. Multiple family dwellings.

C. Requirements for mixed uses.

Where more than twenty-five (25) percent of the total floor area of any building in the C-1 Commercial Marine District is used for dwelling purposes and such building may also contain non-residential uses, the minimum height, area, and bulk requirements for residential development applicable in the district in which such building is located shall apply, subject to the side yard modification for mixed uses contained elsewhere in this Article. Where twenty-five (25) percent or less of the total floor area of such building is used for dwelling purposes, the building shall be subject to the height, area, and bulk requirements to non-residential buildings in the district. Also, The area of the main structure on a lot may not exceed 25% of the total lot area.

D. Location, configuration, or erection of buildings, same as in R-3.

- E. Permitted Accessory Uses - Permitted accessory uses shall include the storage of office supplies or merchandise normally carried in stock in connection with the permitted office, business, or commercial use, subject to applicable district regulations.
- F. Permitted Signs - Subject to the general sign regulations in Article VIII of this Ordinance.
- G. Additional Regulations - The regulations contained in this article are supplemented or modified by regulations contained in other Articles, especially the following:
 - 1. Article III, Board of Appeals; Special Exception and Variance Approvals.
 - 2. Article X, Conditional Uses
 - 3. Article VIII, Off-Street Parking and Loading Regulations

Section 6: TCOD – Town Center Overlay District

- A. PURPOSE - The Town Center Overlay District (TCOD) is designed to provide a special permit mechanism to expand and better control the mix of commercial, residential, and public development in selected zoning district: of the Town of Betterton.
- B. LOCATION- The TCOD is located in the central portion of Betterton and is graphically delineated on the Zoning District Map.
- C. Procedures:
 - 1. The Board of Appeals shall be the permanent granting authority for the TCOD developments after getting recommendations from the Town Administrator and the Planning Commission. Applicants shall submit preliminary proposals to the Town Administrator for informal review and discussion of fees before formal application.
 - 2. Applicants shall file the formal application and pay the fee for a permit within the TCOD with the Town Administrator The application shall include ten (10) copies of building and development plans showing the development proposal for the property. These plans shall show how the proposal conforms with or deviates from the underlying zoning district's area, density, parking, and use requirements, as well as how the proposal meets any special requirements for uses within the TCOD.
 - 3. Copies of these materials shall be transmitted to the Planning Commission.
 - 4. The Planning Commission shall review, in accordance with the general standards in Section D below, the development proposal for zoning compliance.

5. The Planning Commission may, in the course of reviewing a TCOD, recommend approval or denial of the as-submitted application or the waiver or modification of the basic density, frontage, set back, coverage, green space, or parking requirements of the underlying district if it is found that a substantially better design will result from such modification. The Planning Commission shall inform the Town Administrator and the Board of its recommendations in accordance with the general standards in Section D below within thirty (30) days of the referral.
6. The Board of Appeals shall conduct a public hearing and make written findings concerning each considerations stipulated in (4) above in accordance with Article III of this Ordinance.

D. General Standards - All TCOD uses are subject to the following general standards. These standards are designed to assist the applicant in the preparation of site and building plans and to assist the Planning Commission in its review of development proposals. These standards are meant to encourage creativity, innovation, and well-designed projects. They apply to principal buildings and structures and to all accessory buildings and structures, signs, and other site features.

1. Adequacy of the site in terms of location and size of the use, the nature and intensity of the operations involved, the size of site in relation to it, and the location of the site with respect to the ways giving access to it shall be in harmony with the orderly development of the district.
2. For vehicular and pedestrian circulation (including walkways, interior drives, and parking), special attention shall be given to location and number of access points to public streets, width of interior drives, and access points, general interior circulation, separation of pedestrian and vehicular traffic, and the arrangement of safe and convenient parking areas. The design of these vehicular and pedestrian ways shall enhance the appearance of and access to the proposed development and to the neighboring properties.
3. Special attention shall be given to proper site surface drainage to ensure that removal of surface waters will not adversely affect either neighboring properties or the public storm drainage system.
4. The design, size, location, lighting, and materials of all permanent signs and outdoor advertising structures or features will enhance rather than detract from the design of proposed buildings and the neighboring properties.
5. Set backs, screened planting, and other screening methods for exposed storage areas, exposed machinery installations, service areas, truck loading areas, utility buildings and structures, and similar accessory areas and structures shall be designed to make them compatible with the neighboring properties.

6. Every effort shall be made to preserve the landscape in its natural state by minimizing tree and soil removal and ensuring that grade changes are compatible with the general appearance of neighboring developed area.
7. Adequacy of utilities and other public services, including water and sewage treatment.
8. No use shall be permitted which would be offensive, because of objectionable noise, vibration, smoke, gas fumes, odors, glare or flashing lights, or be hazardous to the community, because of fire, explosion, or other cause.
9. All uses that fall within the Historic District must conform and complement the existing character of that area.
10. The design of buildings, fences, and other structures shall be evaluated on the basis of harmony with site characteristics, nearby buildings, and local architectural motif, including historic structures, in regard to height, texture, color, roof characteristics, and set back.
11. Evaluate each proposal within the Chesapeake Bay's Critical Area with its impact on the natural environment, including slopes, vegetation, wet land, and water bodies, as required by the CAZ-1 District criteria outlined in Section 11 of this Article where applicable.
12. The Commission shall also give an evaluation on the compliance with the Town's Afforestation-Reforestation Ordinance.

E. Specific Standards and Uses

1. Antique shop, art gallery, and other similar uses.
2. A small business office, such as insurance agent office, computer consultant, with sufficient office street parking for the greatest number of expected customers at any one time.
3. Inn/hotel and bed and breakfast provided:
 - a. The rooms are located in a residence and are operated by an owner-occupant.
 - b. Facilities for food service are approved by the Kent County Health Department and are served to guests only.
 - c. No more than two (2) adults may occupy a room.
 - d. Off -street parking, which is adequately screened from the street and adjacent properties, is available. Parking shall meet the yard requirements of the underlying district.
 - e. The structure maybe expanded by no more than twenty-five (25) percent to accommodate additional kitchen, bathroom, living room, or other common areas.
 - f. Only one (1) front entrance is provided.

- g. No separate kitchen, cooking facilities, or utility meters are provided for or used by the roomers.
4. Civic, social, fraternal organizations, including membership clubs and lodges, provided off-street parking, adequately screened from the street and adjacent properties is available and meets the yard requirements of the underlying district.
 5. Community center.
 6. Delicatessen provided:
 - a. Off-street parking meets the yard requirements of the underlying district and is adequately screened from the street and adjacent properties.
 - b. Seating is limited to ten (10) seats.
 - c. Trash is stored in areas designed and constructed so as to allow no view of the trash storage from the street, to prevent waste paper from blowing around the site or adjacent properties, and to permit safe, easy removal by truck or by hand.
 - d. Exterior additions are limited to porches and decks.
 - e. Food service is approved by the Kent County Health Department.
 - f. Financial services area, such as an ATM machine, provided a five (5) foot vegetative buffer is established around the building and between drives, parking, and adjacent properties.
 7. Home occupation provided:
 - a. There are no exterior changes to the building or site other than a permitted sign.
 - b. Only goods produced on the premises or products incidental to the service provided are sold.
 - c. It is operated wholly within a dwelling or accessory structure.
 - d. No more than one person outside the resident family is hired.
 - e. No equipment is used which creates offensive noise, dust, odor, heat, or glare.
 - f. Lighting is designed so it does not cause direct light or glare upon adjacent properties.
 8. Laundromat
 9. Nursery school/day care center provided it is approved by all appropriate state agencies.

10. Personal service establishments which perform services on the premises for persons residing within adjacent residential areas, such as shoe repair, tailor, beauty parlor, barber shop, and the like, provided all services are conducted wholly within a building.
11. Veterinary office is limited to non-board and small animals.

Section 7: IDOD-Infill Development Overlay District

A. Intent - It is the general intent of the Infill Development Overlay District to:

1. Accommodate growth in the Town of Betterton by encouraging and facilitating new development on vacant, bypassed and underutilized land where such development is found to be compatible with the existing neighborhood.
2. Encourage efficient use of land and public services in the context of existing communities.
3. Stimulate economic investment and development in older established neighborhoods.
4. Provide developers and property owners flexibility so that they can achieve high quality design and develop infill projects that strengthen existing neighborhoods.
5. Create a high quality [neighborhood compatible with the community environment.
6. Implement the goals, objectives, and policies of the Betterton Comprehensive Plan.
7. Improve approval certainty for infill development by providing clear development standards.
8. Encourage compact development that is pedestrian-scaled and, if applicable, transit-oriented.

The district standards encourage appropriate development of underutilized properties and consolidation of developable land where it will achieve a more efficient land use and improved site design. Design standards promote compatible infill and redevelopment by, among other things, allowing development on sites that may not meet the minimum land area and dimension requirements of the underlying zones.

B. Applicability - The provisions of this district apply to all parcels designated “IDOD” on the official zoning map. All land uses and development, including buildings, drives, parking areas, landscaping, streets, alleys, greenways, tree protection, and pedestrian/bicycle ways, shall be located and developed in accordance with the applicable provisions of the zoning ordinance and land development regulations, except as modified by this Section. In the case of conflict in other sections of this ordinance, the more flexible standard shall apply.

If a proposed development does not meet the definition of “infill” or “redevelopment” the applicant may seek approval to develop land through the normal permit process or through the variance process, as applicable.

C. General Requirements - Development plans shall incorporate the following elements to enhance compatibility with the surrounding community:

1. Sidewalks that connect to the adjacent sidewalk system;
2. Public streets that connect to the adjacent street pattern;
3. Preservation of architecturally significant structures whenever feasible;
4. Inclusion of, or relationship to, civic spaces
5. Street furniture, lighting and landscaping that is primarily oriented to pedestrian use; and
6. Building types, setbacks, building envelopes, use and parking compatible with the surrounding community.

All new buildings (except accessory structures) shall have the primary entrance oriented to the street or public walkway, with direct, barrier-free and convenient pedestrian connections.

D. Permitted Uses - Permitted uses shall be limited to those allowed in the underlying zone except as follows:

1. The Planning Commission may permit duplex and townhouse dwellings in any residential district.
2. The Planning Commission may permit the redevelopment of any residential unit or units in any zoning district provided such residential unit or units existed prior to the adoption of this section regardless of whether or not the units constitute a non-conforming use.

E. Development standards

1. General: Density, design, materials, use and scale should reflect local style, climate, heritage and materials unique to the Town of Betterton.
2. Flexible development standards to reduce lot areas, widths and yards and to increase building heights may be permitted for infill developments at the discretion of the Planning Commission, subject to proof of good cause and benefit to the development and the community and to address difficult sites which incorporate infill and redevelopment or rehabilitation. Building height and coverage may vary so long as the project average is consistent with the neighborhood scale and architectural rhythm and does not constitute a disruptive condition in the identity of the area (See Section 7 below).
3. Density: Density may exceed the underlying zone for the purpose of creating a neighborhood having a variety of housing types consistent with D above.
 - a. Total number of dwelling units as well as location to be established at the time of preliminary plan approval.

- b. Lot Size. Lot areas established in the preliminary plan shall be dependent on proposed densities, floor area, setbacks, building heights and community compatibility.
- 4. Building Height:
 - a. Buildings restricted to the height limit established for the district, or the average of adjacent buildings along the block face.
 - b. If the average of adjacent buildings is greater than the maximum height allowed in the district, the proposed building or structure must meet the following criteria for community compatibility:
 - (1) Neighborhood scale
 - (2) Privacy
 - (3) Light and shadow
 - (4) Views
 - (5) Architectural compatibility
- 5. Building Setback.
 - a. For each block in the overlay zone, the Planning Commission may designate a build-to line based on the average established front yard setback along the block face. The build-to line shall establish the front yard setback for the lots on the block. Infill and redevelopment structures shall be located within two (2) feet either side of the build-to line, except that no structure shall be located closer than five (5) feet to street or public right-of-way.
 - b. The Planning Commission may relax side yard requirements to facilitate interesting and innovative design solutions, provided that the encroachment into the setback does not adversely affect storm drainage, privacy, sunlight or views of the adjacent property, nor restrain the potential of the adjacent property for future development.
- 6. Bulk and Scale. Building bulk and scale shall be similar to and consistent with the surrounding neighborhood as evaluated by the bulk of buildings adjacent, abutting and surrounding the proposed development. Larger buildings should be designed to adhere to the existing architectural pattern of the surrounding neighborhood.
- 7. Compatibility standards
 - a. General: Provides exemplary site design, architectural design and high quality materials that are compatible with, and does not negatively alter the character of, the existing neighborhood.
 - b. All permitted uses conform to the purposes of the Ordinance and are compatible with existing uses in the general vicinity of the proposed development. The following requirements shall apply:

- (1) Building Size, Height, Bulk, Mass, Scale. Buildings should be similar in height and size or be designed in such way that they appear similar in height and size, creating an overall mass that is consistent with the prevalent mass of other structures in the area, e.g., by dividing walls into units of similar proportions to adjacent structures.
- (2) Building Orientation. Primary facades and entries face the adjacent street with a connecting walkway that does not require pedestrians to walk through parking lots or across driveways and that maintains the integrity of the existing streetscape.
- (3) Privacy. Optimize privacy of residents and minimize infringement on the privacy of adjoining land uses by considering appropriate bufferyards, the placement of windows and door entrances. Create opportunities for interactions among neighbors in common pedestrian circulation areas of the project.
- (4) Building Materials shall be similar to materials of the surrounding neighborhood or use other characteristics such as scale, form, architectural detailing, etc. to establish compatibility.

- c. All planned uses, building types, and landscaping will be included on the preliminary plan and will demonstrate the relationships of the proposed development with existing off-site development in the context of the adjacent community. Compliance with these requirements shall in and of itself be deemed to create a presumption of compatibility.
- d. All planned uses shall comply with the Betterton Storm Water,, Forest Conservation, Critical Area and floodplain regulations.

8. Open Space and Landscaping

- a. General: All open space, recreational amenities and landscaped areas shall be shown on the plan.
- b. Open space. Open space shall meet the standard for the underlying zoning district.
- c. Landscaping. Landscaping shall meet the standard for the underlying zoning district.

9. Public Facilities and Utilities

- a. General: Existing and planned public facilities should be shown on development plans.
- b. All public streets, walkways and alleyways shall be shown on development plans. All through streets and walkways must be public. The local street and walkway system shall be safe, efficient, convenient, attractive, and shall accommodate use by all segments of the population.

- c. The street and walkway system, where possible, provides multiple, direct and continuous intra- and inter-neighborhood connections between destinations.
- d. The street network shall include sidewalks on both sides of the street.
- e. Closed street systems are prohibited, but short cul-de-sacs that connect to the main grid system are allowed when consistent with the surrounding community.
- f. Street widths should be consistent with the surrounding community and sized to promote walkability and multi-modal use i.e., pedestrians, bikes, cars, trucks, buses, etc.).
- g. Roads, lighting, sidewalks, street furniture, utilities and other public facilities should enhance pedestrian circulation.

10. Parking

- a. General: Flexibility for the number of parking spaces shall be considered if the project is pedestrian-oriented.
- b. Parking for private automobiles is provided based on safety, convenience, pedestrian and vehicular circulation, and proximity of public parking and public transportation.
- c. The parking plan may provide a combination of off-street and on-street spaces.
- d. Shared parking is encouraged. Shared drives serving no more than two (2) dwellings may be permitted.
- e. As is practicable, at-grade off-street parking areas should be provided on the proposed development site. When possible, off-street parking should be located at the rear of the dwelling with alley access. When off-street parking cannot be located to the rear of the dwelling, it should be provided in a manner that is consistent with existing off-street parking patterns along the block face or immediate surrounding area.
- f. All parking spaces shall be shown on the site plan.
- g. Bicycle spaces shall be provided for commercial/employment and mixed-use projects.
- h. Parking requirements can be waived where ample public parking is available in close proximity within 300 feet of the proposed development site.

11. Findings Required - The Planning Commission shall approve the plan upon finding that:

- a. The plan accomplishes the purposes, objectives and minimum standards and requirements of the overlay district;
- b. The plan is in accordance with the Betterton Comprehensive
- c. The plan is internally and externally compatible and harmonious with existing and planned land uses in the area;

- d. Existing or planned public facilities are adequate to service the proposed development;
- e. The development staging program is adequate in relation to the provision of public facilities and private amenities to service the proposed development; and
- f. The plan is consistent with the purposes and provisions of the smart growth areas act and other applicable Smart Growth legislation.

SECTION 8: PN Planned Neighborhood District

- A. **Purpose.** The Planned Neighborhood ("PN") District is a floating zone. That means that while provisions and regulations are made to govern any development within a PN District, no such district will be pre-mapped on the Zoning Map. The PN District is intended to permit master planned, mixed-use developments of large tracts. The PN District permits development and land use pursuant to an approved Master Development Plan that meets the requirements of this Ordinance and that is approved by the Town Council at the time the PN zoning is applied to specific land(s).

The purpose of the "PN" Planned Neighborhood District is to provide for the development of well-planned, mixed-use neighborhoods that exhibit the following characteristics:

1. Integrated mix of uses, including residential, commercial, employment/office, civic, and open space;
2. A range of housing types and densities to accommodate a diverse population of age groups and price levels;
3. Compact design;
4. Interconnected streets designed to balance the needs of all users, with sidewalks and on street parking where appropriate;
5. Open spaces integral to the community; and
6. Location adjacent to and extending the fabric of existing development.

There is a general presumption that an application for Master Planned Development project, at an appropriate location, conditionally approved as a PN District, and is in compliance with the Comprehensive Plan will be to the general benefit to the Town.

- B. **Applicability.** The Town Council may apply the PN Planned Neighborhood District to any tracts of land exceeding 25 acres.
- C. **Intent.** The PN Planned Neighborhood District is intended to promote the following:

1. Implement the recommendations of the Comprehensive Plan;
2. Develop neighborhoods that accommodate and promote pedestrian travel equally as much as motor vehicle trips;
3. Promote design that results in residentially scaled buildings fronting on, and generally aligned with, streets;
4. Encourage the inclusion of a diversity of household types, age groups, and income levels;
5. Promote traditional town building and site development patterns with an interconnected and broadly rectilinear pattern of streets, alleys, and blocks, providing for a balanced mix of pedestrians and automobiles;
6. Encourage creation of functionally diverse, but visually unified, communities focused on central squares;
7. Promote use of neighborhood greens, landscaped streets, boulevards, and "single-loaded" parkways woven into street and block patterns to provide space for social activity, parks, and visual enjoyment;
8. Provide buildings for civic or religious assembly, or for other common or institutional purposes that act as visual landmarks and symbols of identity;
9. Promote the location of dwellings, shops, and workplaces in close proximity to each other, the scale of which accommodates and promotes pedestrian travel for trips within the community;
10. Preserve open space, scenic vistas, agricultural lands, and natural areas;
11. Permit design flexibility in order to achieve an appropriate mix of residential and non-residential building uses; and
12. Require efficient utilization of designated growth areas.

D. Land Uses in the PN District. The uses permitted within the PN District shall be as established by the land use table set forth in this Ordinance, which shall prevail over conflicting requirements of this Ordinance or the Town's Subdivision regulations.

E. Density Standards.

1. The minimum residential density for a proposed PN District shall be 3.0 dwelling units per (gross) acre. Except as may be provided for below the maximum residential density for a proposed PN District shall be no more than 4.0 dwelling units per (gross) acre.
2. Density Incentives to Further Certain Public Objectives
 - a. Housing type diversity. A density increase of 10 percent is permitted at the discretion of the Town Council when the proposal provides a mixture of at least four of the five following types of housing: single-family detached, two-family (semi-detached), multi-family, townhouse, and

apartments. The architecture of the proposed dwellings shall be harmonious among the various housing types, and they shall be integrated physically; that is, they should not be separated into different neighborhoods but rather mixed in together on the same streets so that at least two dwelling types are located together within the same block.

- b. Civic Structures. A density increase of up to 20 percent is permitted at the discretion of the Town Council when the proposal includes development of (civic or) community facilities not otherwise required, e.g., a Town Hall.
- c. Implementation. For each of the public purposes described in above, if the Town Council is satisfied that the public purpose objectives are being satisfied, density bonuses may be implemented by reducing the amount of required open space or conservation land acreage. The cumulative density bonuses applied to a Master Planned Development project may not exceed 35 percent of the maximum residential base density.

