

ARTICLE VII. SPECIAL EXCEPTIONS

SECTION 1. STATEMENT OF INTENT

The purpose of this Article is to provide for certain uses, which because of their unique characteristics cannot be distinctly listed as a permitted use in a particular District. These special exceptions may be approved by the Board of Zoning Appeals, or where applicable the Planning Director, after consideration in each case of the impact of such uses upon neighboring uses, the surrounding area and the public need for the particular use at the particular location. Limitations and standards are herein established to insure the use's consistency with the character, uses and activities in the District.

SECTION 2. STANDARDS

The Board of Zoning Appeals, or where applicable the Planning Director, in accordance with the procedures and standards of this Ordinance may authorize *buildings, structures*, and uses as special exceptions in the specific instances and particular Districts set forth provided that the location is appropriate and consistent with the *Comprehensive Plan*, that the public health, safety, morals, and general welfare will not be adversely affected, and that necessary safeguards will be provided to protect surrounding property, *persons*, and neighborhood values, and further provided that the additional standards of this Article are specified as a condition of approval. Unless otherwise specified in this Article or as a condition of approval, the height, *yard, lot area*, design, environmental, parking, and *sign* requirements shall be the same as other uses in the district in which the special exception is located.

No special exception shall be authorized unless the Board, or where applicable the Planning Director, finds that the establishment, maintenance, or operation of the special exception meets the standards set forth in this Article. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all question of fact which are determined by the Board or where applicable the Planning Director.

The Board, or where applicable the Planning Director, shall make findings on the following where appropriate:

1. The nature of the proposed *site*, including its size and shape and the proposed size, shape, and arrangement of *structures*;
2. Traffic Patterns;
3. Nature of surrounding area;
4. Proximity of dwellings, *houses of worship*, schools, public *structures*, and other places of public gathering;
5. The impact of the *development* or project on community facilities and services;
6. Preservation of cultural and historic landmarks, significant *natural features* and trees;
7. Probable effect of noise, vibration, smoke and particulate matter, toxic matter, odor, fire or explosion hazards, or glare upon surrounding properties;
8. The purpose and intent of this Ordinance as set forth in Article II;

9. Design, environmental, and other standards of this Ordinance as set forth in Article V;
10. The most appropriate use of land and *structure*;
11. Conservation of property values;
12. The proposed *development's* impact on water quality;
13. Impact on fish, wildlife and *plant habitat*;
14. Consistency with the *Comprehensive Plan*, Land Use Ordinance, and where applicable the Village Master Plan;
15. Consistency with the *Critical Area* Program; and
16. Compatibility with existing and planned land use as described in the *Comprehensive Plan*, Land Use Ordinance, and where applicable the Village Master Plan.

SECTION 3 CONDITIONS AND GUARANTEES

Prior to the granting of any special exception, the Board, or where applicable the Planning Director, 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 property in the neighborhood, and to secure compliance with the standards and requirements specified in this Ordinance. These conditions or restrictions may include but are not limited to the following:

1. Hours of operation
2. Permitted expansion
3. On-premise sales
4. Exterior display, lighting, storage, *signs*, and other indicators or appearance of a business that may detract from the general character of the area
5. Location of parking
6. Increased setbacks and screening
7. Landscaping
8. The size and type of equipment
9. The number of clients allowed on *premises* at one time or class size
10. Accessory vehicles
11. *Accessory uses*
12. Letters of credit, bonds, or other surety

The Board, or where applicable the Planning Director, may require such evidence and guarantees as it deems necessary as proof that the conditions imposed in connection with a special exception shall be implemented. Failure to comply with such conditions or restrictions imposed shall constitute a violation of this Ordinance and the Zoning Administrator may revoke permits issued under the special exception.

SECTION 4 APPROVAL VALID FOR ONE YEAR

Approval of a special exception granted under this Article shall be valid for one year after the date of approval and thereafter shall become null and void unless construction or use is substantially underway during said one year period, or unless the Board of Appeals, or where applicable the Planning Director, approves an extension before the expiration of said one year period. When provided with sufficient evidence, the Board, or where applicable the Planning Director, may grant a special exception for a longer period.

SECTION 5 RECONSIDERATION, ONE YEAR LIMIT

Whenever an application for a special exception has been denied by the Board, such application, or one substantially similar, shall not be reconsidered sooner than one year after the previous denial.

SECTION 6 PROCEDURES

The application for a special exception shall include a *site plan* together with such data and 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 Planning Director may hear and decide the following special exceptions:

1. Accessory storage *structures*
2. Accessory *structures* in the *front yard* requirement of waterfront parcels
3. Accessory *structures* in the *front yard* of a *through lot* or *corner lot**
4. Assisted living facilities with five to eight beds**
5. *Day care group*

The *Planning Commission* shall review and send a recommendation to the Board of Appeals on the following special exceptions:

1. *Aquaculture*
2. Adaptive reuse of historic *structures*
3. *Airport*, landing field, heliport, or helistop, public or private
4. Attached retail businesses
5. *Automobile repair*
6. *Automobile service stations*
7. Boat building and sales
8. Car wash
9. Cemetery, including crematorium and mausoleum
10. *Conference center*
11. Convalescent, nursing, or group homes for the aged with five or more beds
12. *Cottage industries*, tradesmen and artisan shops
13. *Country inn*
14. *Country stores*
15. Dredge spoil *site*
16. *Excavation contractor's yard*
17. *Feedlot* or confinement dairy
18. Golf courses, public or private
19. Hospitals, rehabilitation facilities, or other similar institutions for human care
20. *Houses of worship*

* Amended 11/1/05;

**Amended 11/3/09 and 2/3/10 for CAR

- 20.5 The manufacture, processing, and assembling of food products to include baked and confectioners' goods, frozen food processing, fruit and vegetable processing, canning and storage, or businesses of a similar nature, excluding animal and seafood processing. ++
- 21. Migrant labor camps
- 22. *Mobile home parks*
- 23. Multi-level boat storage
- 24. Outdoor entertainment
- 25. Outdoor recreation, miniature golf, but not golf courses
- 26. *Personal wireless facility tower*
- 27. Poultry houses on parcels where the owner cannot handle the waste generated
- 28. Printing and publishing
- 29. Private schools
- 29.5 Production of biofuels*
- 30. *Public utilities and structures*
- 31. Pubs, taverns and bars
- 32. Radio and television tower, commercial
- 33. Raising of livestock and fowl
- 34. Recreational facilities
- 35. *Resort*
- 36. *Retreat*
- 36.5 *Rural Inn****
- 37. Sand and gravel pits
- 38. *Sanitary landfill* or rubblefill
- 38.5 School bus parking lot ++
- 39. Seafood processing
- 39.5 Septic tank maintenance and excavation[§]
- 40. *Sewage sludge land application*
- 41. *Shopping centers*
- 41.25 *Solar energy systems, utility***
- 41.5 *Solar energy systems, utility scale on farms***
- 42. *Structures* for the buying, processing, and sale of animal products
- 42.5 Tie-out pilings of private piers, *community piers*, and private shared piers, installed at a distance not to exceed 25% of the width of the waterway, the edge of the channel, or 180 feet from the mean high water mark, whichever is less, for the exclusive mooring use by tall ships as safe-harbors from hurricanes and other severe weather-related threats. +
- 43. Truck parking lot
- 44. *Truck stops*
- 45. *Truck terminals*
- 46. *Wind energy systems, small***
- 47. *Wind energy systems, small*, with a height that exceeds 80 feet or on a lot less than 20 acres**

The following special exceptions shall be forwarded directly to the Board of Appeals:

- 1. *Dog kennels*, commercial
- 2. Dormitories for employees
- 3. Exposition center or fairgrounds
- 4. Farm employee housing
- 5. More than four horses and mules on land less than 20 acres in size
- 6. *Private clubs*
- 7. *Public landings*
- 8. Raising of small animals
- 9. Rifle and pistol ranges
- 10. *Single family dwellings*
- 11. *Structures* for the buying, processing, and sale of farm products in *structures* that exceed 10,000 square feet but are less than 50,000⁺⁺⁺ square feet

The Board of Appeals may hire expertise as shall be needed to provide advice and assist in its decision-making. In its recommendation, the *Planning Commission* may recommend that additional expertise is warranted.

Within thirty days of the decision, with respect to special exceptions approved by the Planning Director, any *person* aggrieved by the decision of the Planning Director may appeal the decision to the Board of Appeals.

Within thirty days of the decision, any *person* aggrieved by a decision of the Board of Appeals may file a notice of appeal with the Circuit Court.