F. General Design Requirements

- 1. Design standards referenced in this section shall be considered as minimum performance standards for the PN District.
- 2. Planned neighborhoods are intended to provide for a range of complementary uses and may consist of up to four use areas: Single-Family Residential (SRA) Areas, Central Residential (CRA) Areas, Neighborhood Centers (NC), and Conservation (CA) Areas. At a minimum, they must contain both a SRA and a CA. These areas are intended to provide for the diversity necessary for traditional town life, while maximizing the interactions among related uses and minimizing the adverse impacts of different uses upon each other.
 - a. Single-Family Residential Areas (SRA) provide locations for a broad range of housing types, including single-family detached, semi-detached, and attached, and may also include accessory dwelling units.
 - b. Conservation Areas (CA) are permanently protected open spaces, including greens, commons, habitat protection areas and private non-common acreage used for agriculture, wholesale nurseries, tree farms, etc.
 - c. The Central Residential Area (CRA) is intended to contain a variety of housing options and related uses.
 - d. The Neighborhood Center Area (NC) is the identifiable focal point of each neighborhood and is intended to serve primarily to provide uses that meet the retail and service needs of a traditional community center and its vicinity within one- and two-story buildings, and may contain other compatible uses,

such as civic and institutional uses of community wide importance, specifically including second-floor residential uses.

G. Development Standards

1. The following development standards shall apply to the PN District:
 - a. The setback, lot size, lot dimensions, lot coverage, height, and yard requirements in the PN shall be established for each individual project by the Planning Commission in accordance with the *PN Design Guidelines*. In establishing these requirements the Planning Commission shall consider such factors as the proposed development intensity and the existing character of adjacent neighborhoods.
 - b. Land Coverage. The maximum amount of land that may be built over (covered) by parking lots, roads, sidewalks, or plazas, buildings, or other structures shall be sixty (60) percent of the gross land area of the PN property(ies).
 - c. Minimum Required Open Space
 - (1) A minimum of twenty-five (25) percent of the gross lot area shall be open space including parks, recreational, habitat, forest, agriculture, and stream and wetland preservation areas. Not less than fifteen (15) percent of the minimum required open space shall be in a form usable to and accessible by the residents, such as a central green, neighborhood squares or commons, recreational playing fields, woodland walking trails, other kinds of footpaths, a community park, or any combination of the above. In addition, no more than fifty (50) percent of the minimum required open space may be comprised of active recreation facilities, such as playing fields, golf courses, tennis courts, etc.
 - (2) Open space land shall be permanently protected through conservation easements, and may be developed for uses consisting of the following:
 - (a) Agricultural uses, including horticultural, wholesale nurseries, and the raising of crops, and buildings related to the same;
 - (b) Woodlots, arboreta, and other similar silvicultural uses;

- (c) Woodland preserve, game preserve, wildlife sanctuary, conservation meadows, or other similar conservation uses;
 - (d) Municipal or public uses, public park or recreation area owned and operated by a public or private nonprofit agency, or governmental or public utility buildings or uses, not to include business facilities, storage of materials, trucking or repair facilities, the housing of repair crews, or private or municipal sanitary landfills; and
 - (e) There shall be a balance of active noncommercial recreation; passive recreation and conservation open space as deemed appropriate by the Planning Commission.
- (3) The required open space shall be located and designed to add to the visual amenities of neighborhoods and to the surrounding area by maximizing the visibility of internal open space as "terminal vistas" (the building or landscape seen at the end of a street, or along the outside edges of street curves) and by maximizing the visibility of external open space as perimeter greenbelt land (the undeveloped and permanently protected acreage around a community). Such greenbelt open space shall be designated to provide buffers and to protect scenic views as seen from existing roadways and from public parks.
- (4) PN developments shall include multiple greens, commons, or passive parks measuring a total of at least 1,500 square feet for each dwelling unit, plus five hundred (500) square feet of land for active recreation per dwelling unit.
- (5) Civic greens or squares shall be distributed throughout the neighborhood so as to be located within 1,500 feet of ninety (90) percent of all residential units in the SRA and CRA areas.

2. Residential Unit Mix

UNIT TYPE	MINIMUM PERCENTAGE	MAXIMUM PERCENTAGE
Detached Single Family Dwelling	50	80
Two Family Dwelling	10	40
Townhouse	5	40
Multi-family	5	40
Apartment	5	20

- a. At a minimum each PN development shall have at least three (3) of the five unit types. Each phase of a proposed PN shall have at least three of the five unit types. The Planning Commission may vary this phase requirement if satisfied that at build-out three of five unit types are included in the overall PN development. Each phase of a proposed PN development shall provide housing opportunities for a diverse population mix of age groups and income levels.

H. Small PN Projects.

The Town Council may modify the minimum standards established in subsection F above for a PN development of less than twenty-five acres (25) acres provided:

1. The proposed PN development is shown as part of and integrated into a Master Development Plan for an adjacent (larger) PN project, the applicant demonstrates that the proposed development could be integrated into an adjacent development(s) or neighborhoods by such features as street extensions, the location of its SRA, and the location of common areas and it is determined by the Town Council that the proposed design meets the goals and objectives of the comprehensive plan, and the intent of this section, or
2. The Town Council find that the proposed PN is an infill or transition project between existing developments and/or adjacent to a proposed or planned large scale PN project and that the proposed design of the PN project is consistent with the goals and objectives of the comprehensive plan and the intent of this section.
3. All PN projects shall be consistent with the PN Design Guidelines.

Section 9: Procedure for Approval of a PN District Floating Zone; Master Development Plan Approval

- A. Purpose. The purpose and intent of the PN District floating zone amendment process is to permit specific and detailed mapping of areas and to provide for the creation of a Master Planned Community that includes carefully planned, well-designed residential, commercial and/or mixed use communities at appropriate locations.

- B. PN District Design Standards. The PN Design Guidelines shall guide applicants throughout the review process. 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 PN 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 PN Planned Neighborhood District and Master Development Plan approval shall be made to the Town Council. Preliminary applications shall include:
 - 1. A written petition for location of a PN Planned Neighborhood District and approval of a Master Development 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 Master Development Plan and a statement of how the proposed development concept corresponds to and complies with the goals and objectives of the Zoning Ordinance, the proposed PN 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, private streets, 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:
 - (1) 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.
 - (2) If different land use types are to be included within the Master Development Plan, the plan should include the mix of uses anticipated to be built in each phase.

3. A Concept Master Development 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:
 - (1) Total acreage of subject property and identification of all adjoining landowners;
 - (2) Description of proposed land uses, including residential, commercial, institutional, and recreational;
 - (3) Maximum number of dwelling units, approximate densities of residential areas and anticipated population;
 - (4) Land area and locations generally allocated to each proposed use; and
 - (5) Location of proposed roads, public open space, any sensitive resource areas (environmental or cultural), and public facilities.

D. Referral of Preliminary Application to Planning Commission. If the Town Council finds that the Preliminary Application for a PN District map amendment and Master Development Plan approval is generally consistent with the Comprehensive Plan and the standards of the PN 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 Town Council has 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, Town staff, and Town consultants to continue to analyze the proposal subject to all applicable review processes and procedures. No development may occur until:

- 1. A floating zone has been applied to the property by legislative action of the Town Council;

2. A Master Development Plan is approved for the floating zone by the Town Council; and
 3. A building permit has been issued, following, if applicable, final subdivision plat and/or site plan approval by all agencies with jurisdiction.
- E. Master Development Plan Submittal to the Planning Commission. After the Town Council conditionally approves the preliminary application and Concept Master Development Plan, the petitioner shall submit the following to the Planning Commission for review and recommendations to the Town Council:
1. Graphic Master Development Plan Requirements: Master Development 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.
 - a. Conditionally approved Concept Master Development Plan;
 - b. Boundary Survey, including identification of adjacent property owners;
 - c. 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.
 - d. Proposed open space, protected areas, public and private parks;
 - e. Pedestrian and vehicular master plan showing dominant street configuration and pedestrian walking and biking alignments;
 - f. 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 entrances including gateway improvements, if applicable.
- (9) Phasing plan, including:
 - (a) The general boundaries or location of each phase. Although the Phasing Plan shall include the information required by [ii] and [iii] 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.
 - (b) 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.
 - (c) If different land use types are to be included, the Master Development Plan should include the approximate mix of uses anticipated to be built in each phase.

g. Studies and reports by qualified professionals:

- (1) Where the development provides for more than 50 residential dwelling units or 50,000 s.f. of commercial development, a traffic study that evaluates traffic impacts on proposed entrances on existing public (state, county and town) roads and major existing intersections within one (1) mile of the project that may be impacted by traffic generated by the proposed project;
- (2) Nontidal wetlands delineation;
- (3) Forest Stand delineation with a State Natural Heritage Letter. If indicated, then an Endangered species study prepared by qualified professionals; and
- (4) Historical and archeological survey.

h. Master Development Plan Design Standards, which shall generally conform to the elements of the PN Design Guidelines. The Master Development Plan Design Standards should provide specific detail regarding:

- (1) 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.
 - (2) 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.
 - (3) Landscape, buffer and environmental standards, including: location and scope, materials, and scheduling.
- i. Project Scheduling Information, including: anticipated permitting 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.)
 - j. The Master Development Plan shall also include a management statement regarding the anticipated ownership, construction, operation, and maintenance of:
 - (1) Sanitary and storm sewers, water mains, culverts, and other underground structures;
 - (2) Streets, road, alleys, driveways, curb cuts, entrances and exits, parking and loading areas, and outdoor lighting systems; and
 - (3) Parks, parkways, walking paths, cycle ways, playgrounds, and open spaces.
2. The Master Development Plan shall comply with requirements of this section and the requested floating zone and may be accompanied by such other written or graphic material that may aid the decisions of the Planning Commission and Town Council.
 3. The Town Council may establish additional and supplemental requirements for the Master Development Plan during its consideration of the Preliminary Application, if the Town Council determines such requirements are necessary to enable the Town Council to evaluate the particular floating zone amendment request.
- F. Planning Commission Review and Recommendation – Floating Zone Amendment and Master Development Plan.

1. The Planning Commission shall review the floating zone amendment request and Master Development Plan for compliance with the requirements of this Ordinance and consistency with the Comprehensive Plan and the PN Design Guidelines.
2. The Planning Commission shall evaluate the degree to which the floating zone request and Master Development Plan incorporates and/or addresses the PN Design Guidelines and furthers the goals and objectives of the Comprehensive Plan.
3. The Planning Commission may make recommendations to the petitioner regarding changes to the Master Development Plan proposal, which, in the judgment of the Commission, shall cause the proposal to better conform to the requirements of the Comprehensive Plan, the PN Design Guidelines and the goals and objectives of this Ordinance. The petitioner may resubmit the Master Development Plan to the Planning Commission in consideration of the Commission's comments.
4. If after four (4) Master Development Plan submissions, the Master Development Plan has not received a favorable recommendation from the Planning Commission, the Commission shall make a negative recommendation to the Town Council setting forth its reasons as to why the Master Development Plan should not be approved.
5. The Planning Commission shall consider and comment on the findings required of the Town Council by paragraph G (2) and shall make a favorable or negative recommendation to the Town Council.
6. The Planning Commission shall return the Master Development Plan, with any revisions, together with written comments and recommendations, and its floating zone comments, to the Town Council for action pursuant to the floating zone and Master Development Plan approval process.

G. Town Council Approval of Floating Zone and Master Development Plan.

1. The Town Council shall review the Master Development Plan and other documents, together with such comments and the Planning Commission may have offered recommendations.
2. The Town Council may approve or disapprove the proposed floating zone map amendment and associated Master Development Plan, and shall follow the procedures set forth in Article VI, Section 9 for the approval of a floating zone. Concurrently with the location of a floating zone, the Town Council may approve the Master Development Plan, which, in addition to the provisions of PN District, shall govern the subdivision and/or development of the property. In approving the PN District floating zone map amendment, the Town Council 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 Town Council may approve the PN District map amendment if it finds that the proposed floating zone amendment is:

- a. Consistent with the Comprehensive Plan;
 - b. Consistent with the stated purposes and intent of the PN District;
 - c. Complies with the requirements of this Ordinance; and
 - d. Is compatible with adjoining and uses.
3. After approval of a floating zone amendment by the Town Council, two (2) complete copies of the approved Master Development Plan shall be filed with the Town Clerk. One (1) additional complete copy of the approved Master Development 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 Planned Neighborhood Development is to be constructed in phases, final subdivision plat(s) shall not be required for a phase until such time as applications are filed for a federal, state, or local permit for construction of that particular phase.
 5. As part of the final Master Development Plan approval, the Town Council shall approve a date for initiation of the proposed development.
 6. In the event that a floating zone amendment is approved by the Town Council without subdivision and approval of an associated Master Development Plan, the subject property may not be subdivided until the owner complies with the Master Development review and approval provisions of this Ordinance, and may not be developed except in conformance with a site plan 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 PN District are set forth in Article IV of the Zoning Ordinance. Site plans shall conform to the approved Master Development Plan, including the Master Development design standards.
2. The administrative procedures for approval of a subdivision located within the PN District shall be those of the Town's Subdivision Ordinance, set forth in the Town Code. Final subdivision plats shall conform to the approved Master Development Plan.
3. Any development, site plan or subdivision approval for land in a PN District shall be consistent with the provisions of the PN District, and the specific Master

Development plan applicable to the property, as approved or amended by the Town Council.

I. Amendment of Master Development Plan.

1. The procedure for amendment of an approved Master Development Plan shall be the same as for a new application, except that minor amendments of a Master Development Plan may be approved by the Planning Commission at a regular meeting.
2. Using the guidelines set forth below, the Planning Commission shall determine whether the proposed amendment is a “minor amendment. An amendment shall be deemed a “minor amendment”, provided that such amendment:
 - a. Does not conflict with the applicable purposes and land use standards of this Ordinance;
 - b. Does not prevent reasonable access of emergency vehicle access or deprive adjacent properties of adequate light and air flow;
 - c. Does not significantly change the general character of the land uses of the approved Master Development Plan;
 - d. Does not result in any substantial change of major external access points;
 - e. Does not increase the total number of approved dwelling units or height of buildings; and
 - f. Does not decrease the minimum specified setbacks, open space area, or minimum or maximum specified parking and loading spaces.
3. The phrase "minor amendments" includes, but is not limited to, changes to: the location, number or types of uses within the Planned Unit Development or any phase(s) thereof, subject to 2, 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.
4. The Planning Commission may only approve minor amendments that increase residential density or intensify nonresidential uses if the amendments provide for enhancement of the architectural design and landscaping of the area subject to the amendment.
5. Any amendment of a Master Development 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 a minor amendment.

J. Conflict with other Articles

1. Provisions of the PN Floating zone when found to be in conflict with other provisions of the Betterton Zoning Ordinance may, if approved by the Planning Commission, supersede those other provisions with which they conflict.
2. Provisions of the PN Floating zone when found to be in conflict with other provisions of the Betterton Subdivision Ordinance may, if approved by the Planning Commission, supersede those other provisions with which they conflict.

Section 10: PN Design Guidelines

A. Purpose and Intent. The purpose and intent of establishing Design Guidelines for the PN Planned Neighborhood District is:

1. To preserve and enhance the unique character of the Town while integrating new development into the overall fabric of the community;
2. To encourage creative design and innovative approaches to achieve the community character called for in the Town's Comprehensive Plan;
3. To ensure that each incremental addition to the Town is designed in a manner that is mindful of what has come before and contributes to the achievement of overall community design objectives;
4. To encourage a broad housing market that will accommodate a diverse population mix of all ages, income levels, and socio-economic backgrounds reflective of the Town's existing demographics.

B. Specific Goals and Objectives. The goals and objectives of the PN Design Guidelines are to:

1. Design for the human scale and perceptions to create a sense of neighborhood and community.
2. Enhance Betterton's sense of place in its rural and regional setting by maintaining the small-town feel while keeping new development in harmony with nature.
3. Create a pleasant and functional pedestrian realm that consists of common open spaces, tree-lined streets, landscaped areas (between public and private spaces) and utility corridors.
4. Encourage internal and peripheral open space.
5. Create neighborhood centers or town centers within walking distances of all surrounding neighborhoods.
6. Create appropriate transition areas between neighborhoods.
7. Design for neighborhood and collector streets internal to the community.

8. Integrate buildings of smaller scale in a pattern of various footprints.
 9. Plan for mixed and multiple land uses, also include a mix of housing types, income and a horizontal and vertical mix of uses.
 10. Utilize appropriate details in building design.
 11. Create housing which offers a variety of options to accommodate and encourage a diverse population mix of varied socio-economic backgrounds reflective of the Town's demographics.
- C. **Applicability.** The provisions of the PN Design Guidelines May, if approved by the Planning Commission, be considered during the review of all Master Development Plans, site plans, subdivision plans, or other permits or applications for new development, new construction involving structural alterations, and new structures, on all land located in the PN District. Where these guidelines conflict with any provision of the Betterton Zoning Ordinance or the Subdivision Ordinance, these guidelines shall control.
- D. **Design Provisions.** The Planning Commission will rely on the Comprehensive Plan and the PN Design Guidelines concerning issues of design, neighborhood and community character, and compatibility. In general, these call for the following characteristics, which shall be set forth on a set of drawings, plans, and/or elevations sufficient to permit the Planning Commission to apply the following standards.
- E. **General Design Provisions.** The following standards generally apply to development proposed in the PN District.
1. **Architectural Considerations.**
 - a. The architectural design of structures and their materials and colors should be visually harmonious with the overall appearance, history, and cultural heritage of the Town, with natural landforms and existing vegetation and with other development plans approved by the Town.
 - b. Specific consideration should be given to compatibility with adjacent properties where such projects demonstrate the Town's character.
 - c. Facing buildings should not differ in height by more than 2:1, excluding church steeples, decorative cornices, chimneys, and the like.
 - d. Materials should be used that have similar texture and appearance as appropriate to the Town's character.
 - e. Exterior materials should be natural in appearance, with preference given to wood or wood appearance siding, stone, and brick. Exterior building colors should be traditional or muted tones.
 2. **Overall Form and Spatial Relationships**

- a. Areas of new construction should be sited so as to best preserve natural vistas and the existing topography.
- b. Peripheral greenbelt open space should be designed to follow the natural features whenever possible and to maintain an agricultural, woodland, or countryside character.
- c. The planned neighborhood should be distinguished from the peripheral, greenbelt open space by a well-defined line or edge so that developed areas will transition very quickly to rural, undeveloped lands.
- d. Peripheral open space should surround the planned neighborhood. An exception to this standard is that Neighborhood Centers Areas may be located along major roads, at the planned neighborhood perimeter. Another exception is that planned neighborhoods proposed to be located within five hundred (500) feet of existing residential development should be encouraged to be contiguous with preexisting neighborhoods through the use of multiple street and footpath connections.
- e. If a state highway also functions as a main street or main street extended, setbacks and screening may be reduced in favor of urban gateway treatments, e.g., decorative street lights, special signage and landscape treatments appropriate to an urban street. No such screening need be required when the depth of a perimeter greenbelt exceeds these distances.
- f. Neighborhood Centers and Central Residential Areas should be surrounded by Single Family Residential Areas or, where applicable, by a combination of residential and civic uses.
- g. The transition between different land uses should be handled so as to avoid distinct visual differences, such as in the scale of buildings. Similar land-use types should front one another, while dissimilar land-use types should abut along alleys or rear parking areas.
- h. Neighborhood Centers should be located at or near the geographic center of the residential areas it primarily serves and should be located within fifteen hundred (1,500) feet of three-quarters of all dwellings within its service area. Neighborhood Centers shall not be designed to front on, be highly visible from or take access from a State maintained highway.
- . Higher-density residential uses should be located within the Central Residential Areas.

3. Block Design.

- a. Planned neighborhoods should be designed in a net-like pattern of blocks and interconnecting streets and alleys, defined by buildings, street furniture, landscaping, pedestrian ways, and sidewalks.

- b. While topography, existing vegetation, hydrology, and design intentions should influence block shape and size, the maximum length for a block should be five hundred (500) feet, with an allowance for blocks up to eight hundred (800) feet when mid-block footpaths are provided. No less than one eight-foot pedestrian alley or way should be provided for every two hundred and fifty (250) feet of street frontage in the commercial zones, connecting with rear parking lots.
 - c. Each block that includes storefronts and/or residential lots or uses less than forty-five (45) feet wide should be designed to include an alley serving rear parking areas or garages.
 - d. In order to calm traffic speeds, the use of "T" intersections, where vehicles must stop and turn to the right or to the left rather than proceeding forward in a straight line, is encouraged. At least twenty-five (25) percent of all intersections within the subdivision residential areas should take this form, unless other design devices (such as traffic islands or circles, four-way stop signs, or speed bumps) are employed to reduce vehicle travel speed.
- F. Residential SRA. In addition to the General Design Provisions set forth in subsection E above, the following guidelines generally apply in the Single-Family Residential Areas (SRA) of the PN District.
- 1. Residential design styles should reflect vernacular architecture.
 - 2. Repetitious housing styles within individual neighborhoods are discouraged.
 - 3. Porch frontages are encouraged on all single family detached homes.
 - 4. Residential buildings should front on public ways, and be located so as to create a sense of enclosure along the street.
 - 5. Build-To-Lines (BTL) should include appropriate variations to encourage neighborhood identity and creativity.
 - 6. Lot widths within individual neighborhoods should be varied. Orientation of housing can also vary.
 - 7. Lot widths should be designed to ensure that garages do not dominate the front facade of residential structures.
 - 8. Traditional roof pitches and multiple roof lines are encouraged.
- G. Residential CRA. In addition to the General Design Provisions set forth in subsection E above, the following guidelines generally apply in the Central Residential Areas (CRA) of the PN District.
- 1. In general, townhouse and multi-family units should adhere to the architectural guidelines for single family and two-family dwellings.

2. Townhouse and multi-family units should blend into the overall character of the neighborhoods.
3. Multi-family structures should appear as large single-family units. Small groups of town homes, four or less, may be designed to appear as large single-family structures.
4. Single family residences should be mixed with other permitted housing types.
5. No more than six units should be included in a single town house unit group. Each unit should have a distinct architectural appearance, but the overall appearance of the units should be compatible with and complementary to adjacent single family residential units and with the other units in the neighborhood.
6. Parking for townhouse and multi-family structures should be located to the rear or side of the units.
7. The majority of multi-family and townhouse units should be located in the Central Residential and Neighborhood Center areas of the community.

H. Conservation Area. The following design provisions generally apply in the Conservation Areas (CA) in the PN District.

1. The open space provided within planned neighborhoods should include areas known as Conservation Areas consisting of greenbelts, greens, parks, and other open spaces.
2. The greenbelt parts of Conservation Areas should be designed to create a visual and physical distinction between the proposed development, the surrounding countryside, and any neighboring developments.
3. Greens and squares are spatially defined and distributed open spaces within the planned neighborhoods, designed to serve a variety of outdoor leisure and assembly needs of planned neighborhood residents and to enhance the form and appearance of the development.
4. There should be a main central green, located within five hundred (500) feet of the planned neighborhood's geographical center. When a Neighborhood Center is part of the development proposal, this main green should be located in close proximity to it. Other, smaller greens should be dispersed throughout the remainder of the planned neighborhood in such a way that no lot is more than a walking distance of 1,350 feet from a green, square, or park. The main village green should be designed to a pedestrian scale, meaning that it should be between 20,000 and 40,000 square feet in area. The other, smaller greens, squares, and parks (but not including the central open space within "loop lanes") should be no less than 8,000 square feet in size. All greens should be planned with shade trees along their edges, at intervals not greater than fifty (50) feet, with groups of trees located at various points throughout their area.

- I. Neighborhood Center. In addition to the General Design Provisions set forth in subsection E above, the following guidelines generally apply in the Neighborhood Center (NC) of the PN District.
1. Maximum Size. New commercial buildings in the Neighborhood Center and their associated parking spaces should not occupy more than five (5) percent of the Gross lot area. Area of the entire planned neighborhood. Commercial buildings may occupy up to ten (10) percent of the Adjusted Tract Area if they include second-story office uses. Commercial buildings may occupy up to fifteen (15) percent of the Gross lot area if they include second-story residential units. In order to qualify for the fifteen (15) percent figure, at least half of the new commercial building coverage (foundation footprint) should be of two-story construction, and at least twenty-five (25) percent of the second-story space shall be designed for residential uses.
 2. Uses. The mixed-use/commercial portions of the planned neighborhood should be contained within the Neighborhood Center. This area should be designed to provide a variety of retail shops and services to support the day-to-day needs of planned neighborhood residents and other local residents, complemented by other compatible business, civic, and residential uses in commercial-type buildings in a manner consistent with a small downtown or central market place in the community.
 3. Commercial areas should surround, be located adjacent to, or be across the street from a public park, green, or square of at least 10,000 square feet, which area may be credited as part of the open space required of the development.
 4. New commercial buildings may be either traditional in their architectural character or be a contemporary expression of traditional styles and forms, respecting the scale, proportion, character, and materials of shops in the community. Shop front design should be based upon historic examples in the area, with large display windows having sills between twelve (12) and eighteen (18) inches above sidewalk level and lintels nine (9) to twelve (12) feet above sidewalk level. Commercial buildings should also articulate the line between the ground and upper levels with a cornice, canopy, balcony, arcade, or other visual device.
 5. The massing of larger commercial buildings should be de-emphasized in a variety of ways, including the use of projecting and recessed sections, to reduce their apparent overall bulk and volume. Such breaks in their facades and rooflines should occur not more frequently than the width of two historic shop fronts (generally about 25 feet each), nor less frequently than one hundred (100) feet. To harmonize with the traditional scale of commercial buildings in historic towns and villages, new commercial buildings should not contain more than 3,500 square feet (above grade), and those with more than 1,500 square feet of floor space (above grade) should be of at least one and-one-half-story construction.

6. A majority of buildings should be designed for multiple uses, with offices and/or residential units above.
7. Buildings should be topped with pitched roofs with overhanging eaves, but flat roofs with articulated parapets and cornices may be allowed. Desired materials on pitched roofs include slate (either natural or manmade), shingle (either wood or asphalt composition), and metal formed to resemble "standing seams." Roof color should be traditional, meaning that it should be within the range of colors found on existing buildings in the community. The use of fascias, dormers, and gables is encouraged to provide visual interest. All gables should be functional.
8. Gas station canopies should have pitched roofs and the lighting should be from luminaries completely recessed into the ceilings of said canopies, so that the lighting elements themselves are not visible from or beyond the lot lines.
9. Exterior wall materials may include stucco, wood clapboard (including vinyl or aluminum imitation clapboard siding), native stone, split-face aggregate block, or brick of a shape, color, and texture very similar to that found in the historic villages and towns in of Kent County. Except on rear walls, all forms of concrete block should be prohibited. In addition, metal buildings should also be excluded from this sub-district.
10. Large work area doors or open bays shall not open toward or face the public ways.
11. HVAC and other fixed operating machinery shall be either screened from view or located so that such items are not visible from the highway, public rights-of-way, or adjoining non-commercial areas. Large trash receptacles, dumpsters, utility meters, and above ground tanks, etc., shall be similarly treated.
12. All signage should:
 - a. Be affixed to a building facade, canopy, or arcade;
 - b. Be located no higher than the sills of second-story windows;
 - c. Be visible to both pedestrians and drivers;
 - d. Be illuminated with steady external lighting (if lighted at all); and
 - e. Use lighting conforming to the regulations contained in the Zoning Ordinance.
13. Traditional canvas awnings without interior illumination are encouraged, and all signs should be of wood or metal, preferably with dark background colors and light-colored lettering.
14. Storefront buildings should have at least sixty (60) percent of their front facade coincident with their street frontage, including frontage onto courtyards.
15. Principal entrances to buildings should be from the front sidewalk, except in courtyard designs.

16. Storefront buildings fronting on the same street and located on the same block should be attached, except as necessary to accommodate pedestrian ways.
- J. Lighting Design Provisions. An exterior lighting plan shall be submitted to the Town whenever subdivision or site plan approval is sought in the PN District in order to determine whether the provisions of this section have been met and that adjoining property will not be adversely impacted by the proposed lighting.
1. In general, the following provisions apply to lighting proposed as part of any development:
 - a. Lighting should be designed so as to prevent direct glare, light spillage and hazardous interference with automotive and pedestrian traffic on adjacent streets and all adjacent properties.
 - b. Light fixtures should be designed as an integral design element that compliments the design of the neighborhood through style, material, and color.
 - c. All utility lines shall be installed underground.
 - d. Street pedestrian way lights should be decorative and blend with the architectural style of the neighborhood, and should not exceed 14 feet in height.
 - e. Flickering or flashing lights are prohibited.
 - f. Light sources should not be located within buffer areas except on pedestrian walkways.
 - g. Lighting that unnecessarily illuminates any other lot and substantially interferes with the use or enjoyment of another lot is prohibited.
 - h. Lighting fixtures should not exceed the minimum height and power necessary to accomplish their intended function.
 2. Residential. In addition to the general provisions set forth in subsection J (1) above, the following provisions apply to lighting for residential development.
 - a. Multi-family residential units should be adequately lighted to ensure public safety and the security of the buildings.
 - b. Lighting on individual streets should be designed consistent with the planned function of the street without excessive illumination.
 - c. Porch light and yard post lighting should be incorporated into the street lighting design in residential developments.

3. Non-Residential. In addition to the provisions set forth in subsection J(1) above, the following provisions apply to lighting used for non-residential uses (including but not limited to commercial, civic, recreational, fraternal, and religious facilities).
 - a. All exterior lighting should be shielded so as not to shine directly onto surrounding properties or public ways or rights of way, except as planned and approved for safety purposes. In addition, the globe, lens, bulb, or filament should be shielded to not be visible from adjoining properties.
 - b. Lighting should be designed to provide uniform illumination of the property to prevent extreme contrasts between light and dark areas and to provide for adequate safety and security.
 - c. Lighting may be used to accent key architectural elements and/or to emphasize landscape features. Architectural lighting should be recessed under roof overhangs or generated from concealed, low-level light fixtures.

K. Parking Provisions. A parking plan shall be submitted to the Town whenever subdivision or site plan approval is sought in order to determine whether the requirements of this section have been met. Parking standards are flexible and take into account off-site parking. The Planning Commission shall review the parking plan to ensure adequate parking is available, and that it is appropriately integrated into the overall Master Development Plan. The parking plan should comply with Article IX. In addition to the provisions set forth in Article IX, the following standards generally apply to parking in the PN District.

1. Parking areas should be small scale, and highly landscaped.
2. Parking shall not be a dominant site feature and should be screened, landscaped, and lit to assure public safety.
3. In Neighborhood Centers, parking should consist of ample on-street parking and small lots located to the side or rear of buildings and screened from the main commercial street.
4. Parking lots should not be located on street corners and at intersections.
5. Parking lots should not be located at terminal vistas.
6. Parking lots should not be located near parks or public squares unless designed to serve the park.
7. Access to parking should be provided from rear driveways where possible.
8. Parking areas for adjacent commercial uses should be interconnected to minimize traffic on adjacent streets.
9. Shared parking arrangements are encouraged.

10. Parking blocks should be oriented to buildings to allow pedestrian movement down and not across rows.
 11. Through access should be provided within and between parking blocks; dead end drives are strongly discouraged.
 12. On-street parallel, angled, or head-in parking is encouraged in commercial areas.
- L. Street Provisions. In addition to complying with the provisions of the Subdivision Regulations relating to streets, the following standards generally apply in the PN District:
1. Streets should be designed to accommodate the pedestrian, cyclist, and the vehicle, e.g., sidewalks and bike paths.
 2. Street layout should be composed of interconnecting narrow streets laid out in a modified grid.
 3. Streets should connect to at least two other streets. Cul-de-sacs and dead ends should be avoided.
 4. Distinct (e.g., patterned) pedestrian crosswalks should be installed at intersections and any other location where pedestrian systems cross a street.
 5. Traffic calming should be an integral part of the overall street design.
 6. Development plans should address improvements to offsite roads that serve a project, including offsite pedestrian linkages.
 7. The view from the long axis of a street should terminate at a significant design feature.
 8. The design speed for all streets within the PN District should be a maximum of 25 MPH.
 9. A separate bicycle lane should be provided on streets planned for high traffic volumes (>2,000 ADT).
 10. Direct access onto Collector streets from residential property is discouraged.
 11. Curb radii should be sufficiently small to reduce vehicle speed.
 12. On-street parking on minor streets should be provided on one or both sides, as appropriate.
- M. Sidewalks, Curbs and Gutters. In addition to the provisions relating to sidewalks, curbs and gutters as set forth in the Subdivision Regulations, the following standards generally apply in the PN District.
1. Sidewalks
 - a. A continuous sidewalk system should provide pedestrian access from all residential units to all other land uses.

- b. The minimum width for sidewalks in residential neighborhoods and recreational areas is five (5) feet.
- c. The minimum width for sidewalks in commercial areas is eight (8) feet. However, wider sidewalks may be necessary depending on the anticipated volume of pedestrian traffic or type of business use in a specific commercial area.
- d. Pedestrian crosswalks should be located at all major pedestrian crossings.
- e. Bump-outs should be provided at major pedestrian crossings on commercial streets and undivided major collector streets.
- f. Utility structures and mailboxes should not be located so as to reduce the width of sidewalks.
- g. In commercial areas, sidewalks may be used for outdoor retail display or outdoor dining areas, provided that it does not impede pedestrian flows or create a hazard.
- h. Where appropriate, durable street furniture, trash receptacles, and other amenities should be placed along sidewalks.

2. Curbs and Gutters

- a. Curbs and gutters are required on the entire street frontage of any parcel or lot, except alleys, unless alternative low impact stormwater designs are approved by the Planning Commission.
- b. Curbs and gutters shall be built to the construction standards and specifications as determined by the Town.
- c. Only one curb cut per street frontage should be allowed on residential lots that do not have alley access.
- d. There should be a maximum of two (2) curb cuts per commercial lot per street frontage.

N. Landscaping, Shading and Buffers. As part of the PN submission, the applicant is required to provide landscape standards for the development. At a minimum, landscape standards shall comply with the requirements of set forth in Appendix D of the Betterton Zoning Ordinance.

Section 11: CAZ – Critical Area Overlay District

Section 12: Intent.

In 1984 the Maryland General Assembly passed the Chesapeake Bay Critical Area Act in response to growing concern over the decline of the quality and productivity of the waters of the Chesapeake Bay and its tributaries. The decline was found to have

resulted, in part, from the cumulative effects of human activity that caused increased levels of pollutants, nutrients, and toxins, and also from declines in protective land uses such as forest land and agricultural land in the Bay region. In 2002, the Atlantic Coastal Bays were added to the Critical Area because these bays were experiencing a similar decline..

Section 13: Purpose and Goal.

The General Assembly enacted the Critical Area Act for the following purposes:

- To establish a resource protection program for the Chesapeake Bay and Atlantic Coastal Bays and their tributaries by fostering more sensitive development activity for certain shoreline areas so as to minimize impacts to water quality and natural habitats; and
- To implement a resource protection program on a cooperative basis between the State and affected local governments, with local governments establishing and implementing their programs in a consistent and uniform manner subject to State Criteria and oversight.

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 that accommodate growth as well as address the environmental impacts that the number, movement, and activities of persons may have on the area.

Section 14: Implementation of the Critical Area Provisions

- A. Local Implementation: These provisions regulate development activities and resource utilization activities, e.g., 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 in May of 1988. The Program consists of this ordinance, the Town's Critical Area maps, and the Comprehensive Plan and subdivision regulations.

Section 15: Regulated Activities and Applicability:

- A. 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, 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 Town Administrator or their designee after review and approval under the Town's Critical Area Program
- B. **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, COMAR 27.02.04 and COMAR 27.02.06. If applicable, consistency reports shall be submitted to the Chesapeake Bay Critical Area Commission.

Section 15: 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 Betterton. In the case of conflicting provisions, the stricter provisions shall apply.
- B. **Responsible Agencies.** These provisions shall be implemented and enforced by the Town Administrator with the assistance of the Critical Area Circuit Rider. Should an infraction of provisions contained in this Critical Area overlay Zone, or under any law, Chapter or plan related to the Town's Critical Area Overlay District provisions or requirements be brought to the attention of any official of the Town, said official shall immediately contact the Town Administrator who may consult with the Critical Area Circuit Rider and/or the Town's attorney to determine the proper remedial course of action. The Town Administrator shall send a copy of the decision to the Critical Area Commission. The Commission, at its discretion, may also take such remedial action as given it under State 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 this section, the following may be considered:

1. The gravity of the violation;
2. the willfulness or negligence involved in the violation;
3. the environmental impact of the violation.

Section 16: Critical Area Acreage.

At the time of Critical Area approval, the Town of Betterton had about thirty-two (32) acres classified as Intensely Development Area, sixty-two (62) acres classified as Limited Development Area, and seventy-two (72) acres as Resource Conservation Area. In 1990, 2.18 acres were reclassified from LDA to IDA by the use of growth allocation for the Rigby Bluffs project. Presently there are 34.18 acres of IDA. In 1993, growth allocation of 41.9 acres of RCA was approved for the Betterton Bay Club project to LDA. In 1996, the growth allocation that was approved for the Betterton Bay Club project was rescinded and the 41.9 acres returned to the Town's growth allocation pool. Currently there are 59.82 acres of LDA.

Section 17: Development in the Critical Area

A. **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 land use management districts within the Critical Area. The Critical Area has also been defined as an overlay zone in the Town Zoning Ordinance. The Town has identified each of the three land use management districts within the Critical Area based on the following criteria and has developed policies and programs to achieve the objectives as proposed by the Town Program. The Town recognizes the following three types of development areas: Intensely Developed Areas (IDAs); Limited Development Areas (LDAs); and Resource Conservation Areas (RCAs). The following general provisions are applicable throughout the Critical Area:

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.

B. Implementation. For purposes of implementing this regulation the Town has determined, based on land uses and development in existence on December 1, 1985, which land areas fall within the three types of land management and development areas described in this program.

C. Activities permitted only in IDA. Certain new development, or redevelopment 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.

The Town may preclude additional development activities that it considers detrimental to water quality, fish, wildlife, or plant habitats within the Critical Area.

D. 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.

E. Continuation of existing, permitted facilities. Existing permitted facilities of the type noted in paragraph D above shall be subject to the standards and requirements of the Department of the Environment, under COMAR, Title 26.

- F. **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 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.

Section 18: Water Dependent Facility Requirements

- A. **Definition.** "Water dependent facilities" means those structures or works associated with industrial, maritime, recreational, and educational or fisheries activities that require location at or near the shoreline within the 100-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. **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 facilities 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. 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. That the facilities are consistent with an approved local plan set forth below and comply with provisions 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.** Applicants for new or expanded water-dependent facilities in Intensely Developed Areas or Limited Development areas shall set out 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 the 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 the 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.

H. **Marinas and Other Commercial Maritime Facilities** – New, 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 this section. 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 water.

a. **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;
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 for the Critical Area;
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 are not allowed.

I. **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

J. **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.

K. **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.

L. **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.

Section 19: 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 paragraphs 1, 2 and 3 below, the Town may not issue a building permit for any project involving the construction of a dwelling unit or other non-water dependent structure on a pier located on State or private tidal wetlands within the Critical Area.
1. The Town may issue a Construction Permit for a project involving the construction of a dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area that was issued by the Department of Natural Resources on or before January 1, 1989.
 2. The Town may issue a Construction Permit for a project involving the construction of a dwelling unit or other non-water dependent structure on a pier located on State or private wetlands within the Critical Area if the following conditions exist:
 - a. The structure is constructed on a pier that existed as of December 1, 1985 verified by a DNR aerial photograph and accompanied by a map of the area;
 - 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 Permit for the repair of an existing dwelling unit or other non-water-dependent structure on a pier located on State or private wetlands within the Critical Area.
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.

Section 20: Shore Erosion Protection Works

- 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:

- a. Encourage the protection of rapidly eroding portions of the shoreline in the Critical Area by public and private landowners;
- b. Where such measures can effectively and practically reduce or prevent shore erosion, encourage the use of non-structural shore protection measures in order to conserve and protect plant, fish and wildlife habitat.

C. Standards for erosion protection. The Town shall require that each application for shore erosion protection meet the following standards:

- a. Structural control measures shall only be used in areas where appreciable erosion occurs and where non-structural measures would not be practical or effective in controlling erosion.
- b. 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;
- c. Non-structural measures shall be utilized in areas of erosion where they would be a practical and effective method of erosion control;
- d. Structural erosion measures shall not be encouraged in areas where no significant erosion occurs;
- e. If significant alterations in the characteristics of a shoreline occur, the measure that best fits the change may be used for sites in that area.

D. Shoreline changes. The Town recognizes that storms and other natural events may change current shoreline erosion patterns. As such, an individual may request the use of a structural erosion control device in an area currently designated for non-structural controls. This request to the Town must be accompanied by documentation which identifies the specific location of the site to be protected, and a description of the event or events which led to the change in the erosion pattern. Notification of such a request shall be sent to the Town Administrator for the review and consultation with the Critical Area Circuit Rider.