SECTION 7. SPECIAL EXCEPTIONS

Buildings, structures, and uses for which special exceptions may be authorized and the additional standards relative thereto are as follows:

1. Accessory storage *structures* with a *floor area* of more than 1,200 square feet or a height that exceed 17 feet on parcels less than 5 acres in AZD, RCD, RC, RR, CAR, and CR.
2. *Accessory structures* in the *front yard* of *through* or *corner lots* in AZD, RCD, RC, RR, CAR, CR, V, IV, and IVCA.*
3. *Accessory structures* in the *front yard* requirement of waterfront parcels in RCD and CAR.
4. Adaptive reuse of historic *structures* in AZD, RCD, RC, RR, CR, V, IV, IVCA, and M provided:
 - a. *Structures* shall be listed in the Kent County Historic *Site Survey* or approved as a historically significant *structure* by the *Planning Commission*.
 - b. It is shown that exterior changes to *site structures* will be minimized. Extensions or enlargement of the principal and *accessory structures* may not exceed 25% of the gross *floor area* of each individual *building* above that which existed as of August 1, 1989. Enlargements shall be designed in keeping with the character of the *building*.
 - c. Landscaping is in keeping with the character of the *building*.
 - d. The *site* must have access to a public road adequate to handle traffic generated. The proposed use shall not generate traffic of a type or amount inappropriate for all access *roads* and the surrounding area. The use does not require road improvements detrimental to the character of the area.
 - e. The number of dwellings shall not exceed the *density* permitted in the district in which the *structure* is located.
 - f. The proposed use does not create an unacceptable impact by way of noise, odor, noxious materials or other nuisances.
 - g. In RCD, adaptive reuse projects shall be limited to non-commercial and non-industrial uses.
5. *Airport, landing field, heliport, or helistop* in AZD, RC, RR, CAR, CR, and M provided:
 - a. Flight obstructions, such as towers, chimneys, other tall *structures*, or natural obstructions, do not fall within the approach zone to any proposed runway or landing strips of the landing field or *airport*
 - b. The use complies with the recommendations of the Federal and State Aviation Authorities.
 - c. Runways are designed to minimize the approach and takeoff areas over residential areas.
 - d. Applications for special exceptions for private airstrips, heliports and helistops shall comply with the following:

- i. The takeoff and landing flight path shall be a minimum of 1,000 feet in any direction from any residence or public *building*.
 - ii. The takeoff and landing path of the aircraft shall have a minimum of 250 feet vertical clearance over surrounding property unless a navigation *easement* is reached with the affected property owners for a lesser clearance.
 - iii. No business such as the sale or leasing of aircraft, maintenance, or flight instructions shall be permitted.
 - iv. The applicant shall maintain a flight operation's log that shall be open for inspection by representatives of the Department of Planning and Zoning.
 - v. Approvals shall be for a period not to exceed 5 years.

- 6. *Aquaculture* including accessory processing and sales in CAR and RR provided:
 - a. Open or uncovered storage of shells, bones, and refuse does not occur on *site*.
 - b. No curing or smoking occurs on *site*.
 - c. All *structures* for processing and all disposal areas for materials and byproducts of processing are a minimum of 600 feet from all property lines.
 - d. Seafood processing facilities and disposal areas are not in the *100-year floodplain*
 - e. The operation is managed according to a management plan approved by the Natural Resources Conservation Service, University of Maryland Extension Service, and the Kent County Health Department
 - f. Parking, processing and disposal areas are screened from adjacent properties and public *roads*.
 - g. Access *roads* are capable of handling the type of traffic generated by the operation.

- 6.5 Assisted living facilities with five to eight beds in AZD, RC, RR, CAR** and CR provided:*
 - a. The property owner resides on the premises.
 - b. The assisted living facility is subordinate and accessory to the principal dwelling in size and appearance and is in the same *structure* as the principal dwelling unit. Expansions shall be designed in keeping with or to enhance the character of the other buildings.
 - c. The rooms for the use are not designed or constructed to be separate dwelling units and may not be sold as separate dwelling units.
 - d. The appearance of the *structure* and property remain that of a single family dwelling so that the average neighbor is unaware of the assisted living facility's existence.
 - e. The *structure* meets all applicable Kent County Codes, including the building code, and Health Department requirements.
 - f. The applicant has received approval from the appropriate State of Maryland agencies.
 - g. The facility does not create an unacceptable environmental impact by way of noise, odor, noxious materials, or other nuisances.