E. Process. The Town, in reviewing any application for a permit for structural erosion control devices, shall refer the application to the Soil Conservation District and to the Department of Natural Resources for field verification of the need for the

structural erosion control as well as for recommendations on proposed erosion control mechanisms.

1. Any application made to the Town for the installation of an erosion control device must, at a minimum, include the following information:
 - a. Photograph of erosion problem;
 - b. The specific location of the site on a USGS 7.5 topographic map;
 - c. Soil type and erodibility;
 - d. Proposed and existing land use.
2. Applications must include appropriate authorization from the Maryland Department of the Environment and the U.S. Army Corps of Engineers.
3. For shore erosion control projects that involve clearing of natural vegetation within the Buffer, applicants shall be required to replant in natural vegetation the impacted area of the Buffer.

Section 21: 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 are currently 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.** The following criteria are hereby adopted for Intensely Developed Areas:

1. All plans shall be assessed for their impacts on water quality and other biological resources.
2. Alterations in the plans shall be made to mitigate any negative impacts.
3. 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 for projects requiring site plan review.
4. All plans shall be assessed for their impacts on water quality and other biological resources.
5. Alterations in the plans shall be made to mitigate any negative impacts.
6. Urban best management practices shall be considered and, where appropriate implemented as part of all plans for development and redevelopment.
7. Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in those sections of this ordinance.
8. 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.
9. 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 Town Administrator or their designee and the Critical Area Circuit Rider.
- D. If practicable, permeable areas shall be established in vegetation and whenever possible, redevelopment shall reduce existing levels of pollution.
- E. 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.
- F. 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.
- G. 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, wetland and aquatic habitat restoration elements.

- H. 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.
- I. **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 such as street tree planting, gardens, landscaping, and Buffer planting;
 - b. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
 - c. 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;
 - d. Replacement trees shall be of native species and planted on a 1:1 ratio with balled and burlap or containerized trees of two inch (2”) caliper.
- J. **Public Education Program.** The Town shall use a public education program to alert developers and property owners to potential impacts, mitigation measures and urban best management practices that should be considered as part of all intense development activity from individual dwellings through major development projects.

Section 22: 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:
 - 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 the Intensely Developed Area designation 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. This development conforms to the water quality and habitat protection criteria set forth below; 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.** For all development activities in the Limited Development Areas, the Town shall require that the applicant identify any environmental or natural features described below, and shall meet all of the following standards of environmental protection:

1. Adherence to the provisions of the applicable sections of this ordinance regarding Habitat Protection Areas and water-dependent facilities.
2. All roads, bridges, and utilities 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.
3. All development activities that must cross or affect streams shall be designed to:
 1. Reduce increases in flood frequency and severity that are attributable to development;
 2. Retain tree canopy so as to maintain stream water temperature within normal variation;
 3. Provide a natural substrate for stream beds; and

4. Minimize adverse water quality and quantity impacts of stormwater.
4. 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.
5. For the cutting or clearing of trees in forests and developed woodland areas which 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.
6. 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 Town in 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 (4) 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.
7. 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.
8. In addition, applicants shall adhere to the following criteria for forest and woodland development:
- a. A performance bond shall be collected by the Town in an amount determined by the Town to assure satisfactory replacement as required by paragraphs (3) and (4) above;
 - b. Grading permits shall be required before forest or developed woodland is cleared;
 - c. Forests which have been cleared before obtaining a grading permit or that exceed the maximum area allowed in (4) 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 paragraphs (3), (4) and (5) 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 fees-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 designated 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.
9. Applicants shall adhere to the following standards for development on steep slopes. 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 Limited Development Areas set forth above.
10. Except as otherwise provided in this sub-section, for stormwater runoff, man-caused impervious areas shall be limited to 15 percent of the site.
- a. If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then man-made impervious surfaces are limited to twenty-five (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, then man-made impervious surfaces of the lot may not exceed twenty-five percent (25%) of the lot, and the total impervious surfaces of the entire subdivision may not exceed fifteen percent (15%).
 - d. Impervious surface limits provided in sections a and b above may be exceeded, upon findings by the Town Administrator or his designee that the following conditions exist:
 - (1) New impervious surfaces on the property have been minimized;

- (2) For a lot or parcel one-half acre or less in size, total impervious surface area does not exceed impervious surface limits in subsection A 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 subsection B or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
- (4) The following table summarizes the limits set forth in paragraphs 1 through 3 above:

LOT/PARCEL SIZE (SQUARE FEET)	IMPERVIOUS SURFACE LIMIT
0 – 8,000	25% of Parcel + 500 SF
8,001 – 21, 780	31.25% of Parcel
21,780 – 36,300	5,445 SF
36,301 – 43,560	15% of Parcel

- (5) Water quality impacts associated with runoff from new impervious surfaces can be and have been minimized through site design considerations 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 \$1.00 per square foot of new impervious surface area on the property. The Town shall use all fees collected under this provision to fund projects that improve water quality within the Critical Area, consistent with the Town’s Critical Area Program and Zoning Ordinance.
11. The Town should allow 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.

12. To reduce the extent of impervious areas and maximize areas of natural vegetation, cluster development shall be considered when planning for future development.
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.

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 pre-development 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.

Section 23: 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.** All development activities in the Resource Conservation Areas shall require that the applicant identify any environmental or natural feature described below, and shall meet 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, the Agricultural Section, and the Forest and Woodlands Protection Section of this ordinance.
 - 2. Land 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 area necessary to support the protective uses will be encouraged by the town and implemented as necessary.

3. 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 RCA.
4. New commercial, industrial and institutional uses shall not be permitted in the RCA, 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.
5. The town shall ensure that the overall acreage of forest and woodland within the RCA does not decrease.
6. Development activities within the Resource Conservation areas shall be consistent with the requirements for Limited Development Areas as specified in this ordinance.
7. 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.
8. In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the RCA, 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 RCA.** In addition to the uses specified above, certain nonresidential uses may be permitted in Resource Conservation Areas if it is

determined by the Planning Commission or their designee that the proposed use is one of the following:

- (a) A home occupation as an accessory use on a residential property and as provided for in the Town's zoning ordinance.
- (b) 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;
- (c) A cemetery that is an accessory use to an existing church; provided Impervious surfaces are limited to 15 percent of the site or 20,000 square feet, whichever is less;
- (d) A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility;
- (e) A gun club or skeet shooting range or similar use, excluding main buildings and/or structures, such as a clubhouse, snack bar, etc.;
- (f) A day care facility in a dwelling where the operators live on the premises and there are no more than eight children;
- (g) A group home or assisted living facility with no more than eight residents;
- (h) Other uses determined by the town and the Critical Area Commission to be similar to those listed above.

Section 24: Surface Mining in the Critical Area

Surface mining is not permitted in the Town. Should the Town amend its 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.

Section 25: Natural Parks

The Town does not have any natural parks in the Critical Area. Should a natural park be proposed in the Critical Area, the Town shall amend its Critical Area Ordinance to include appropriate language.

Section 26: Agriculture

Agriculture is not permitted in the Town. Should the Town amend its Zoning Ordinance to allow agricultural uses in any zone within the Critical Area, the Town shall amend its Critical Area Ordinance to include appropriate language.

Section 27: Habitat Protection Areas

- A. Description. The Habitat Protection Section of the Town of Betterton Critical Area Program addresses protection of the following four habitats:
 - 1. The 100 foot Buffer;
 - 2. Threatened and Endangered species and Species in Need of Conservation;
 - 3. Plant and Wildlife Habitat Protection Areas including non-tidal wetlands;
 - 4. Anadromous Fish Propagation Waters.

- B. **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, Planning Commission, Town staff, 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 a more detailed site analysis and inventory as part of the Environmental Assessment for development activity in the Critical Area.

Section 28: The 100-Foot Buffer

- A. Identification of the Buffer. The establishment of a minimum 100-foot buffer from the mean high water line of tidal waters, the edge of bank of tributary streams, and the landward extent of tidal wetlands shall be required on a site by site basis as part of the Environmental Assessment and site analysis report.

- B. **General Policies.** The Town adopts the following policies with regard to the function 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.

B. Standards -The following criteria apply to land use activities within the Buffer.

1. The Buffer shall be established at a minimum distance of 100 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 expanded beyond 100 feet to include contiguous sensitive areas of steep slopes, hydric soils or highly erodible soils whose 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 up 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 related facilities may not be allowed in the Buffer except for those necessarily associated with Water Dependent Facilities as defined 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 lands area proposed to be developed 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 the Buffer functions set forth in this section.

C. 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 within the Buffer, any vegetation in the Buffer that is proposed to be removed, and the proposed planting in the Buffer required to “establish” the Buffer or as mitigation for impacts. The planting shall include the size, species and location of all plantings. Buffer Management Plans are not required for the normal maintenance of existing lawns and landscape plantings.

D. 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 bond 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.

E. **Tree cutting in the Buffer.** The Buffer shall be managed to achieve or enhance the policies stated in Section 28 Babove. 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 approved by the Planning Commission or their designee. Cutting 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, providing the device, measure or facility has received all necessary State and Federal permits.
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 Department of Agriculture and Natural Resources, if necessary to preserve the forest from extensive pest or disease infestation or threat from fire.

Section 29: Threatened and Endangered Species and Species in Need of Conservation

A. **Identification.** The approximate location of rare threatened and endangered species and species in need of conservation are shown on the Town Critical Area map. This map will be used to assist in the identification of general areas where threatened and endangered species are located. Significant habitat areas include the Puritan Tiger Beetle know to exist along the eroded banks of the Chesapeake Bay and Sassafras River.

- 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 (F) 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, once identified, 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, Federal laws or regulations or on private land, any private restrictions, such as 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.

Section 30: Plant and Wildlife Habitat and Non-tidal Wetlands Protection

- 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, when such identification occurs;

6. Other plant and wildlife habitats determined to be of local significance;
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 that are required to support the continued presence of various species;
4. Protect those wildlife types and plant communities that 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 a property located within the Critical Area will require review 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 develop a Habitat Protection Plan to protect and conserve the habitats identified. This information concerning habitats will be incorporated into the Town's 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 bases 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 birds (such as 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 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 or 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.

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 and in the Town as a whole:

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 of 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 Department of the Environment and Agriculture, the local Soil Conservation Districts and the U.S. Fish and Wildlife Service and the US Army Corps of Engineers. 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 applicant 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 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.

Section 31: Anadromous Fish Propagation Waters

The Maryland Department of Natural Resources has identified the Sassafras River as a spawning area for yellow perch and striped bass. Yellow perch, herring and white perch were also found up river as far as they could migrate.

- A. **General Policies.** The policies of Town with regard to Anadromous fish propagation waters shall be to:
- 1. Protect the in stream 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. Regulate land use so as to provide for the unobstructed movement of spawning and larval forms of anadromous fish in streams.

B. **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 objective:
 - a. Minimize the effect of development activities or land disturbances within the watershed;
 - b. Maintain, or if practical, 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 practical, increase the natural or native vegetation of the watershed and tree canopy over the streams.
4. The Town shall ensure that the 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;
 - 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 in-

stream, as described in COMAR 08.05.03.11B(5), shall be prohibited between March 1 and June 15 of each year.

Section 32: Special Buffer Areas (SBAs). The following provisions are intended to accommodate limited use of shoreline areas that have been mapped as Special Buffer Areas (SBAs) under the provisions of this Chapter while protecting water quality and wildlife habitat to the greatest extent possible. This section applies to new development or redevelopment within 100 feet of tidal waters, tidal wetlands and tributary streams on lots of record as of December 1, 1985. The lots shall have been officially designated by the Town, and approved by the Critical Area Commission, as Special Buffer Areas.

- A. **Single-family detached residential areas:** 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 50 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 structures be located less than 50 feet from the water or edge of tidal wetlands.

5. Variances to other setback requirements shall have been considered before additional development within 100 feet of mean high tide is approved.
6. 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 provisions set forth above.
7. Development does not impact any other habitat protection area other than the buffer, including non-tidal wetlands, other state and federal permits notwithstanding.
8. Special Buffer Area designations shall not be used to facilitate the filling of tidal wetlands that are contiguous to the buffer to create additional buildable land for new development or redevelopment.
9. Mitigation for development or redevelopment in the Special Buffer Areas 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 100-foot buffer shall be planted on-site in the buffer or other location as may be determined by the Planning Commission. 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 Planning Commission in consultation with the Critical Area Planner 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 or \$500.00 per tree 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 to enhance wildlife habitat, improve water quality, or otherwise promote the goals of the Town Critical Area Program. The funds cannot be used to accomplish a project or

measure that would have been required under existing local, State, or federal law, regulations, statutes, or permits. for plantings or water quality Best Management Practices within the Town's Critical Area and shall not revert to the general fund.(added 5/4/07 CAC Condition)

B. For commercial, Industrial, Institutional, Recreational and Multi-family residential areas: In designated Special Buffer Areas, new development or 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.
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 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. The 50-foot setback shall be maintained for 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 50 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 50-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. The applicant will be required to maintain any other existing natural vegetation in the buffer.

7. SBA designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the buffer or to create additional buildable land for new development or redevelopment.
8. Mitigation for development or redevelopment in the Special Buffer Area approved under the provisions of this section 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.

**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

- 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 buffer yard may be made on a case-by-case basis as approved by Planning Commission.
- c. In addition to establishing 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:

- (1) Natural forest vegetation of an area twice the extent of the footprint of the development activity shall be planted within the 100-foot buffer on-site, or at another location approved by the Planning Commission.
- (2) Applicants who cannot fully comply with the planting requirements above may use offsets to meet mitigation requirements. These can include 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 Planning Commission 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.
- (3). Applicants who cannot comply with either the planting or offset requirements above shall pay a fee in lieu of \$2.50 per square foot or \$500.00 per tree for the area to be planted.
- (4) Any required reforestation/mitigation offset areas shall be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of Kent County.
- (5) Monies collected under this section shall be deposited in a separate account and shall be used for plantings in the Critical Area for the benefit of wildlife habitat and water quality improvement, and shall not revert to the general fund. The status of these funds must be reported in the jurisdiction's quarterly reports.

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.

Section 33: Special Buffer Area Mapping Standards

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

TOWN OF BETTERTON

Zoning Ordinance with Critical Area Commission Conditions of Approval 5/4/07

And Ordinance changes 6/22/10

Printed 12/9/2010

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- 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 requirements. Portions of the property that are not designated as a SBA shall comply fully with the 100 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.

Section 34: 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 100-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 in the Buffer and clearing, cutting or removal of vegetation in excess of the area permitted to be cleared, by this ordinance, constitutes a violation of this section and shall result in fines and mandatory plantings (See Section 15 – Enforcement). The Planning Commission, 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. A state or registered forester, a landscape architect, or a landscape professional shall prepare all replanting plans at the expense of the offender.

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 Section 15. 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 15 of this ordinance. 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 Section E. 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 as described above because of existing vegetation, existing development, or the size of the parcel, a fee-in-lieu of planting may be collected. Fees shall be assessed at a minimum of \$2.50 per square foot of required mitigation or \$500.00 per tree.

Section 35: Growth Allocation Floating Zone

- A. **Purpose and Intent:** The Growth Allocation Floating Zone is not mapped, but is designated in use areas classified as Resource Conservation Areas (RCA) and/or Limited Development Areas within the Town of Betterton Critical Area Overlay Zone. The purpose of the floating zone is to permit a change in the land management classification established in the Critical Area Overlay Zone 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 Town Council for award of the Critical Area Growth Allocation are eligible for this floating zone.
- B. **Related Approvals.** Approvals of development plans, e.g., site plans, subdivision plat, PRD plans or master plans shall not be construed as approval of the Growth Allocation Floating Zone. An applicant may be approved for such plans and not be approved for the Growth Allocation Floating Zone.
- 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 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 Intensely Developed Area in a manner that minimizes impacts to Habitat Protection areas 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 New Intensely Developed Areas and Limited Development Areas in a Resource Conservation Area at least 300 feet beyond the landward edge of tidal wetlands or tidal waters.
7. New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of the Town for such areas, shall be so designated 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 Kent 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. If the Town is unable to utilize a portion of its Growth Allocation as set out in paragraphs (1) and (2) above within or adjacent to existing Intensely Developed or Limited Development Areas, then that portion of the allocated expansion which cannot be so located may be located in the Resource Conservation Areas in addition to the expansion allowed in (4) above. An applicant shall be required to cluster any development in an area of expansion authorized under this paragraph.

D. **Process:** Applicants for Growth Allocation shall submit a request for Growth Allocation accompanied by appropriate plans and environmental reports in accordance with the following process:

1. All applications for Growth Allocation shall be submitted to the Planning Commission fifteen (15) days prior to the next scheduled meeting. 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. 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 Critical Area 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 100-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. Information regarding how the Town has applied location guidelines set forth in Section C above. (e.g., LDAs adjacent to IDAs).

The Town 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 Town 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 Town Commissioners with a recommendation from the Planning Commission including conditions

recommended by the Planning Commission.

6. The Town 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 property owner, developer or consultant;
 - b. Planning Commission recommendations;
 - c. Public comments; and
 - d. The recommendations of the Critical Area Commission.
7. The Town Commissioners shall send the approved project to the Kent County Commissioners to request the award a portion of 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. Upon receipt of the request from the Town, 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. Final subdivision and site plans shall be processed in accordance with the requirements of this ordinance and the Town's subdivision regulations.
8. 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 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.
9. 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.

10. 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.
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.

E. **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.

F. **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 1985, and 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, being deducted from the jurisdiction's Growth Allocation, unless the development envelope concept outline in paragraph (2) 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 areas subject to human use such as active recreation areas, and any additional acreage needed to meet the development requirements of the criteria. The required buffers refer to the minimum 100-foot Buffer and the 25-foot nontidal 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 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 requirement.

Section 36. Grandfathering

- A. **Continuation of existing uses.** The Town shall permit the continuation, but not necessarily the intensification or expansion, of any use in existence on the date of Program approval, unless the use has been abandoned for more than one year or is otherwise restricted by existing local ordinance. If any existing use does not conform with the provisions of this ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures outlined in the variances section of this ordinance.
- B. **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 density requirements in effect prior to the adoption of the 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 (not withstanding that such development may be inconsistent with the density provisions of this ordinance) provided that:
1. It is on land where development activity has progressed to the point of the pouring of foundation footings or the installation of structural members.
 2. 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 land that was subdivided into recorded, legally buildable lots, where the subdivision received the Town's final approval prior to June 1, 1984 if:
 - a. At the time of development, the land is brought into conformance with the Critical Area Program insofar as possible, including the consolidation or configuration of lots not individually owned and these procedures are approved by the Critical Areas Commission; or
 - b. The land has received a building permit subsequent to December 1, 1985, but prior to local Program approval.
 3. It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the Town's final approval between June 1, 1984 and December 1, 1985; and

4. It is on land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA OR RCA requirements in this chapter or the area of the land is counted against the growth allocation permitted under this ordinance.

- C. **Consistency.** Nothing in this section may be interpreted as altering any requirements for development activities set out in the Water-Dependent Facilities Section or the Habitat Protection Areas Section of this ordinance.

Section 37. Intrafamily Transfers.

- A. **Applicability.** The Town shall permit bona fide intrafamily transfers to be made only from parcels of land that:

1. Were of record on March 1, 1986; and
2. Are 7 acres or more and less than 60 acres in size.

- B. **Required subdivision.** A bona fide intrafamily transfer from a parcel of land shall be a subdivision of the parcel of land that is subject to approval under the Subdivision Regulations of the Town.

- C. **Approval of subdivision of parcels.** The Town may approve the subdivision of a parcel of land into the number of lots indicated in this subsection by means of a bona fide intrafamily transfer and may not approve any greater subdivision of the parcel of land or any portion of it as follows:

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. **Conditions of approval.** As a condition of approval the Town shall require that:

1. 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, and

2. 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 in (E) of this section.
3. This subsection does not prevent the conveyance of the lot to a third party as security for a mortgage or deed of trust.

E. Standards and procedures for subsequent conveyance of lots. The Town has established standards and procedures for bona fide intrafamily transfers as part of this program which will permit the subsequent conveyance of lots to persons other than immediate family members. The standards and procedures shall assure 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 this subtitle and that warrants an exception; or
3. Other circumstances that are consistent with this subtitle and with the Critical Area Criteria 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.

ARTICLE VII: SUPPLEMENTARY HEIGHT, AREA, AND BULK REGULATIONS

Section 1: Modification of Height Regulations

- A. Except within an area defined as an Airport Approach Zone by the Federal Aviation Agency, the height limitations of this ordinance shall not apply to the following:
 - 1. Belfries
 - 2. Chimneys
 - 3. Public monuments
 - 4. Church spires
 - 5. Elevator bulkheads
 - 6. Fire towers
 - 7. Flagpoles
 - 8. Ornamental towers and spires
 - 9. Water towers and standpipes

- B. Except within an area defined as an Airport Approach Zone by the Federal Aviation Agency, public, semipublic, and public service buildings, institutions and schools, when permitted in a district, may be erected to a height not exceeding forty (40) feet and churches and temples erected to a height not exceeding sixty (60) feet, when the required side and rear yards are each increased by at least one (1) foot for each one (1) foot of additional building height above the height regulations for the district in which the building is located.

- C. No places of public assembly, including but without limitation, schools, churches, theaters, and assembly halls shall be erected or otherwise located within any area which would be classified as an Airport Approach Zone.

ARTICLE VIII: SIGN REGULATIONS

Section 1: General Requirements

- A. Permit Requirements; Inspection; Fees - No sign, unless herein exempted, shall be erected, constructed, posted, altered, or relocated except as provided in this Article and these regulations and until a permit has been issued by the Administrator. Before any permit is issued, an application especially provided by the Administrator shall be filed, together with three (3) sets of drawings and/or specifications, one (1) set to be returned to the applicant, as may be necessary to fully advise and acquaint the Administrator with the location, construction, materials, manner of illumination, and/or securing or fastening, number of signs applied for and the wording of the sign or advertisement to be carried on the sign. All signs which are electrically illuminated shall require a separate electric permit and inspection. All signs shall be erected on or before the expiration of ninety (90) days from the date of issuance of the permit; otherwise, the permit shall become null and void and a new permit shall be required. No sign shall be approved for use unless it has been inspected by the department issuing the permit and it is found to be in compliance with all requirements of this Ordinance and applicable technical codes. Fees for sign permits shall be in accordance with the schedule adopted by ordinance, copy of which is maintained in the office of the Administrator.
- B. Location - No sign, portable or otherwise, is to be placed or located to conflict with vision, clearance or other requirements of applicable traffic ordinances.
- C. Number of Permanent Signs Limited - Except as otherwise provided, these regulations shall be interpreted to allow one (1) permanent sign per occupancy. The combined sign area per store frontage may not exceed the smaller of the area permitted by the building's frontage length or the maximum sign area permitted by the zoning district.
- D. Permitted Signs for Nonconforming Business or Commercial Uses in Residential Districts - Permitted signs for a nonconforming business or commercial use in a residential district shall consist of those signs permitted in the B-1 Neighborhood Business District.
- E. All Signs Subject to Nonconforming Use Regulations - Except as otherwise specifically provided in these regulations, all signs shall be subject to the provisions of Article XI, which governs nonconforming uses.
- F. Additional Freestanding Type Signs Permitted Under Certain Conditions - In cases where a single property extends from parallel street to parallel street and the sign on the front cannot be seen from the rear, an additional sign of the freestanding type is allowed, the height of which cannot exceed seven (7) feet and the square footage of which cannot exceed ten (10) square feet.

Section 2: Definitions

For the purpose of this Article, certain terms and words pertaining to signs are hereby defined. The general rules of construction contained in Article II of this Ordinance are applicable to these definitions. The following terms shall have the meanings indicated:

ABANDONED SIGN - A permitted sign which was erected on property in conjunction with a particular use which use has been discontinued for a period of thirty days or more, or a permitted temporary sign for which the permit has expired.

ACCESSORY SIGN - A sign relating only to uses of the premises on which the sign is located or products sold on the premises on which the sign is located or indicating the name or address of a building or the occupants or the management of a building on the premises where the sign is located. The size of the sign shall not exceed one (1) square foot and must be mounted flat against the building.

BANNER - A rectangular piece of fabric that is suspended along a rope or is attached to a building at its four corners.

DETACHED SIGN - A sign not attached to nor painted on a building, but which is affixed to the ground. A sign attached to a flat surface, such as a fence or a wall, not part of a building shall be considered a "detached sign".

DOUBLE-FACED SIGN - A sign with two (2) parallel or nearly parallel faces, back to back, and located not more than twenty-four (24) inches from each other.

ENTRY-SERVED STOREFRONT - It shall be recognized that when a business occupies a ground floor space and has an entrance leading directly into the place of business from the front of a building.

FLAG, RESIDENTIAL - A rectangular (or irregular) piece of fabric suspended along one side up to five feet by seven feet or 35 square feet. A residential flag is for the purpose of adornment, not advertising a product or a business.

FLAG, BUSINESS - A rectangular (or irregular) piece of fabric suspended along one side for the purpose of advertising a product or business, up to five feet by seven feet or 35 square feet.

FLASHING SIGN - An illuminated sign on which the artificial or reflected light is not maintained stationary and constant in intensity and color at all times when in use. Any sign which revolves or moves, whether illuminated or not, shall be considered a "flashing sign".

FLAT SIGN - Any sign attached to and erected parallel to the face of or erected or painted on the outside wall of a building and supported throughout its length by such wall or building and not extending more than nine (9) inches from the building wall. Such sign shall not exceed the square foot limit applicable in the particular district involved. The sign must be oriented so as to be read from a point perpendicular to the building.

ILLUMINATED SIGN - Any sign designed to give forth artificial light or designed to reflect light from one (1) or more sources of artificial light erected for the purpose of providing light for the sign.

INDIRECTLY ILLUMINATED SIGN - A sign which does not produce artificial light from within but which is back- lighted or illuminated by spotlights or floodlights not part of or attached to the sign itself.

INTERNALLY LIGHTED, TRANSLUCENT SIGN - A sign of translucent non transparent material which is illuminated from within but has no exposed or exterior bulbs, tubes, or other light sources.

MANSARD ROOF SIGN - A one-sided sign mounted on the mansard or false mansard roof. For purposes of this ordinance, a "mansard roof" is a double-sloped roof whose lower section rises steeply. A "false mansard roof" consists of a roofed surface attached high on the walls of a low-pitched or flat-roofed building that attempts to give the illusion of a true structural mansard roof.

MARQUEE SIGN - A sign attached to a canopy or covering structure projecting from and attached to a building.

OCCUPANCY - For purposes of this Article, business conducted by an individual or group of individuals engaged in the sale of more than one (1) kind of merchandise or service shall not be interpreted as more than one (1) "occupancy", unless separate and independent ownership of individual business can be shown.

PENT-ROOF SIGN - A one-sided sign mounted on a pent roof. For purposes of this Article, a "pent-roof" is any permanent pitched roof attached to and supported solely by the wall of a building and originating below the building's main cornice line. Porch roofs, canopies, and marquees are not pent roofs. Pent roof signs shall be parallel with the building wall and shall not project horizontally beyond the pent roof's edges or above the building's main cornice line.

PROJECTING SIGN - A sign which is attached to and projects more than nine (9) inches from the face of a wall of a building and is intended to be viewed from a ninety degree angle to the face of the building.

SIGN - A structure, display or device that is arranged, intended, designed, or used for advertisement, announcement, identification, description, or direction.

SIGN AREA - That area within a line, which includes the outer extremities of all letters, figures, characters and delineation's or within a line which includes the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign background, whether it is columns, a pylon, or a building or part thereof, shall not be included in the "sign area". Only one (1) side of a double-faced sign shall be included in a computation of sign area. For other signs with more than one (1) face, each side shall be included in a computation of sign area.

TEMPORARY SIGN - A sign erected for no more than thirty (30) days.

WINDOW SIGN - Any sign attached to and erected parallel to the face of or erected or painted on the surface of a window and supported throughout its length by such window. For the purposes of this Article, a window sign is considered a flat sign.

Section 3: Signs Subject to Permit; Standards

A. Residential District Signs

Signs subject to permit in the Residential Districts include temporary signs (except those that are exempt) and permanent signs. Permanent signs are to be flat or detached signs limited in area to twenty (20) square feet and, if detached, limited in height to five (5) feet. Permanent signs are limited to signs for farms to advertise products raised on the premises, for the identification of an estate or subdivision and for the identification of permitted public and semipublic uses as defined in the Zoning Ordinance.

Business District Signs

1. Signs subject to permit in the B-1 and TC-1 Zones include temporary (unless exempt), permanent, and accessory signs. Permanent signs are to be restricted to flat signs with a maximum area equal to one (1) square foot of sign area for one (1) linear foot of store frontage, but limited to forty (40) square feet for each occupancy fronting on a street. One permanent flat sign per occupant is allowed.
2. Signs subject to permit in the C-1 Zone include temporary, permanent, and accessory signs. Permanent signs are to be flat signs with a maximum area equal to one (1) square foot of sign for one (1) linear foot of store frontage, but limited to forty (40) square feet. One (1) additional flat sign, if placed on the water side of a waterfront property and oriented to be read from boats on the water, is allowed. One (1), or where applicable, two (2) flat signs per occupancy are allowed.

Section 4: Exemptions to Permit Requirements

The following signs are exempted from the provisions of these regulations and may be erected or constructed without a permit, but in accord with the structural and safety requirements of applicable codes:A. Official traffic signs or sign structures and provisional warning signs or sign structures, when erected or required to be erected by a governmental agency, and temporary signs indicating danger.

- B. Non-illuminated signs, not to exceed one (1) square foot per sign, warning trespassers or announcing property as posted.
- C. Private signs directing vehicular and pedestrian traffic movement onto a premises or within a premises only, not to include advertising and not exceeding two (2) square feet in area for each sign. Illumination of these signs shall be subject to the provisions of Article VI of this Ordinance.
- D. Rental signs on the premises which announce rooms for rent and/or board, apartment, or house for rent and not exceeding two (2) square feet in area.
- E. Temporary, non-illuminated paper signs in show windows. Provided however that the total area of such signs shall not exceed 10% of the window area on which such signs are place.
- F. Temporary, non-illuminated signs, not more than six (6) square feet in area, advertising real estate for sale or lease or announcing contemplated improvements of real estate and located on the premises, one (1) such sign for each street frontage.
- G. Temporary, non-illuminated signs not more than ten (10) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress.
- H. Signs on vehicles of any kind, provided that the sign is painted or attached directly to the body of the original vehicle and does not project or extend beyond the original manufactured body proper of the vehicle. This section should not be interpreted to permit the parking for display purposes of a vehicle to which signs are attached in a district where such signs are not permitted.
- I. Temporary signs for the following purposes displayed for a period not exceeding 30 days:
 - 1. Signs advertising a special civic or cultural event such as a fair, exposition, concert, or meeting sponsored by a governmental or charitable organization.
 - 2. Special displays used for public demonstrations or promotions for nonpartisan civic purposes.
 - 3. Special sales promotion displays in a district where such sales are permitted, including displays incidental to the opening of a new business.
 - 4. Signs, limited to six square feet or less, advertising political candidates, organizations, and similar political purposes.
 - 5. Signs advertising private yard sales.
- J. One nameplate, limited in area to 2 square feet, to identify the owner or occupant of a residential dwelling.

- K. One sign, limited in area to 2 square feet, to identify a permitted home occupation.
- L. Temporary signs of no more than 15 square feet for the following purposes:
 - 1. Special event and holiday signs.
 - 2. "Grand opening," "going out of business," and "sale" signs for businesses and services.
 - 3. Signs for work under construction.
 - 4. Signs advertising the sale or lease of property upon which they are located.
- M. Temporary real estate sign of no more than 6 square feet.
- N. Residential decorative flags are allowed up to five feet by seven feet or 35 square feet without a permit. A residential, decorative flag is for the purpose of adornment, not advertising a product or a business.
- O. Flags of a government, such as the U.S. flag, the State flag, the County flag, the Town flag, etc., are allowed without restriction.
- P. Business flags for the purpose of advertising a product or business are allowed up to five feet by seven feet or 35 square feet. One business may have up to six business flags on its property.
- Q. Wind socks are allowed.
- R. A banner with a no-fee permit if it is to be put up for a period of time less than 31 consecutive days per year or on weekends for a total of less than 46 days per year and is no larger than 40 square feet. For a larger banner or for a banner that is to be kept up longer than 30 consecutive days, an application for a building permit must be submitted following the procedures given in section A of the general requirements of Article VI.

Section 5: Nonconforming Signs

Signs existing at the time of the enactment of this ordinance and not conforming to its provisions, but which were constructed in compliance with previous regulations, shall be regarded as nonconforming signs. Nonconforming signs which are structurally altered, relocated, changed or replaced shall comply immediately with all provisions of this ordinance. Repainting the sign in the same manner and the same colors shall be construed as maintenance and shall not affect the legal nonconforming status of the sign.

Section 6: Prohibited Signs

Abandoned signs, marquee signs, and all other signs not specially allowed under the provisions of this ordinance are prohibited.

Section 7: Standards for Illuminating and Mounting

- A. Illumination.

1. Signs are to be indirectly illuminated unless otherwise allowed.
2. The light from any illuminated sign shall be so shaded, shielded, or directed that the light intensity or brightness will not be objectionable to surrounding areas.
3. No sign shall have flashing lights or other illuminating device which has a changing light intensity, brightness or color. Beacon lights are not permitted. Exposed neon tubing is not permitted.
4. No colored lights shall be used at any location or in any manner so as to be confused with or construed as traffic control devices.
5. Neither the direct or reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares.
6. No exposed reflective-type bulbs and no strobe light or incandescent lamp which exceeds fifteen (15) watts shall be used on the exterior surface of any sign so as to expose the face of the bulb, light, or lamp to any public street or adjacent property.

B. Mounting

1. Unless detached or affixed to windows, all permanent flat signs are to be mounted flat against a wall, except in those situations where the structure of the building precludes a wall-mounted, permanent sign of allowable dimensions. In those cases, a pent-roof or mansard roof type sign is allowable.
2. Projecting signs must be double-sided with a thickness between sides not to exceed two and one-half inches. Projecting signs may be suspended by a bracket or attached directly to the building. The means of attachment must meet all provisions regarding structural safety. Projecting signs may project a maximum of forty-two (42) inches from the building. The lowest point of the sign must be a minimum of seven (7) feet above the sidewalk level and any walking surface immediately below the sign. The uppermost point of the sign must be no more than a maximum of twelve (12) feet above the sidewalk level.

Section 8: Administration; Maintenance; Removal

- A. Applications for unusual signs or displays which give rise to questions of interpretation of these regulations may be referred by the Town Administrator to the Board of Appeals for the purpose of interpretation by the Board and recommendation for action on the application by the Town Administrator. If, in the opinion of the Board, the application is not adequately covered by these regulations, the Board may make recommendations for amendment of this ordinance.
- B. The owner and/or tenant of the premises and the owner and/or erector of the sign shall be held responsible for any violation of these regulations.
- C. All signs shall be maintained in good condition and appearance. Any sign which shows neglect or becomes dilapidated may be removed by the Town Administrator or his duly authorized representative at cost to the owner, after due notice has been given to the owner as provided below.

- D. The Administrator shall cause to be removed any sign erected or maintained in conflict with these regulations if the owner or lessee of either the site or the sign fails to correct the violation within thirty (30) days after receiving written notice of violation from the Town Administrator.
- E. Signs must be erected within 90 days of permit issuance or the permit becomes null and void.

ARTICLE IX: OFF-STREET PARKING AND LOADING

Section 1: Off-Street Parking Requirements

Except as otherwise provided in this ordinance, when any building or structure is hereafter erected or structurally altered or any building or structure hereafter is converted for the uses listed in the Table of Off-Street Parking Spaces listed below accessory off-street parking spaces shall be as required in such Table or as required in subsequent sections of this Article.

Section 2: Table of Off-Street Parking

USE	REQUIRED OFF-STREET PARKING SPACES
Public Parks and Playgrounds	1 space per 2,500 square feet of area
Bakery, Catering, Studio, Barbershop, and Beauty Parlor	3 spaces plus 1 additional space for every 100 square feet over 200 square feet
Daycare Center	3 plus 1 for each employee (unless specified by State law)
Deli, Food Store, Laundromat, Medical Services, Municipal Offices, Post Office, other types of Retail Stores	5 spaces plus 1 additional space for every 200 square feet over 1000 square feet
Bicycle Repair and Service, Filling Station, ATM Machine, and General Services	3 spaces
Bed and Breakfast, hotel, motel	1 space per sleeping room, plus 5 spaces
Private Clubs, lodges, and meeting halls Country club or golf club	1 space per 5 members, if known, or 1 per 100 square feet of floor area
Church or temple, or similar place of assembly	1 per 4 seats or bench seating spaces
Public library, museum, art gallery, or community center	10 per use, plus 1 additional for each 300 square feet of space in excess of 1000 square feet

USE	REQUIRED OFF-STREET PARKING SPACES
Restaurant or other establishment for consumption of food or beverages on the premises	1 per 100 square feet of floor area, with a minimum of 3
convalescent home, home for the aged or similar institution	1 per 5 patient beds
one and two family dwellings	2 per dwelling unit
multiple family dwellings	1.5 per dwelling unit

NOTES:

1. The use of regulations for each district is not affected by the arrangement of uses in the Table.
2. The parking requirements in the Table are in addition to space for storage of trucks or other vehicles used in connection with any use.
3. The parking requirements in the Table do not limit other parking requirements contained in the district regulations.
4. The parking requirements in the Table do not limit special requirements that may be imposed with conditional uses pursuant to Article IX of this Ordinance or special use exceptions pursuant to Article of this Ordinance.
5. Floor area, as used in the Table, shall be as defined in Article II of this Ordinance.
6. Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number.
7. Except as otherwise provided, the number of employees shall be compiled on the basis of the maximum number of persons employed on the premises at one time on an average day or average night, whichever is greater. Seasonal variations in employment may be recognized in determining an average day.
8. The Town recognizes that the Table cannot and does not cover every possible situation that may arise, therefore, in cases not specifically covered; the Planning Commission is authorized to determine the parking requirements using this table as a guide.
9. In the case of mixed uses, uses with different parking requirements occupying the same building or premises or in the case of joint use of a building or premises by more than one (1) use having the same parking requirements, the parking spaces required shall equal the sum required for the various uses computed separately.
10. Whenever a building or use is changed or enlarged in floor area, numbers of employees, number of dwelling units, seating capacity, or otherwise to create a need, under the requirements of this Ordinance, for an increase in parking spaces of ten (10) percent or more than those required before the change or enlargement, such additional spaces shall be provided on the basis of the change or enlargement. No additional spaces shall be required for the first change or enlargement which would result in an increase of spaces of less than ten (10) percent of those required before the change or enlargement, but this

exception shall not apply to a series of changes or enlargements which together result in a need for an increase of parking spaces of ten (10) percent or more.

11. Parking is prohibited in front yards except in properly constructed and approved parking spaces.

Section 3: Location of Parking Facilities; Joint Use

- A. All parking spaces required herein shall be located on the same lot with the building or use served, except that where an increase in the number of spaces is required by a change or enlargement of use or where such spaces are provided collectively or used jointly by two (2) or more buildings or establishments, the required spaces may be located and maintained at a distance not to exceed three hundred (300) feet from an institutional building or some other nonresidential building served.
- B. In any case, where the required parking spaces are not located on the same lot with the building or use served or where such spaces are collectively or jointly provided and used, such parking space shall be established by a recorded covenant or agreement as parking space to be used in conjunction with the principal use and shall be reserved as such through an encumbrance of the title of the property to be designated as required parking space, such encumbrance on the title of the property to be valid for the total period the use or uses for which the parking is needed are in existence. A certificate of recording of the covenant or agreement shall be furnished to the Town Administrator.

Section 4: Design Standards

- A. **Minimum Area** For the purpose of these regulations, an off-street parking space is an all weather surfaced area not in a street or alley, having an area of not less than two hundred (200) square feet, permanently reserved for the temporary storage of one (1) vehicle and connected with a street or alley by a all weather surfaced driveway which affords ingress and egress for an automobile..
- B. **Drainage and Maintenance - Off-street parking facilities** shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys. Off-street parking areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee..
- C. **Separation from Walkways and Streets - Off-street parking spaces** shall be separated from walkways, sidewalks, streets, or alleys by a wall, fence, curbing or other approved protective device or by distance so that vehicles cannot protrude over publicly owned areas.
- D. **Entrances and Exits - The location and design of entrances and exits** shall be in accord with the applicable requirements of Town traffic regulations and standards. Landscaping, curbing, or approved barriers shall be provided along lot boundaries to control the entrance and exit of vehicles and pedestrians.
- E. **Interior Drives - Interior drives** shall be of adequate width to serve the particular design arrangement of parking spaces.