- 7. Attached retail businesses in CC provided proposed *buildings* are in harmony with the scale, *bulk*, and character of the area

- 8. *Automobile repair* in IV and IVCA provided automobiles waiting for repair are stored in a *building* or in the *rear yard* screened from adjacent properties.

- 9. *Automobile service stations* in V, provided major repairs and bodywork is not conducted *on-site*.

- 10. Boat building and sales in CC, C, and CCA provided construction areas are at least 100 feet from any residential district.

11. Car Wash in IV and IVCA provided:
 - a. The car wash is designed to allow adequate traffic flow for cars to enter and exit the facility safely.
 - b. Single bay facilities with automated brushes and multiple bay self service facilities shall provide a space for the parking of one car per bay to be used as a dry down area. Facilities using a conveyor or chain drag system for moving motor vehicles through the washing area shall provide space at the *building* exit for three times the number of vehicles that can be accommodated at one time within the *structure*.
 - c. Vacuum facilities shall comply with the setbacks for a primary *structure* in the applicable zoning district.
 - d. Appropriate permits are obtained from the State of Maryland.
 - e. Wastewater is recycled.

12. Cemetery, including crematorium and mausoleum in AZD, RC, RR, CAR, CR, and V provided:
 - a. Burial plots shall be 10 feet from all property lines. *Buildings* shall comply with the *yard* requirements for the applicable zoning district.
 - b. Mausoleums shall be a minimum of 75 feet from a public road and 50 feet from the side and rear property lines.
 - c. Crematoriums shall be 200 feet from all property lines.

13. *Conference center* in RCD, RC, RR, CAR, CR, IV, and IVCA provided:
 - a. In IV and IVCA, the project shall collectively consist of 15 acres but not more than 750 acres. In RCD, RR, RC, and CAR the project shall collectively consist of at least 50 acres but not more than 750 acres.
 - b. The *conference center* shall consist of 100 but not more than 225 guest rooms.
 - c. At least 100 square feet of meeting space shall be provided per guest room.
 - d. Permanent theme parks, amusement parks, and/or stadiums are prohibited.
 - e. Where applicable, the applicant has applied for growth allocation from the County. Special exception approval will not be valid without the granting of growth allocation.
 - f. The Board shall make specific findings on the availability of public and governmental services. Proposed improvements shall be appropriate to the character of the area.
 - g. Where they exist, historic *structures* shall be incorporated into the overall project.
 - h. Significant view corridors, both from the *site* and onto the *site* shall be preserved in so much as possible.
 - i. The height of all *structures* shall not exceed 38 feet.
 - j. The design of the *conference center* and *accessory uses* shall reflect and complement the rural character of the area or neighborhood.
 - k. The number of *dwelling units* shall not exceed that which is permitted in the applicable zoning district. *Dwelling units* may be detached or attached.
 - l. Continuous residential *lot development* aligned with golf course fairways shall be prohibited within the *Critical Area* and discouraged elsewhere.
 - m. Parking lots shall be landscaped as required for commercial developments in Article V, Section 11 of this Ordinance.
 - n. Permitted *accessory uses*, subject to the approval of the Board of Appeals, including *restaurants*; recreational facilities such as tennis courts and *swimming pools*; spas; retail use provided the establishments are in the main *building* with the entrance to the retail use from the inside the *building*; stables but not an equestrian center; other recreation amenities but not including trap, skeet, clay birds, paint ball or other similar firearm activities; *piers*; and other *accessory uses* that are customarily associated with a *conference center*. The applicant shall describe all proposed *accessory uses* in the application for a special exception. The Board of Appeals may deny or limit the size and extent of *accessory uses*.