- F. Marking- Parking spaces in lots of more than five (5) spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used as necessary to ensure efficient traffic operation of the lot. Signs, markers, and pavement markings shall conform with the standards approved by the Maryland State Highway Administration and endorsed by the United States Department of Transportation.
- G. Lighting- Adequate lighting shall be provided if off-street parking spaces are to be used at night. The lighting shall be arranged and installed to minimize glare on neighboring properties and to localize the light to the parking area.
- H. Screening When off-street parking areas for five (5) or more automobiles are located next to a residential district or to any lot upon which there is a dwelling as a permitted use under these regulations and where such parking areas are not entirely, visually screened from such lot by an intervening building or structure, there shall be provided a continuous visual screen with a minimum height of six (6) feet. Such screen may consist of a compact evergreen hedge or foliage screening or louvered wall or fence.
- I. Construction Material - All off-street parking facilities shall be provided with an all weather surface and the design and specifications therefore shall be subject to approval by the Planning Commission.
- J. Landscaping- In off-street parking areas of five (5) or more spaces, the Planning Commission shall require landscaping as set forth in Appendix D.

ARTICLE X: CONDITIONAL USES

Section 1: Purpose

The purpose of this Article is to provide for certain uses which cannot be well-adjusted to their environment in particular locations, while offering full protection to surrounding properties by rigid application of district regulations. These uses are generally of a public or semipublic character and are essential and desirable for the general convenience and welfare, because of the nature of the use, the importance of its relationship to the Comprehensive Plan and possible impact not only on neighboring properties but on a large section of the Town, these uses require the exercise of planning judgment on location and site plan.

Section 2: Conditional Uses Enumerated

- A. The Board of Appeals, in accordance with the procedures and standards of this ordinance, may authorize the following buildings, structures, uses, and conditional uses in the specific instances and particular districts set forth provided that the location is appropriate and not in conflict with the Comprehensive Plan, that the public health, safety, morals, and the general welfare will not be affected, that adequate off-street parking facilities will be provided, and that the necessary safeguards will be provided for the protection of surrounding property, persons, and neighborhood values, and further provided that the additional standards of this Article are complied with. Unless otherwise specified in this Article or specified as a condition of approval, the height limits, yard spaces, lot area, and sign requirements shall be the same for other uses in the district in which the conditional use is located.
- B. No conditional use shall be authorized unless the Board finds in each specific case that the establishment, maintenance, or operation of the conditional use from the evidence produced at the public hearing meets the standards set forth in this Article. The applicant for a conditional use shall have the burden of proof, which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board. As a further guide to the Board's decision upon the facts of each case, they shall give consideration to the following, where appropriate:
1. The nature of the proposed site, including its size and shape, and the proposed size and shape, and arrangement of structures;
 2. Traffic conditions including resulting traffic patterns;
 3. The nature of the surrounding area and the extent to which the proposed use might impair its present and future development;
 4. The proximity of dwellings, churches, schools, public structures, and other places of public gathering;
 5. The probable effect of the proposed use upon the peaceful enjoyment of people in their homes;
 6. Facilities for sewers, water, schools, transportation, and other services, and the ability of the Town or County to supply such services;

7. The limitations of firefighting and rescue equipment, and the means of access for fire and police protection;
8. The preservation of cultural and historical landmarks and trees;
9. The probable effect of noise, vibration, smoke and particulate matter, toxic matter, odorous matter, fire and explosion hazards, or glare upon the uses of surrounding properties;
10. The purpose and intent of this Ordinance as set forth in Article I;
11. The most appropriate use of land and structures;
12. The conservation of property values;
13. The contribution, if any, such proposed use, building, or addition would make toward the deterioration of areas and neighborhoods.

C. Buildings, structures, and uses for which conditional uses may be authorized and additional standards relative thereto are as follows:

1. Piers and bulkheads – The following regulations shall apply to boat docks, piers, and wharves, accessory or non-accessory in any district:
 - a. The projection of docks, wharves, and piers into waterways beyond the waterway line, lot lines, or established bulkhead lines or the placing of mooring piles or buoys shall be limited by applicable Town ordinances and state laws and applicable regulations of the United States Army Corps of Engineers, and in no case shall a dock, wharf, pier, or pile project more than five hundred fifty (550) feet beyond the shore, or beyond the one (1) fathom line both as established at mean high tide, whichever is less.
 - b. Groins, levees, bulkheads, pilings, breakwaters, and other similar structures shall be erected and maintained in accordance with applicable location and construction standards of the Town or state and the United States Army Corps of Engineers.
2. Churches, rectories, parish houses, convents, and monasteries, temples and synagogues.
3. Commercial greenhouses wholesale or retail.
4. Convalescent homes, nursing homes or homes for the aged
5. Day Care Centers for children.
6. Exposition centers.
7. Golf courses, not lighted for night play, including miniature golf courses, putting greens, driving ranges, and similar activities operated as a business and including a building for a golf shop, locker room, and snack bar as an accessory use to a permitted golf course, provided that no such building is located closer than one hundred (100) feet to adjoining property lines. Practice greens and tees may accompany a standard nine or eighteen hole golf course occupying at least seventy-five (75) acres.
8. Heliports and helistops.
9. Hospitals, but not animal hospitals.
10. Educational or philanthropic institutions, including museums and art galleries.

11. Marinas and yacht clubs, provided that:
 - a. The marina or yacht club complies with all other codes, regulations, laws, and ordinances, including those relating to the establishment of bulkhead lines.
 - b. The proposed design is satisfactory with regard to such safety features as the location of fueling points, the fuel storage effect on navigation and possibilities for water pollution, including pump-out facilities.
 - c. The marina or yacht club is properly located with respect to access roads and existing and future developed areas.
 - d. The necessary approval is obtained from the United States Army Corps of Engineers.

12. Private clubs.
13. Funeral homes.
14. Recreational uses, such as:
 - a. Commercially operated swimming, tennis, and athletic clubs, provided that the facilities shall be limited to those games and uses such as swimming, shuffleboard, croquet or tennis or such other games as may be specifically approved by the Board. Activity areas and buildings shall not be located closer than twenty-five (25) feet to any lot line.
 - b. Tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes, provided that no such use, structure, or accessory use is located closer than fifty (50) feet to any adjoining property line, unless such property line fronts a public street or waterway with rights-of-way not less than twenty-five (25) feet, in which instance the required set back need not exceed twenty-five (25) feet, and provided further that all such facilities must be located on a site having a minimum of two (2) acres.

16. Rooming, boarding and lodging houses.
17. 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.
18. Community redevelopment Projects.
19. Any use not specifically named in these regulations, subject to a determination, in cases of uncertainty, of the district classification; provided, however, that such use shall be in keeping with uses specifically permitted in the districts in which such use is to be classified.

Section 3: Application Requirements and Procedures for Conditional Use Approval

- A. A preliminary site plan complying with the requirements of Article IV of this ordinance shall accompany an application for approval of a conditional use under this Article, together with such information as may be required for a determination of the nature of the proposed use and its effect on the Comprehensive Plan, the neighborhood, and

surrounding properties. The procedures for approval of a conditional use are set forth below, together with applicable laws, regulations and ordinances governing the subdivision of land.

B. Where the provisions of the ordinance require the submittal of site plans for a conditional use, the following regulations shall apply:

1. The Applicant shall file ten (10) copies of a preliminary site plan with the Planning Commission. The preliminary site plan shall comply with the requirements of Article IV and shall be accompanied by such other written or graphic material as may be necessary or desirable in aiding the decisions of the Board of Appeals.
2. The Planning Commission shall review the site plan for compliance with the requirements of this Ordinance. The Planning Commission may make reasonable additional requirements, including, but not limited to, those which may be imposed by the Board of Appeals under Article III of this ordinance, especially requirements as to utilities, drainage and the landscaping and maintenance thereof, lighting, signs and advertising devices, screening, access ways, curb cuts, traffic control, heights of buildings and setbacks of buildings necessary to protect adjoining uses. The site plan shall be amended in accordance with the requirements of the Planning Commission before being submitted to the Board of Appeals for its consideration. The Planning Commission shall forward to the Board of Appeals the applicant's application for approval of the site plan, supporting documents, and the amended site plan along with the Planning Commission's recommendation.
3. The Board shall fix a reasonable time for the hearing of an application or appeal, give notice thereof, as well as due notice to the parties in interest, and decide the same within forty-five (45) days following the hearing. Upon the hearing, any party may appear in person or by agent or by attorney. Public notice of a hearing shall consist of a publication, at least fifteen (15) days prior to the hearing, in the newspaper of general circulation, which specifies the time, place and nature of the hearing.
In addition, the Board shall cause the date, time, place and nature of the hearing to be posted conspicuously on the property in accordance with the rules of the Board.
In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made.
4. In the event the Board of Appeals approves the request, the Board will direct the applicant to have a final site plan prepared, filed and recorded. This final plat shall comply with the specifications of the Board of Appeals, the requirements of Article IV and applicable laws, regulations and ordinances governing the subdivision of land. Permits shall be issued in accordance with the approved, filed and recorded plat.
5. If required by the Board of Appeals, the applicant shall file a surety bond or deposited in escrow with the Town in an amount sufficient to ensure the completion of such requirements as may be imposed by the Board of Appeals.

Section 4: Conditions and Guarantees

A. Prior to granting any conditional use, the Board may impose such conditions and restrictions upon the establishment, location, construction, maintenance, and operation thereof as deemed necessary to reduce or minimize any effect of such use upon other properties in the neighborhood, and to secure compliance with the standards and requirements specified in this Article to include such things as:

1. No outside signs or advertising structures except professional or directional signs.
2. Limitations of signs as to size, type, color, location, or illumination.
3. Amount, direction, and location of outdoor lighting.
4. Amount and location of off-street parking and loading spaces.
5. Cleaning or painting of structures.
6. Roof type.
7. Building construction and materials.
8. Building connection or disconnection with other buildings.
9. Location of exits or entrances, doors, and windows.
10. Type and location of paving, shrubbery, landscaping, ornamental or screening fences, walls, or hedges.
11. Time of day or night for operating.
12. Prohibition against structural changes.
13. Control or elimination of smoke, dust, gas, noise, or vibration caused by operations.
14. Requirements for termination of a use, based on lapse of time or such other conditions as the Board may specify.
15. Improvements to ingress/egress.
16. Improvements to street frontage.

B. In cases in which a conditional use is granted, the Board may require such evidence and guarantees as it deems necessary as proof that the conditions imposed in connection therewith shall be met and followed. Failure to comply with such conditions or restrictions shall constitute a violation of this ordinance. Any condition granted under this section shall be noted on the final recorded plat.

Section 5: Time Limit for Approval

Approval of a conditional use under this Article shall be valid for a period of one (1) year after the date of approval and thereafter shall become null and void unless the approved use is operational or unless an extension of time, not exceeding one (1) year is approved by the Planning Commission and for good cause shown before the expiration date of said one year period.

Section 6: Pre-Existing Conditional Uses

Any conditional use listed in this Article, which legally existing at the effective date of the regulations of this Article shall be considered a nonconforming use unless it has qualified as provided above and has been approved as a conditional use by the Mayor and Council.

Section 7: Revocation of Permits

Permits issued under a conditional use approval may be revoked by the Town Administrator or their designee for failure to comply with the conditions of approval or applicable regulations.

ARTICLE XI: NONCONFORMING USES

Section 1: Nonconforming Uses

Any use of land or building actually existing at the time of the passage of this ordinance and which does not conform with the requirements of regulations of the district in which it is located shall be known as a nonconforming use.

- A. Continuance -- the lawful use of land existing on the effective date of this ordinance, although such use does not conform to the regulations specified for the district in which such land is located, may be continued provided that no such use shall be enlarged or increased, nor be extended to occupy a greater area than that occupied by such use at the time of the adoption of this ordinance, and that if any use ceases, the subsequent use of such land shall be in conformity to the regulations specified for the district in which such land is located.
- B. Restoration after Damage or Reconstruction -- nothing in these regulations shall prevent the continuance of a use or the reconstruction of a structure occupied by a lawful nonconforming use destroyed by fire, explosion, act of God, or act of the public enemy, as it existed at the time of such destruction provided that a permit is obtained and reconstruction begun within six months after the occurrence, unless an extension is granted by the Planning Commission.
- C. Discontinuance of Nonconforming Use -- No building or portion thereof being used in whole or in part for a nonconforming use which remains a idle or unused for continuous period of one-year, whether or not the equipment or fixtures are removed, shall again be used except in conformity with the regulations of the district in which such building or land is located.
- D. Intermittent Use -- The casual intermittent, illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.
- E. Ordinary Repair and Maintenance
 - 1. The normal maintenance and repair or with a replacement, installation, or relocation of non-bearing partitions, fixtures, wiring, or plumbing may be performed on any structure that is devoted in whole or in part to the nonconforming use or structure. Neither this nor any other provision of this section shall be interpreted to authorize any increase in the size or degree of the nonconforming use or structure in violation of the provisions of any other subsections of this section.
 - 2. Nothing in this section shall be deemed to prevent the strengthening or restoring of a structure to a safe condition by order of a public official who is charged with

protecting the public safety and who declares some structure to be unsafe and orders its restoration to a safe condition.

- F. Existence of a Nonconforming Use -- Whether a nonconforming use exists shall be a question of fact, and in case of a dispute between the property owner and the Planning Commission, the question of the classification of use shall be decided by the Board of Appeals, after public notice and hearing in accordance with the rules of the Board.

Section 2: Nonconforming Structures

- A. Continuance -- A lawful nonconforming structure existing on the effective date of this Article may be continued, repaired, maintained, or altered subject to the provisions of this section.

- B. Additions or Enlargements to Nonconforming Structures. A lawful nonconforming structure may be altered or enlarged if the addition satisfies one or more of the following conditions:
 - 1. The proposed addition when considered independently of the existing structure, complies with the standards and regulations of the Zoning Ordinance;
 - 2. The nonconforming building is not expanded beyond its current footprint, including adjoining patios, driveways, and sidewalks. Impervious surfaces on the site are not increased as a result of the addition. The building, after the addition conforms to the height regulations applicable to its zoning district;
 - 3. The addition does not project any further into a required side yard setback than the existing building and the enlarged building complies with height regulations.

- C. Moving of Nonconforming Structures -- A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to the applicable zoning district.

- D. Repair of Nonconforming Structures -- Nothing in these regulations shall prevent the repair or reconstruction of a lawful nonconforming building damaged by fire, explosion, act of God, or act of the public enemy provided that the degree of nonconformity is not increased, that a permit is obtained, and construction begun within six months after the occurrence unless an extension is granted by the Planning commission.

- E. Restoration of Unsafe Buildings – Nothing in this chapter shall be deemed to prevent the strengthening or restoring to a safe condition of any building or part thereof declared to be unsafe by any official charged with protecting the public safety, upon order of such official.

Any structure deemed unsafe and demolished under this provision may be allowed to be reconstructed under the following conditions:

1. Reconstruction shall be in conformity with the provisions of this Ordinance; or
2. Reconstruction must be considered under the Infill/Redevelopment Regulations set forth in Article VI, Section 7.

Section 3: Nonconforming Lots

Nonconforming lots of record existing at the time of the adoption of this ordinance shall be exempt, unless otherwise provided, from the minimum lot area and lot width requirement of each zoning district. Such lots may be developed with any use allowed by the regulations for the district and must comply with all other site development regulations set forth in this ordinance.

Section 4: Nonconforming Signs

See Article IX, Sign Regulations.

APPENDIX A INFORMATION REQUIRED WITH ZONING AND BUILDING PERMIT APPLICATIONS

NOTE: All plats and plans must be clear and legible. Incomplete plats will be returned to the applicant for completion and re-submission.

Item#	DESCRIPTION	Sketch/ Concept Plan	Minor Site Plan	General Develop . Plan	DEVELOPMENT STAGE	
					Major	Site Plan Final
I.	PROJECT-PLAT INFORMATION					
1.	Name, address of owner, applicant, developer and lienholder, date of application.	X	X	X	X	X
2.	Name and address of engineer, land surveyor architect, planner, and/or landscape architect, as applicable, involved in document preparation.	X	X	X	X	X
3.	Date of survey and any subsequent revisions.		X		X	X
4.	Seal, signature and license number of engineer, land surveyor, architect, and/or landscape architect, as applicable involved in document preparation.		X		X	X
5.	Title block denoting name and type of application, tax map sheet, block and lots, parcel, and street location.	X	X	X	X	X
6.	A vicinity map at a specified scale (no smaller than 1"=200') showing location of the tract with reference to surrounding properties, streets, landmarks, streams, etc. Show all of the property owned according to the Tax Map(s) if only part of the property is to be developed.	X	X	X	X	X
7.	Existing and proposed zoning of tract and adjacent property.	X	X	X	X	X
8.	Adjacent property owners, names, Liber and Folio.	X	X	X	X	X
9.	Title, north arrow and scale (1"=100').		X		X	X

Item#	DESCRIPTION	- Sketch/ Concept Plan	Minor Site Plan	General Develop . Plan	DEVELOPMENT STAGE	
					Major Site Plan	
					Prelim.	Final
10.	Appropriate signature block for Planning Commission Chairman, and the health department.		X		X	X
11.	Appropriate certification blocks.		X			X
12.	Certification and dedication by the owner or owners to the effect that the subdivision as shown on the final plat is made with his or her consent and that it is desired to record same.		X			X
13.	Monumentation, location and description.		X			X
14.	Standardized sheets 18"x24" (final - black ink on mylar).		X		X	X
15.	Metes and bounds from a recent survey showing dimensions, bearings, curve, data, length of radii, arc, chords, and central angles for all centerlines and rights-of-way, and centerline curves on streets, datum and benchmark, primary control points approved by the Town Engineer.		X		X	X
16.	Acreage of tract to the nearest thousandth of an acre.	X	X	X	X	X
17.	Date of original and all revisions.	X	X	X	X	X
18.	Size and location of any existing or proposed structures with all setbacks dimensioned (for concept plan, GDP general location but not setbacks). Include storm drains, culverts, retaining walls, fences, stormwater management facilities, and sediment and erosion structures.		X	X	X	X
19.	Number of dwelling units.	X	X	X	X	X
20.	Location, dimensions, bearings, names of any	X	X	X	X	X

				DEVELOPMENT STAGE		
					Major	Site Plan
Ite m#	DESCRIPTION	- Sketc h/ Conce pt Plan	Minor Site Plan	General Develop . Plan	Prelim.	Final
	existing or proposed roads or streets. The location of pedestrian ways, driveways. Right of way widths. (for GDP, concept plans, general locations).					
21.	All proposed lot lines (width and depth) and area of lots in square feet, number of lots, lot numbers.		X		X	X
22.	Location and type of utilities.		X		X	
23.	Copy and/or delineation of any existing or proposed deed restrictions or covenants.		X		X	X
24.	References to protective covenants governing the maintenance of undedicated public spaces or reservations.		X			X
25.	Location and size of proposed Natural Park areas, play grounds and other public areas.	X		X	X	X
26.	Any existing or proposed easement (drainage and utility) or land reserved for or dedicated to public use*. Location, dimensions of proposed reservations, right of ways, open space, buffers, forested areas along with means by which these areas will be permanently maintained.	X	X	X	X	X
27.	Statement of owner dedicating streets, right-of-way, and any sites for public use.		X			X
28.	Development stages or phasing plans (for GDP and concept plans, general phasing). Sections numbered by phase.	X		X		
29.	Total number of off-street parking spaces including ratio and number of units per space.	X	X	X	X	
30.	List of required regulatory approvals/permits.	X	X	X	X	X
31.	List of variances required or requested.	X	X	X	X	X

Item#	DESCRIPTION	- Sketch/Concept Plan	Minor Site Plan	General Develop. Plan	DEVELOPMENT STAGE		
					Major	Site Plan	
					Prelim.	Final	
32.	Requested or obtained design waivers or exceptions.	X	X	X	X	X	
33.	Payment of application fees.	X	X	X	X	X	
34.	Total area of the site that will be temporarily and/or permanently disturbed.		X		X		
II.	SETTING-ENVIRONMENTAL INFORMATION						
35.	All existing streets, watercourses, flood plains wetlands, or other environmentally sensitive areas on or adjacent to the site.	X	X	X	X		
36.	Existing rights-of-way and/or easements on or immediately adjacent to the tract.	X	X	X	X	X	
37.	Topographical features of subject property from USGS map or more accurate source at 2'-5' intervals, 50' beyond the boundary, with source stated on maps.	X		X			
38.	Field delineated or aerial survey topo at 2' contour interval		X		X	X	
39.	General areas of >15% slope shaded and identified as steep slopes.	X	X	X			
40.	Slope analysis of >15% slopes. These areas shall be shaded and identified as steep slopes.				X	X	
41.	Forest Stand Delineation or Conservation Plan(See Zoning Ordinance).	X	X	X	X	X	
42.	Existing system of drainage of subject site and adjacent sites and of any larger tract or basin of which it is a part.		X		X	X	
43.	A 100 Year Flood Plain based on FEMA maps.	X	X	X	X	X	
44.	Tidal and non-tidal wetland delineation based on NWI maps and field review.	X	X	X			