- o. The number of *slips* on the accessory *pier* shall not exceed 20% of the number of guest rooms and the use of the *slips* shall be limited to use by those using the conference facilities. Accessory *piers* must meet all requirements applicable to *marinas* such as pumpouts, restrooms, and showers.
 - p. All *structures* shall comply with the minimum 100-foot *buffer* and shall be 200 feet from all side and rear property lines whichever is greater.
 - q. A golf course shall meet all the requirements found in Article VII, Section 7.26 of this Ordinance.
 - r. In RCD, RC, RR, and CAR at least 60% of the property shall be in *open space*.
 - s. The Board of Appeals may place additional restrictions on the following:
 - i. Additional *yard* requirements for all *structures*, including patios and places of public assembly
 - ii. Lighting
 - iii. Landscaping and screening
 - iv. Outdoor activities, outdoor music and their hours of operation
 - v. Access
 - t. Application for a *conference center* shall include a sketch plan and renderings of all primary and each type of *accessory structure*.
14. Convalescent, nursing, or group homes for the aged with five or more beds in V, IV, and IVCA.
15. *Cottage industries*, tradesmen and artisan shops in AZD, RC, RR, CAR, CR, IV, IVCA, CC, C, CCA provided:
- a. Except on *farms*, the *cottage industry* shall be secondary to the use of the property for dwelling purposes and shall be less than 60% of the living area, 1,200 square feet, or in an existing *accessory structure*, whichever is greater. The square footage limitation includes outdoor storage areas but not required parking.
 - b. On *farms*, the *cottage industry* shall be secondary to the *farm*. The *cottage industry* is limited to 4,000 square feet in size or an existing *building*, whichever is greater. The square footage limitation includes outdoor assembly and storage areas but not required parking.
 - c. The use is secondary in size and scope to the residential or agricultural use of the property.
 - d. The *buildings* associated with the use are not visually intrusive or inappropriate to their setting. New *buildings* and expansions shall be designed in keeping with or to enhance the character of the other *buildings*.
 - e. The *cottage industry* does not create an unacceptable environmental impact by way of noise, odor, noxious materials, or other nuisances.
 - f. The *cottage industry* does not generate traffic of a type or amount inappropriate for all access *roads* and the surrounding area. It does not require road improvements detrimental to the character of the area.
 - g. The following uses shall not be allowed:
 - i. Any activity that may reasonably be expected to result in excessive noise, smoke, dust, odors, heat, or glare beyond that which is common to the zoning district. The proposed use shall conform to the maximum permissible sound levels under Article V, Section 14.6.1 of this Ordinance.
 - ii. Use or manufacture of products or operations that are dangerous in terms of risk of fire, explosion, or hazardous emissions;
 - iii. Any other use deemed incompatible with a residential or agricultural area.

16. *Country inn* in AZD, RCD, RC, RR, CAR, CR, and M provided:
- a. Such *structures* have existed prior to August 1, 1989, except on properties with more than 25 acres in the Marine District.*
 - b. The number of rooming units provided on the *site* is limited to fifteen excluding resident management quarters.
 - c. Boarding and dining facilities in AZD, RC, RR, and CAR, may be permitted only when attendant to rooming units and further provided that such facilities are limited to a maximum seating capacity of forty persons. Such dining facilities may be provided to patrons other than boarders. No dining facility shall be permitted in RCD.
 - d. The *site* has access to a public road. This access must be capable of supporting the passage of emergency vehicles. The Board may require improvements to existing access *roads*.
 - e. There shall be sufficient acreage for the proposed use and activities.
 - f. Extension or enlargement of principal and *accessory structures* should maintain features and character that are consistent with the *structures* that existed as of August 1, 1989.**
 - g. Adequate landscaping shall be provided to *screen* all parking areas from adjoining residential properties. Landscaping or screening proposed shall be shown on a *site plan* as required by this Ordinance.
17. *Country stores* on *primary* and *secondary roads*, in AZD, RC, RR, and CR provided:
- a. The *structure* existed prior to August 1, 1989.
 - b. Property on which the store is located must abut upon and have safe access to a *primary* or *secondary road* as shown on the Major Thoroughfare Map.
 - c. Extension or enlargement of the principal and *accessory structures* does not exceed 50% of the gross *floor area* of each *building* above that which existed as of August 1, 1989.
18. *Day care group* in AZD, RCD, RC, RR, CAR, CR, V, IV and IVCA provided:
- a. Outdoor activity areas are fenced and screened.
 - b. Two drop-off/pick-up parking spaces are provided.
 - c. Structured play areas for active play or play *structures* are not in the *front yard* and are 10 feet from the side or rear property line.
 - d. The *structure* retains its residential character.
 - e. Day care in the RCD shall be in dwellings existing prior to December 1, 1985.
19. *Dog kennels*, commercial in RC, RR and CAR provided that any open dog pens, runs, cages, or kennels shall be at least 200 feet from any side or rear *lot line*.
20. Dormitories for employees in M provided:
- a. The *structure* meets the design standards for multi-family residential *development* as set forth in Article V, Section 7 of this Ordinance.
 - b. The *structure* is screened, if possible, from adjacent *roads*, *waterways*, and properties.
 - c. The applicant proves that the *structure* is necessary to house employees.
 - d. Residents are limited to employees of the *marina*.
 - e. Dormitories are not in the minimum 100-foot *buffer*.
21. Dredge spoil *site* in M provided:
- a. The *site* does not exceed 100,000 cubic yards per existing parcel as of the date of the adoption of this ordinance unless used in conjunction with an approved surface mine *reclamation*. The disposition of dredge spoils used in conjunction with a surface mine *reclamation* shall have all permits required by the State of Maryland and the application shall demonstrate that measures are provided to protect the groundwater, stabilize pH, and to generally protect the environment of the area.

- b. Material is limited to clean dredge spoil which is tested according to the *regulations* of the State of Maryland.
 - c. Prime farmland is not used for a dredge spoil *site*.
22. *Excavation contractor's yard* in AZD, including outdoor storage of the contractor's equipment and equipment parts; temporary stockpiling of *soils*, sand, gravel, stone, recyclable brick, concrete, blacktop materials, pipes, iron, tires, and tanks provided:
- a. The contractor has an approved sand and gravel pit on the same parcel of land or on an adjacent parcel of land owned by the contractor upon which the contractor's excavation business is located.
 - b. The *contractor's yard* area and gravel pit area must be separately designated and permitted. None of the activities permitted by this subsection may occur within the sand and gravel pit area.
 - c. The *contractor's yard* permit area must be larger than two (2) acres and smaller than twenty (20) acres.
 - d. The *contractor's yard* must not be visible year round from an adjacent parcel of land or public road. The contractor may use natural *topography* and vegetation or may construct *berms* or plant vegetation to satisfy this requirement.
 - e. Storage of tires and equipment must be limited to contractor's own excavation *yard* use.
 - f. Temporary storage of pipe, iron, and tanks, which are not part of the contractor's equipment, shall not exceed two years.
 - g. The special exception shall be for a period not to exceed five years.
23. Exposition center or fairgrounds in AZD, RCD, and RC provided the fair ground or exposition center does not result in the *development* of a major sports arena for football, baseball, drag racing, motor cross, auto racing, or other major sports activities.
24. Farm employee housing in AZD and RCD provided:
- a. There are 50 acres of tillable land on the *farm*.
 - b. All farm employee houses share access from the public road.
 - c. It is occupied by permanent employees of the *farm* who earn the majority of their income from the *farm* or by members of the immediate *family* owning or operating the *farm*.
 - d. The farm employee houses shall not be *mobile homes*.
 - e. In RCD, farm employee housing shall meet the density requirement.
25. *Feedlot* or confinement dairy in AZD provided:
- a. All *buildings*, corals, and waste management *structures* are 600 feet from the nearest property line.
 - b. No part of the operation shall be in the *100-year floodplain*.
 - c. The operation is managed according to a waste and nutrient management plan approved by the Natural Resources Conservation Service, the University of Maryland Extension Service, and the Kent County Health Department. Where the phosphorus index, developed by the University of Maryland, indicates that phosphorus is a problem or is likely to become a problem, the plan shall use phosphorus based nutrient management. When in the opinion of the Board of Appeals, *Planning Commission*, or Planning Director additional review is needed by an outside agency, the application and waste and nutrient management plan may be forwarded to the Maryland Department of the Environment or any other appropriate agency.