Item#	DESCRIPTION	- Sketch/Concept Plan	Minor Site Plan	General Development Plan	DEVELOPMENT STAGE	
					Major	Site Plan
					Prelim.	Final
45.	Non-tidal wetlands identification based on field delineation/determination and buffers.				X	X
46.	Location of sensitive areas and their Buffers (Zoning Ordinance).	X	X	X	X	X
47.	Location and width of Bufferyards.	X	X	X	X	X
48.	Soil types based on the Kent County Soil Survey.		X		X	
49.	Traffic Impact Study, as required.				X	
50.	Statement of effect on school district and school bus service, as required.				X	
The following additional information items are required in the areas designated Critical Areas						
51.	Location of the Critical Area District boundary and Critical Area designation.	X	X	X	X	X
52.	Number of acres in each Critical Area designation.	X	X	X	X	X
53.	Mean high waterline and landward edge of tidal wetlands.	X	X	X	X	X
54.	Location of existing forested areas to be disturbed by construction. Planting plan approved by the Critical Area Planner (final).	X	X	X	X	
55.	The known locations of HPA's, the habitat of any threatened or endangered species, and the habitat of any Species in Need of Conservation. Habitat Protection Plan reviewed by the Maryland Fish, Heritage and Wildlife Administration.	X	X	X	X	X
56.	The location of the Critical Area Buffer and the expanded Buffer, as required.	X	X	X	X	X
57.	Hydric and highly erodible soils based on the	X	X	X	X	

Item#	DESCRIPTION	- Sketch/Concept Plan	Minor Site Plan	General Develop. Plan	DEVELOPMENT STAGE		
					Major	Site Plan	
					Prelim.	Final	
	Kent County Soil Survey.						
58.	Natural Park management plan, if applicable.					X	
59.	Shore erosion protection plan, if applicable.					X	
60.	Environmental assessment.		X	X	X		
61.	Statement of consistency with the Critical Area Program.	X	X	X	X		
III.	PLATS, IMPROVEMENT PLANS, AND CONSTRUCTION INFORMATION						
62.	Subdivision Plat meeting requirements of the Betterton Subdivision Regulations.		X			X	
63.	Grading and drainage plans including roads, drainage ditches, sediment basins, and berms.		X		X	X	
64.	Existing and proposed contour intervals as follows:		X		X	X	
	Less than 5% slope = 1 foot						
	5 to 15% slopes = 2 feet or less						
	>15% = as required for construction						
65.	Proposed street grades, typical cross sections and profiles, right-of-way widths, pedestrian ways, total area of roads.		X		X	X	
66.	Existing and proposed utility infrastructure plans and profiles including sanitary sewer, water, storm drainage and stormwater management, as appropriate in the case of minor subdivisions.		X		X	X	
67.	Grades and sizes of sanitary sewers and waterlines.		X		X	X	
68.	Direction and distance to water and sewer if not available on or adjacent to the site with		X		X		

Item#	DESCRIPTION	- Sketch/Concept Plan	Minor Site Plan	General Development Plan	DEVELOPMENT STAGE	
					Major Site Plan	
					Prelim.	Final
	invert and elevation of sewer.					
69.	Certification from electric and telephone utilities of adequate facilities to serve proposed development.		X		X	
70.	Location of fire hydrants.				X	X
71.	Construction details as required by ordinance.		X			X
72.	Stormwater Management Plan.		X		X	X
73.	Soil Erosion and Sediment Control Plan.		X		X	X
74.	Lighting plan and details, as required.					X
75.	Landscape plan and details, including required Bufferyards.		X		X	X
76.	Forest Conservation Plan approved by Kent County Planning Office				X	X
77.	Proposed street names.				X	X
78.	New block and lot numbers.				X	X
79.	Solid waste management plan.				X	X
80.	Preliminary architectural plan and elevations.				X	X
81.	Required County, State, and/or Federal or approvals, e.g., State Highway Administration, County Public Works, Army CORPS of Engineers, DNR Wetlands Permit/License, MDOE Quality Certification, MDOE sanitary construction permit, local Health Department approvals.		X			X
82.	Department of Public Works signature on final Site Plan					X
83.	Public works agreement and surety instruments.					X

APPENDIX B SUMMARY OF NOTIFICATION REQUIREMENTS
CRITICAL AREA COMMISSION
(COMAR 14.20)

Type of Application	Require Notification to Critical Area Commission (Yes/No)		
	IDA	LDA	RCA
1. Disturbance to Habitat Protection Areas	Y	Y	Y
2. Physical disturbance to Buffer	Y	Y	Y
3. Variance from Critical Area Program	Y	Y	Y
4. Development resulting in less than 5,000 sq. ft. of disturbance	N	N	N
5. Development resulting in between 5,000 and 15,000 sq. ft. of disturbance	N	N	Y
6. Development resulting in greater than 15,000 sq. ft. of disturbance	Y	Y	Y
7. Subdivision of one to four lots	N	N	N
8. Subdivision of five to ten lots	N	Y	Y
9. Subdivision of greater than ten lots	Y	Y	Y
10. Subdivision affecting Growth Allocation	N/A	Y	Y
11. Single family dwelling (building permit)	N	N	N
12. Accessory structures (building permit)	N	N	N
13. Intrafamily transfer	N	N	Y
14. Rezoning that would occur wholly or partially within the Critical Area	Y	Y	Y
15. Special exception or conditional use for industrial, commercial, institutional non-residential or multi-family	N	Y	Y
16. Substantial alteration to applications previously submitted to Critical Area Commission	Y	Y	Y

APPENDIX C SCREENING, SHADING, LANDSCAPING and ENVIRONMENTAL STANDARDS

Part I Buffers

Section 1. Purpose

1. One of zoning's most important functions is the division of land uses into districts which have similar character and contain compatible uses. All uses permitted in any district have generally similar nuisance characteristics. Bufferyards will operate to minimize the negative impact of any future use on neighboring uses.
2. The bufferyard is a combination of setback and a visual buffer or barrier and is a yard or area together with the planting required thereon. Both the amount of land and the type and amount of planting specified for each bufferyard requirement of this Chapter are specified and are designed to ameliorate nuisances between adjacent zoning districts to ensure a desired character along public streets and roads. The planting units required of bufferyards have been calculated to ensure that they do, in fact, function as "buffers."
3. Bufferyards shall be required to separate different zoning districts from each other in order to eliminate or minimize potential nuisances such as dirt, litter, noise, glare of lights, signs, and unsightly buildings or parking areas, or to provide spacing to reduce adverse impacts of noise, odor, or danger from fires or explosions. Mature woodlands are considered the best buffers and should be used whenever possible.

Section 2. Location of Bufferyards

Bufferyards shall be located on the outer perimeter of a lot or parcel, extending to the lot or parcel boundary line. Bufferyards shall not be located on any portion of an existing or dedicated public or private street or right-of-way. Bufferyards shall not be located within a yard required in a single family attached (townhouse) development.

Section 3. Determination of Required Bufferyard

To determine the type of bufferyard required on a parcel or between two parcels or between a parcel and a street, the following procedure shall be used:

1. Identify whether any portion or property line of the site constitutes a zoning district boundary. If it does, determine the zoning on both sides of the property.
2. Determine whether the land on the adjoining property is vacant or developed or whether a plat of the subdivision has been approved.
3. Classify any street adjacent to the proposed use as a local, collector, or arterial street.

4. Determine the bufferyard required on each boundary (or segment thereof) of the subject parcel by referring to the Tables of Required Bufferyards.
5. Determine if the proposed development is a use which has bufferyards required to separate that use from certain uses. Then determine the bufferyard required between such uses by referring to the Tables of Required Bufferyards.

Section 4. Responsibility for Bufferyards

1. When a proposed use adjoins a vacant parcel for which a bufferyard is required by the presence of a zoning boundary, that use shall at the time of development provide one-half of the buffer which is required by the Tables of Required Bufferyards.
2. The second use to develop shall, at the time it develops, provide all additional plant material and/or land necessary to provide the total bufferyard required between those 2 uses. If the adjoining use had developed without a bufferyard, the second use will be responsible for installing the total bufferyard.
3. Existing plant material and/or land located on the preexisting (first developed) land use which meets the requirements of this Chapter may be counted as contributing to the total bufferyard required between it and the second (adjacent) land use to develop.

Section 5. Tables of Required Bufferyards

ZONE	R-1	R-2	R-3	T-COD	C-1
R-1	--	A	B	C	D
R-2	A	--	B	C	D
R-3	C	B	--	C	D
TCOD	na	na	na	na	na
C-1	B	B	B	B	C
PN	D	D	D	B	--

REQUIRED STREET BUFFERS	FUNCTIONAL CLASSIFICATION		
ZONING DISTRICTS	ARTERIAL	COLLECTOR	LOCAL
R-1, R-2, R-3	D	C	B
B-1, C-1, TCOD	B	B	B
PN	C	C	C

Section 6. Bufferyard Requirements

Illustrations graphically indicating the specification of each bufferyard are listed below.

Section 7. Bufferyard Use

A bufferyard may be used for passive recreation or stormwater management. It may contain pedestrian, bike, or equestrian trails provided that: (1) no plant material is eliminated, (2) the total width of the bufferyard is maintained, and (3) all other regulations of the Chapter are met. (4) In no event, however, shall swimming pools, tennis courts or other such uses be permitted in bufferyards. The Planning Commission may allow substitution or reduction of the bufferyard if it finds that the required bufferyard will obstruct the view of a driver or that the bufferyard is incompatible with the existing streetscape.

Section 8. Ownership of Bufferyards

Bufferyards may remain in the ownership of the original developer (and assigns) of a land use, or they may be subjected to deed restrictions and subsequently be freely conveyed, or they may be transferred to any consenting grantees, such as adjoining landowners, the Town of Betterton, or a homeowner's association, provided that any such conveyance adequately guarantees the protection of the bufferyards for the purposes of this Chapter. Final Ownership shall be specified and approved by the Planning Commission.

Section 9. Bufferyards Which Exceed Minimum Requirements

Where the bufferyard required between a land use and vacant land turns out to be greater than that bufferyard which is required between the first use and the subsequently developed use, the following options apply:

1. The subsequent use may provide one half of the buffer required by this Section. The existing use may expand its use into the original buffer area, provided that the resulting total bufferyard between the two uses meets the bufferyard requirements of this Section.
2. The existing use may enter into agreements with abutting landowners to use its existing buffer to provide some or all of the required bufferyard of both land uses. The total buffer shall equal the requirements of this Section. Provided that such an agreement can be negotiated, the initial use may provide the second use some or all of its required bufferyard and/or extra land on which it might develop. The existing use may reduce its excess buffer by transferring part or all of the excess buffer to the adjoining landowner to serve as its buffer. Any remaining excess buffer area may be used by the existing use for expansion of that use or for transfer by it to the adjoining landowner to expand that adjoining use.

Section 10. Contractual Reduction of Bufferyards

1. When a land use is proposed adjacent to vacant land, and the owner of that vacant land enters into a contractual relationship with the owner of the land that is to be developed first, a reduced buffer may be provided by that first use, provided that: the contract contains a statement by the owner of the vacant land of an intent to develop at no greater than a specified land use intensity class; and an agreement by that vacant landowner to assume all responsibility for additional buffer, if needed by the subsequent development of a less intense use than had been agreed upon, is transferred to the owner of the vacant

(second in time to be developed) land. All such agreements shall be recorded and run with the land and copies shall be provided to the Town of Betterton.

Part II Shading

Section 1. Town Findings and Declaration of Policy: Shade Trees

1. The Town finds that:
 - a. Trees are proven producers of oxygen, a necessary element for human survival,
 - b. Trees appreciably reduce the ever increasing environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air we breathe,
 - c. Trees transpire considerable amounts of water each day and thereby purify the air much like the air-washer devices used on commercial air conditioning systems,
 - d. Trees have an important role in neutralizing wastewater passing through the ground from the surface to ground water tables and lower aquifers,
 - e. Trees, through their root systems, stabilize the ground water tables and play an important and effective part in soil conservation, erosion control, and flood control,
 - f. Trees are an invaluable physical, aesthetic, and psychological counterpoint to the urban setting, making urban life more comfortable by providing shade and cooling the air and land, reducing noise levels and glare, and breaking the monotony of human developments on the land, particularly parking areas, and
 - g. For the reasons indicated herein, trees have an important impact on the desirability of land and therefore on property values.
2. Based upon the findings set forth above, the Town declares that it is not only desirable but essential to the health, safety, and welfare of all persons living or working within the Town's planning jurisdiction to protect certain existing trees and, under the circumstances set forth in this article, to require the planting of new trees in certain types of developments.

Section 2. Required Trees Along Dedicated Streets

Along both sides of all newly created streets that are constructed in accordance with the Town of Betterton street standards, the developer shall at a minimum either plant or retain sufficient trees so that between the paved portion of the street and a line running parallel to and fifty (50) feet from the centerline of the street, there is for every fifty (50) feet of street frontage at least an average of one deciduous tree that has or will have when fully mature a trunk at least 12 inches in diameter.

Section 3. Retention and Protection of Large Trees

1. Every development shall retain all existing trees 18 inches in diameter or more unless the retention of such trees would unreasonably burden the development.

2. No excavation or other subsurface disturbance may be undertaken within the drip line of any tree 18 inches in diameter or more, and no impervious surface (including, but not limited to, paving or buildings) may be located within 12½ feet (measured from the center of the trunk) of any tree 18 inches in diameter or more unless compliance with this subsection would unreasonably burden the development. For purposes of this subsection, a drip line is defined as a perimeter formed by the points farthest away from the trunk of a tree where precipitation falling from the branches of that tree lands on the ground.
3. The retention or protection of trees 18 inches in diameter or more as provided in Subsections 1 and 2 unreasonably burdens a developer if, to accomplish such retention or protection, the desired location of improvements on a lot or the proposed activities on a lot would have to be substantially altered and such alteration would work an unreasonable hardship upon the developer.
4. If space that would otherwise be devoted to parking cannot be so used because of the requirements of Subsections 1. or 2., and, as a result, the parking requirements set forth in Article IX cannot be satisfied, the number of required spaces may be reduced by the number of spaces "lost" because of the provisions of Subsections 1. and 2., up to a maximum of 15 percent of the required spaces.

Part III Landscape Standards

Section 1. Plan Requirements for Landscaping and Screening

1. **Applicability.** A master landscaping plan or screening plan meeting the standards of this part is required for any development, except applications involving a detached single family dwelling unit requiring only a building permit.
2. A master landscape or screening plan shall consist of one (1) or more sheets drawn to scale or combined with a site plan and shall include the following information:
 - a. The location and footprint of all proposed buildings, structures, and facilities on the site and proposed landscaping areas.
 - b. The approximate location of rivers or stream branches or natural, intermittent streams or drainage channels, ponds, wooded areas, or other special natural features on the development site.
 - c. A tabular summary of type of species, height, diameter, and quantity of shrubbery and trees, including street trees, to be planted within landscaped or screening areas.
 - d. The height, length, type and location of fencing and related planting areas to be used for screening purposes.
 - e. Location of underground and overhead utilities.
 - f. The continuity of proposed open space with contiguous and other nearby open spaces, existing or proposed.
3. The plan shall show landscaping proposals for the following areas or facilities where applicable to the type of development proposed.

- a. Street trees
 - b. Bufferyard plantings
 - c. Foundation plantings
 - d. Screening for dumpster or other solid waste collection areas
 - e. Stormwater management retention or detention areas landscaping
 - f. Above ground utility box screening
 - g. Parking lot plantings/screening
 - h. Perimeter plantings
 - i. Recreation facilities landscaping
 - j. Loading and unloading space screening
4. The plan shall be consistent with the specific requirements of a site plan or comprehensive development plan or the specific requirements for the type of development proposed.

Section 2. Landscaping Materials

1. Whenever landscaping is required, it shall consist of, as a minimum, a combination of grass, trees and shrubs including the following species at the sizes specified, arranged in such a manner as to complement the proposed structure or project and its adjacent neighborhood. The total linear amount of property lines or perimeter of the development site and each lot shall be used as a guide to compute the amount of plantings as required. All such materials may be randomly placed on the site except as may be required to meet the Bufferyard requirements of this Chapter. Plantings required in other sections of this Chapter.
2. Landscaping shall emphasize native species trees, shrubs, and flowers to reduce maintenance, to help ensure longevity, and to reinforce the natural character of the area. Species should be selected partly on the basis of their visual appeal during different seasons of the year.
3. Any applicant may incorporate and combine the mitigation requirements for meeting the provisions of the Town's Forest Conservation Act, the Chesapeake Bay Critical Area Program, and the State's Non-Tidal Wetlands Act with these provisions. The Planning Commission may approve such mitigation plans as a substitute for compliance with these conditions. Any plan may also use existing trees to count toward the requirements of these guidelines.
4. Whenever screening is required, the following minimum screening materials may be used in any combination to accomplish the purpose and intent for which the screening is required. The intent is to screen by 50% the visibility of adjoining property by the following means. Additional types of landscaping and screening materials or other landscaping amenities may be used, subject to the approval of the Planning Commission, Town Administrator, or Board of Appeals but in no case shall landscaping or screening be less than that necessary to accomplish the purpose and intent for which the screening is required.
 - a. Solid wood, metal, brick, concrete, or otherwise architecturally solid fence.
 - b. Chain link fence with slat inserts where view is to be obscured.

- c. Berms, or berms with fence installed or berms with trees and shrubs planted, or any combination thereof; sufficient to provide a barrier at least six (6) feet in height (measured from the bottom of the berm).
 - d. Whenever a fence is installed as a screen, it shall be located at least three (3) feet from any abutting property line and landscaping shall be provided on both sides of the fence.
 - e. Retention of existing natural vegetation depending on width, density, and type, provided that the Planning Commission or Board of Appeals may require additional, supplemental plantings to obtain the effect intended by the purpose and intent of this requirement.
 - f. Plantings which will have a minimum height of six (6) feet at maturity.
5. The applicant shall be required to post a performance bond with the Town to ensure that any landscape materials that die within eighteen (18) months of planting shall be replaced with the same species and size, and that any landscape material shall be well maintained, specifically irrigated and fertilized, for a total of twenty-four (24) months from time of planting. If landscape materials are removed, they shall be replaced with material of similar size, shapeliness, function, hardiness, longevity, and appearance.

Section 3. Shade Trees

1. Shade trees, with a height of more than thirty (30) feet at maturity, shall be a minimum 1 inch in caliper and a minimum six (6) feet or more in height at the time of planting and shall be planted in continuous rows along the edges of properties in accordance with the following spacing standards:
- a. Two-family, multi-family residence in any district - one per one hundred (100) feet.
 - b. All other districts - one per fifty (50) feet.
 - c. Special exceptions - the requirements for the district in which the use is located or an alternate as may be determined by the Planning Commission, Administrator, or Board of Appeals.
 - d. Maintain a minimum distance of twenty (20) feet from overhead utilities for species that exceed thirty (30) at maturity.
2. Street Trees - Street trees meeting the standards of 1 above shall be planted along internal streets, with at least one tree for every fifty (50) feet of street frontage in residential, commercial and business districts.

Section 4. Understory (Decorative) Trees

Understory trees, with a height of less than thirty (30) feet at maturity, shall be one (1) inch in caliper and four (4) feet in height at the time of planting and shall be provided as follows:

- 1. Two-family, or multi-family residences in any district – as approved by Planning Commission.

2. Commercial district - one per fifty (50) feet.
3. All other districts - one per one hundred (100) feet.
4. Special exceptions - the requirements for the district in which the use is located or an alternate as may be determined by the Planning Commission, Zoning Administrator, or Board of Zoning Appeals.
5. Maintain a minimum distance of twenty (20) feet from overhead utilities for species that exceed thirty (30) feet at maturity.

Section 5. Evergreen Trees

Evergreen trees shall be at a height of three and one-half (3 ½) to four (4) feet or greater at planting and shall be provided as follows:

1. Two-family, or multi-family residence in any district – none.
2. Commercial - one per one hundred (100) feet.
3. All other districts - one per one hundred (100) feet.
4. Special exceptions - the requirements for the district in which the use is located or an alternate as may be determined by the Planning commission, Planning Staff, or Board of Zoning Appeals.
5. Maintain a minimum distance of 20' from overhead utilities for species that exceed 30' at maturity

Section 6. Shrubs

Evergreen and deciduous shrubs shall be at a height of 18 inches to 24 inches or greater at the time of planting and shall be provided as measured by the length of the perimeter of the buildings or structures facing any public street or road as follows:

1. Two-family, or multi-family residences in any district - one per fifteen (15) feet.
2. Commercial - one per fifteen (15) feet.
3. All other districts - one per one hundred (100) feet.
4. Special exceptions - the requirements for the district in which the use is located or an alternate as determined by the Planning Commission, Administrator, or Board of Appeals.

Section 7. Alternatives and Additional Landscape Requirements

As an alternative, an applicant may propose and the Planning Commission or Board of Appeals may approve:

1. The retention of natural growth on the site to meet the requirements of this section, depending on width, density, and type of natural growth, provided that the Board or Commission may require additional, supplemental plantings to obtain the effect intended by the purpose and intent of these requirements.
2. Landscaping consisting of a combination of the plantings listed in this article and alternate plantings of various species and sizes.

3. Landscaping consisting of a combination of architectural materials, including fountains, special bricks, interlocking paving, decorative features, statues, and other combinations of landscaping features, materials, or plantings, including street trees.
4. Whenever deemed appropriate, the Planning Commission may require installation of a vegetated and/or structural buffer along property lines to protect adjoining residential properties from the potential impacts of a proposed non-residential use and/or to maintain or enhance the general visual character of the property and surrounding area. Buffer standards shall be selected from the various Bufferyards.

Section 8. Complementary Plantings

Dwarf and other species may be used only for complementary plantings and no minimum sizes shall be required.

Part IV Landscaping of Parking Facilities

Section 1. Intent

It is intended that the application of the landscape standards set forth below will reduce the visual and environmental impacts of large expanses of parking areas. Breaking up of paved parking areas with plantings will provide improved aesthetics and micro-climatic benefits by reducing heat and glare.

Section 2. Sites Affected

1. New sites. No new parking areas shall hereafter be constructed or used unless landscaping is provided as required by the provision of this Article.
2. Existing sites. No parking areas shall be expanded, moved, or removed and/or reconstructed unless the minimum landscaping required by the provision of this Article is provided for the property to the extent of its alteration or expansion, but not for the entire property.
3. Change of use. No use shall be changed to another use for which the Zoning Chapter requires additional parking over and above that required for the previous use, unless vehicular use area perimeter landscaping as required by this Article is provided for such additional parking. The provisions of this section shall be effective regardless of whether or not new construction is necessary to meet the parking requirements for the new uses. Where new construction will not be necessary to meet the parking requirements, such additional required parking shall be deemed to be on the perimeter for as much as possible of the existing vehicular use area. Where the previous use had no required parking, perimeter landscaping shall be provided for the entire vehicular use area serving the new use. Interior landscaping shall not be required where only the use of the property is changed and no new construction or reconstruction is proposed.
4. Change of zone. No use of an existing building, structure, or vehicular use area shall be commenced subsequent to a change in zoning unless property perimeter landscaping as required herein has been provided.

Section 3. Perimeter Landscaping

1. A planting strip shall be provided at least eight (8) feet wide adjacent to the back of any sidewalks or ten (10) foot wide adjacent to the property line where no sidewalk exists. Where the parking lot does not abut a property line or sidewalk, a five (5) foot planting area shall be provided.
2. Except where otherwise specifically required by the Zoning Chapter, a minimum ten (10) foot wide screening area shall be provided along all abutting property lines of a residential district.
3. The following requirements shall apply to the design and construction of all parking lots for fifteen (15) vehicles or more:
 - a. **Perimeter Landscaping.** An eight (8) foot landscaped area shall be provided adjacent to all driveways leading to the lot and around the outer edges of all parking lots.
 - b. **Screening Areas.** A ten (10) foot screening area shall be provided abutting all residential districts except where a greater distance is required by the provisions of the zoning district in which the parking lot is located.
4. Each landscape area adjacent to a street right-of-way shall contain a minimum of one tree per 40 feet of landscape area parallel to the right-of-way. In addition, a vegetative screen, landscaped berm, fence, wall, or other methods to reduce the visual impact of the parking area shall be provided. The vegetative screen shall have an average continuous height of three (3) feet. A 3-foot decrease in elevation from the adjoining property to the street right-of-way shall be construed as satisfying the vegetative screen requirement.
5. Grass or ground cover shall be planted on all portions of the landscape area not occupied by other landscape material.
6. Special notes on existing natural vegetation:
 - a. In all cases where significant natural vegetation exists, as determined by the Planning Commission or their designee, there will be limits of clearing/grading areas established to protect and preserve these natural areas. These natural areas will not be disturbed by the installation of any structures, utilities, storm and sanitary sewers, water lines, sediment and erosion control traps, stormwater management systems, signage in the buffers unless approved by the Planning Commission. Existing landscape material which is proposed to be used to fulfill landscape requirements shall be shown in the required plan.
 - b. In the case where buffers are created by the application of these standards, no structures, utilities, storm and sanitary sewers, water lines, sediment and erosion control traps, stormwater management systems, and signage will be permitted in the buffers unless approved by the Planning Commission.
 - c. Where pedestrian and bike paths are proposed in the landscape area, such paths shall be designed to preserve the existing trees.

7. Trees required as a part of the parking lot street right-of-way landscaping may be placed on the right-of-way adjoining such parking area when approved by the Planning Commission. Such trees shall be in addition to any street trees required by the subdivision regulations.
8. Landscaping in Easements. The required landscape area for parking areas may be combined with a utility or other easement only if all landscape requirements can be met. Otherwise, the landscape area shall be in addition to, and separate from, any easement.
9. In any parking lot perimeter landscaping area all trees shall be set back at least 4 feet from the edge of paving where vehicles overhang.

Section 4. Interior Landscaping for Parking Lots

1. For any parking lot containing more than 6,000 square feet of area, or 15 or more spaces, interior landscaping shall be provided in addition to the previously required perimeter landscaping. Interior landscaping shall be contained in peninsulas or islands. An interior parking lot landscape island or peninsula is defined as a landscaped area containing a minimum area of 153 square feet having a minimum width of 8.5 feet and a minimum length of 18 feet. There shall be a minimum of 4 feet to all trees from the edge of paving where vehicles overhang. The minimum landscape area permitted shall be 10 percent of the parking area. Each island or peninsula shall be enclosed by appropriate curbing or a similar device at least 6 inches wide and 6 inches in height above the paving surface. For purposes of Subsection 4. below and subject to the limits established in 5. below, up to 4 islands can be combined.
2. Where a parking area is altered or expanded to increase the size to 6,000 or more square feet of area or fifteen (15) or more vehicular parking spaces, interior landscaping for the entire parking area shall be provided and not merely to the extent of its alteration or expansion.
3. Landscape area. For each 100 square feet, or fraction thereof, of parking lot, 5 square feet of landscaped area shall be provided. The interior landscaping requirement shall be computed on the basis of the "net parking facility." For the purposes of this Section, "net parking facility" shall include parking stalls, access drives, aisles, walkways, dead spaces, and required separations from structures, but shall not include required street setbacks or access driveways or walkways within such setbacks.
4. Landscape islands or peninsulas - number required:
 - a. For less than 100 spaces one island or peninsula is required for every 7 parking spaces.
 - b. For 100 spaces or more, one island or peninsula is required for every 10 spaces.
 - c. Each 10 parking spaces shall require an interior planting island.
 - d. All interior parking aisles shall end in a landscape island.
5. Maximum contiguous areas for interior parking lot landscaping. In order to encourage the required landscape areas to be properly dispensed, no required landscape area shall be larger than the following:

- a. 350 square feet in parking areas under 30,000 square feet.
 - b. 1,500 square feet in parking areas over 30,000 square feet.
6. Landscape areas larger than the above are permitted as long as the additional area is in excess of the required minimum. Landscape areas larger than the maximum permitted may be allowed as required landscaping areas. In those cases where significant natural vegetation exists.
7. Minimum plant materials. A minimum of one tree for each 250 square feet or fraction thereof of required landscape or for each 5 spaces of required parking or for each 161 square feet of island or peninsula, whichever is greater, shall be required. The remaining area of the required landscaped area shall be landscaped with shrubs or ground cover not to exceed 2 feet in height, or grass.
8. Landscaping for service structures. All service structures shall be fully screened, except when located more than 35 feet above the established grade, and shall not be visible from a public way to the maximum extent possible, as determined by the Town Administrator. For the purposes of this article, service structures shall include propane tanks, dumpsters, air conditioning units and condensers, electrical transformers and other equipment or elements providing service to a building or a site.
 - a. Location of screening. A continuous planting, hedge, fence, wall, or earth mound shall enclose any service structure or loading zone on all sides unless such structure must be frequently moved, in which case screening on all but one side is required. The average height of the screening material shall be one foot more than the height of the enclosed structure. Whenever a service structure is located next to a building wall, perimeter landscaping material, or vehicular use area landscaping material, such walls or screening material may fulfill the screening requirement for that side of the service structure if that wall or screening material is of an average height sufficient to meet the height requirement set out in this section. Whenever service structures are screened by plant material, such material may count towards the fulfillment of required interior or perimeter landscaping. No interior landscaping shall be required within an area screened for service structures.
 - b. Protection of screening material. Whenever screening material is placed around any trash disposal unit or waste collection unit that is emptied or removed mechanically on a regular basis, a fixed barrier to contain the placement of the container shall be provided within the screening material on those sides where there is such material. The barrier shall be at least 18 inches from the material and shall be of sufficient strength to prevent possible damage to the screening when the container is moved or emptied. The minimum front opening of the screening material shall be 12 feet to allow service vehicles access to the container.
9. Interior landscaping for parking areas shall be installed and continuously maintained by the owner.

10. Plan submission and approval. Whenever any property is affected by these parking area landscape requirements, the property owner or developer shall prepare a landscape plan for approval according to the requirements contained in the Landscape Section of this Chapter.
11. Unnecessary paving or irregular paving plans are strongly discouraged and, if incorporated in a site plan, shall be subject to approval by the Planning Commission, or their designee.
12. Alternative parking area-landscaping design may be considered by the permitting officials in cases where unique topography and site constraints dictate such alternative. The innovative use of planting design and materials is encouraged and will be evaluated on the intent demonstrated to fulfill the stated objectives of this Chapter.
13. Landscape material type and quality shall be as follows:
 - a. Parking lots and areas that are required to be paved must be shaded by deciduous trees (either retained or planted by the developer) that have or will have when fully mature a trunk at least 12 inches in diameter. When trees are planted by the developer to satisfy the requirements of this subsection, the developer shall choose trees that meet the standards set forth in the Bufferyard Requirement section.
 - b. Each tree of the type described in Subsection a. shall be presumed to shade a circular area having a radius of 15 feet with the trunk of the tree as the center, and there must be sufficient trees so that, using this standard, 20 percent of the vehicle accommodation area will be shaded.
 - c. No paving may be placed within 12 ½ feet (measured from the center of the trunk) of any tree retained to comply with Subsection a., and new trees planted to comply with Subsection a. shall be located so that they are surrounded by at least 200 square feet of unpaved area.
 - d. Parking areas shall be laid out and detailed to prevent vehicles from striking trees. Vehicles will be presumed to have a body overhang of three feet, six inches.

BUFFERYARD STANDARDS

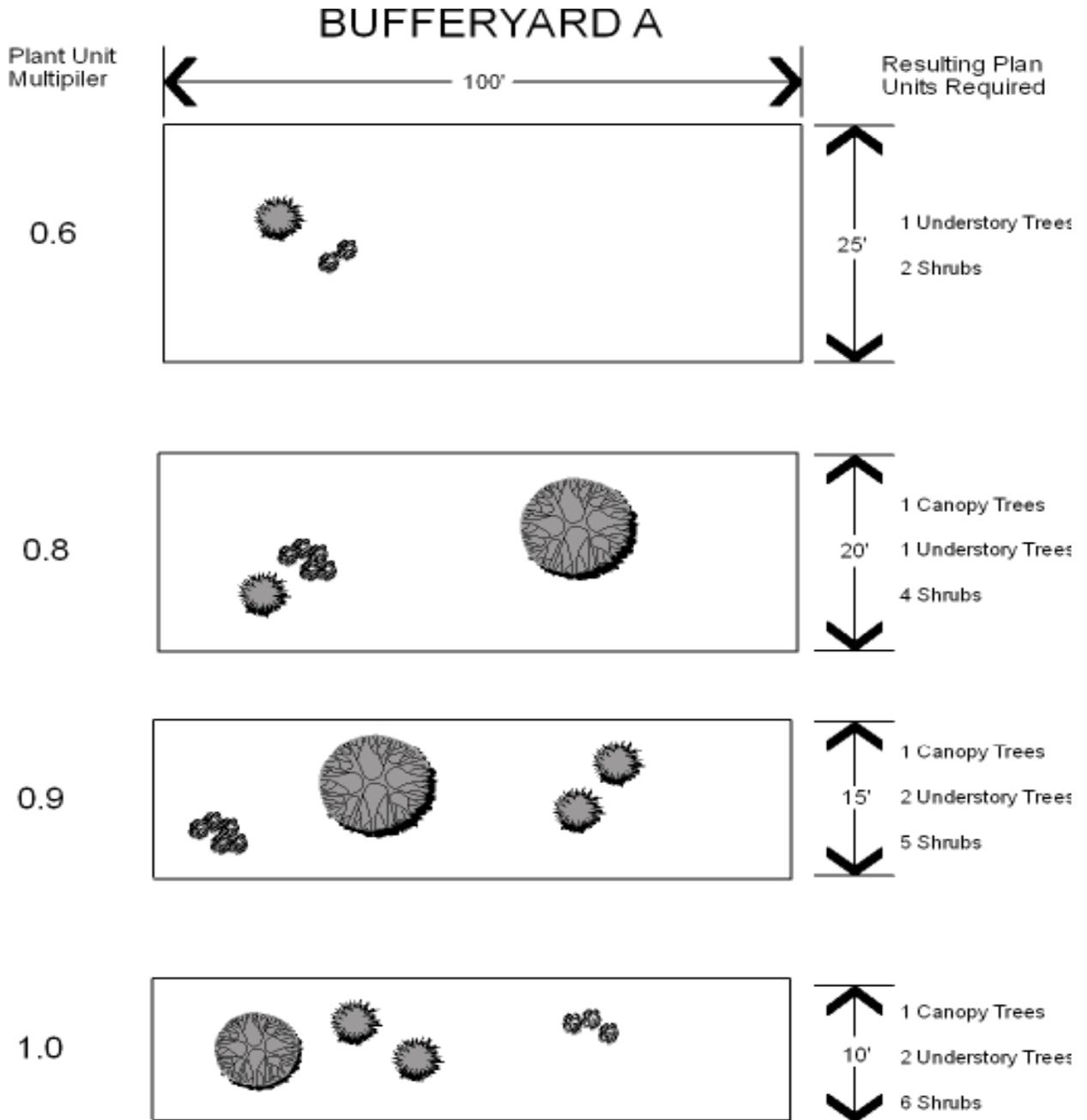
Part I Buffers

Part II Shading

Part III Landscaping Standards

Part IV Landscaping of Parking Facilities

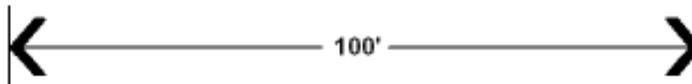
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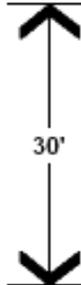
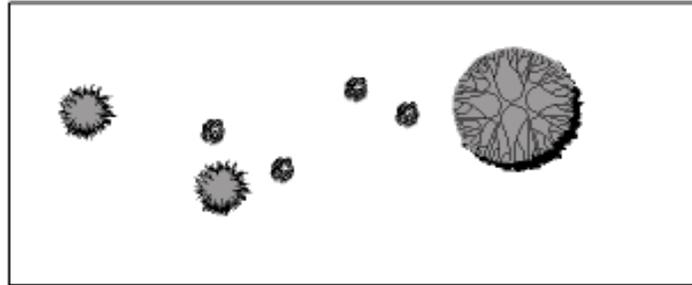
BUFFERYARD B

Plant
Multiple

Resulting
Units Required

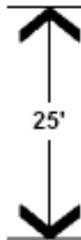
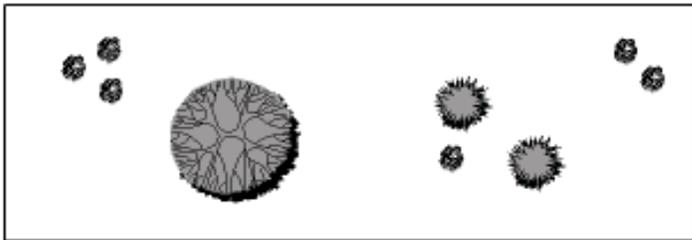


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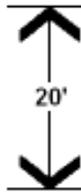
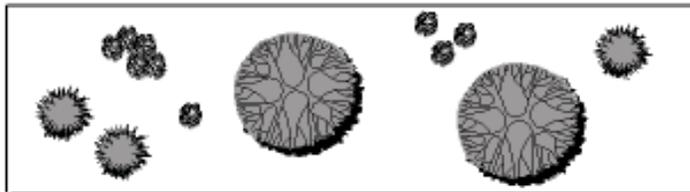
1 Canopy Trees
2 Understory Trees
4 Shrubs

0.8



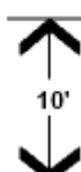
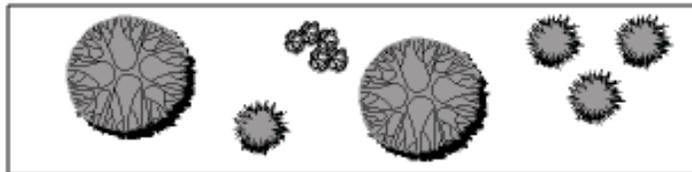
1 Canopy Trees
2 Understory Trees
6 Shrubs

0.9



2 Canopy Trees
3 Understory Trees
8 Shrubs

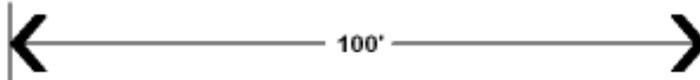
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2 Canopy Trees
4 Understory Trees
10 Shrubs

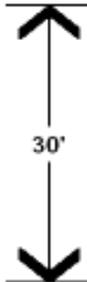
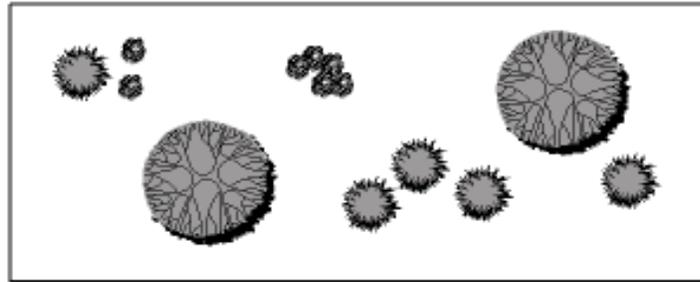
BUFFERYARD C

Plant Unit
Multiplier



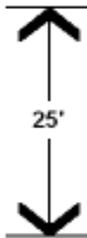
Resulting Plant
Units Required

0.6



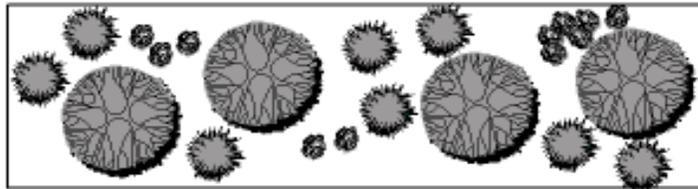
2 Canopy Trees
5 Understory Tree
7 Shrubs

0.8



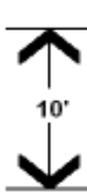
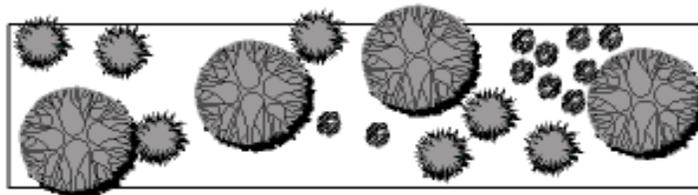
3 Canopy Trees
6 Understory Tree
10 Shrubs

0.9



4 Canopy Trees
7 Understory Tree
11 Shrubs

1.0



4 Canopy Trees
8 Understory Tree
12 Shrubs