- d. Sediment and *stormwater management plans* are approved by the appropriate agency and are implemented.
 - e. The applicant shall prepare a management plan that demonstrates that the *feedlot* or confinement dairy will be operated in a safe and environmentally sound manner and will not create a hazard to the surrounding area and *waterways*.
 - f. To assure continued compatibility with the surrounding area, the Board may place additional restrictions on the following:
 - i. Screening and landscaping from adjacent properties and public *roads*
 - ii. Exterior displays, lighting, and *signs*
 - iii. The location of access routes to the *site*, both on and *off-site*
 - iv. The type of waste disposal, e.g. injection, disk etc.
 - v. Monitoring wells and surface water testing where appropriate
 - vi. Manner and route of moving waste from one *site* to another
 - vii. Waste and nutrient management plans for properties receiving waste
26. Golf courses, public or private, in AZD, RCD, RC, RR, CAR, and CR provided:
- a. The golf course is at least a regulation par 72, 18-hole golf course.
 - b. The course is managed according to a water conservation plan that addresses water use, including irrigation, and the recapture and reuse of water sources. Irrigation shall be the minimum necessary for the operation and maintenance of the course and associated facilities.
 - c. The course is managed according to integrated pest management and nutrient management plans approved by the University of Maryland Extension Service and the Natural Resources Conservation Service.
 - d. The *site* must have access to a public road that can handle the traffic generated by the operation and emergency vehicles. The Board may require improvements to existing access *roads*. Should improvements be required, a bond, irrevocable letter of credit, or other surety shall be posted running to the County Commissioners.
 - e. The course, including the layout and routing of holes, shall be designed to preserve and maintain to the extent possible natural *topography*, significant trees and landmarks, vegetation, and cover. *Wildlife corridors* shall be preserved and enhanced whenever possible.
 - f. Buffers, no-mow, and no-spray zones shall be adjacent to existing or created *wetlands*, water bodies, and habitat areas. Native grasses and vegetation shall be used within these zones.
 - g. A 100-foot landscaped area from tees, greens, and fairways shall be provided along adjacent property lines. Landscaping shall be designed to complement other landscaping occurring naturally on the *site*. Whenever possible, existing vegetation shall be incorporated into the *landscape plan*.
 - h. The golf course and driving range shall not include lighting. Lighting of the clubhouse, parking and other areas shall be that necessary for the safety and security of the operation, its employees and its customers. Lighting shall not exceed 18 feet in height unless mounted on a *building* and shall be designed to avoid glare onto adjacent properties and *roadways* and shall not interfere with traffic or create a traffic hazard. Lighting shall be color corrected.
 - i. Parking lots shall comply with the landscaping and screening standards in Article V, Section 11 of this Ordinance.
 - j. Whenever possible, historic *buildings* should be restored and used as a part of the operation.
 - k. To assure continued compatibility with the surrounding area, the Board may place additional restrictions on the following:

- i. Proposed method of irrigation
 - ii. The location of the driving range, holes, cart ways, tees, fairways, roughs, water hazards, maintenance facilities, irrigation, and pumping station
 - iii. *Accessory uses* such as clubhouses, *restaurants*, bars, day care, pro shops, pools, tennis courts, comfort facilities, maintenance facilities, golf cart storage, driving range, sod farm for golf course, practice holes, practice putting green, and parking. In RCD the following accessory uses shall require growth allocation: clubhouses, restaurants, bars, day care, pro shops, pools, tennis courts, comfort facilities, golf cart storage and parking.

- 27. Hospitals, rehabilitation facilities, and similar institutions for human care but not including animal hospitals in V⁺, IV and IVCA

- 28. *Houses of worship* in RR and CR provided:
 - a. Outdoor public announcement systems and drive in facilities are prohibited.
 - b. The Board specifically approves *accessory uses*. In no case shall an *accessory use* be of a type and scale that is normally found in commercial operations.
 - c. Parking areas shall be screened and landscaped according to the standards found in Article V, Section 11 of this Ordinance.

- 28.5 The manufacture, processing, and assembling of food products to include baked and confectioners' goods, frozen food processing, fruit and vegetable processing, canning and storage, or businesses of a similar nature, excluding animal and seafood processing, provided: *
 - a. That in reviewing the site plan and determining the suitability of the proposed location, the Planning Commission must find all of the following:
 - i. Existing or planned public facilities are adequate to handle the usage generated by the business. The use does not require improvements to public facilities detrimental to the character of the area.
 - ii. The proposed use does not create an unacceptable impact on the surrounding area by way of noise, odor, noxious materials, or other nuisances. The Planning Commission may require a Certified Engineer's Report describing the proposed operation, all machines, processes, products and byproducts, stating the nature and expected levels of emissions or discharge to land, air, water or liquid, solid, or gaseous effluent and electrical impulses, vibrations and noise under normal business and the specifications or treatment methods and mechanisms to be used to control such emissions or discharge.
 - iii. The health, safety, and welfare of employees and residents of the neighborhood will be protected.
 - b. All uses shall be conducted within a completely enclosed structure. Outdoor storage of materials and unfinished products is prohibited.
 - c. The business does not exceed 10,000 square feet of gross floor area.

- 29. Migrant labor camps in AZD

- 30. *Mobile home park* in V provided:
 - a. The property is served by public water and sewer.
 - b. The overall *density* of the park does not exceed 10 *dwelling units* per acre.
 - c. Each *mobile home* space shall have a minimum area of 4,000 square feet with a minimum width of 40 feet.
 - d. Each *mobile home* space shall provide the following *yards*:
 - i. *Front yard* – 20 feet

- ii. *Side yards* – 8 feet
 - iii. *Rear yard* – 10 feet
 - e. The minimum area of the *mobile home park* including *roads* and *open space* shall be 5 acres.
 - f. The maximum area of the *mobile home park* including *roads* and *open space* shall not exceed 25 acres.
 - g. All utilities within the *mobile home park* shall be underground.
 - h. A minimum of 4,000 square feet or 100 square feet per unit of common recreation area, whichever is greater, shall be provided.
 - i. No individual *mobile home* space shall have direct access onto a public or *private road* outside the *mobile home park*. Each *mobile home* space shall have direct access to an internal road.
 - j. Storage of unoccupied and/or damaged *mobile homes* is prohibited.
 - k. The *mobile home park* must not be visible year round from adjacent properties and the public road.
 - l. A minimum 20-foot vegetative screen is provided between the *mobile home park* and adjacent properties and the public road.
 - m. The *mobile home park* has direct access onto a public road.
31. More than four horses and mules on land less than 20 acres in size in AZD, RCD, RC, RR, and CAR provided:
- a. There shall be no more than 1 horse or mule per acre of available pasture on the *site*.
 - b. No waste management facility or *structure* for the keeping of animals is in the *100-year floodplain*.
 - c. The feeding and watering of animals are conducted a minimum of 50 feet from any body of water, including *tributary streams* and *wetlands*.
 - d. The operation is managed according to a waste and nutrient management plan approved by the Natural Resources Conservation Service, the University of Maryland Extension Service, and the Kent County Health Department. Where the phosphorus index, developed by the University of Maryland, indicates that phosphorus is a problem or is likely to become a problem, the plan shall use phosphorus based nutrient management. When in the opinion of the Board of Appeals, *Planning Commission*, or Planning Director additional review is needed by an outside agency, the application and waste and nutrient management plan may be forwarded to the Maryland Department of the Environment or any other appropriate agency.
32. Multi-level boat storage in M provided:
- a. The *building* is enclosed on three sides.
 - b. The open end of the *building* does not face the road.
 - c. The *building* is 100 feet from all property lines.
 - d. The *building* does not exceed 55 feet in height, 100 feet in length, and 6,000 square feet in size.
 - e. Trailers are not stored on the *premises*.
 - f. Appropriate sanitary and pump out facilities are available on *site*.
 - g. Boat ramps, lifts, railways, or other facilities for access to the water are available on *site*. In no case shall a boat cross a public road to access the water.
33. Outdoor entertainment in IV and IVCA
34. Outdoor recreation, miniature golf, but not golf courses, in V, IV, and IVCA.

35. *Personal wireless facility tower* in AZD, RCD, RC, CC, C, CCA, EC, and I provided:
- a. The applicant demonstrates alternatives of consolidating the facility on an existing tower *structure* or incorporating the facility on a *structure* or water tower have been fully exhausted.
 - b. The applicant demonstrates a public need for the tower.
 - c. The applicant demonstrates a comprehensive approach to facilities with a goal of minimizing the number of *sites* required.
 - d. The height of the tower, including antennas and appurtenances shall not exceed 199 feet unless a *variance* is granted.
 - e. All towers and their accessory *buildings* shall comply with the building setback provisions of the applicable zoning district. In addition, the minimum from the ground base of any tower to any property line, road, or public recreational area shall be the height of the tower including any antennas or other appurtenances. This setback is considered a “fall zone.” The Board of Appeals may reduce the fall zone by 50% of the required distance if it finds that a substantially better design will result from such a reduction. In making such a finding, the Board shall consider both the visual and safety impacts of the proposed use.
 - f. Monopoles or lattice towers shall be the preferred tower *structure* in the County.
 - g. The appearance of the tower *structure* shall be minimized by the reasonable use of commercially available technology to reduce visual impact, with specific reference to size, color, and silhouette properties.
 - h. Equipment shelters shall be designed consistent with traditional Eastern Shore architectural styles and materials with a pitched roof of at least 10/12. The shelters shall be camouflaged behind an effective year round buffer of existing dense vegetation that exceeds the height of the proposed *buildings*. The *Planning Commission* may waive the requirements for shelter design when it finds that the existing vegetation will provide adequate year round screening of the *buildings*.
 - i. The tower shall be sited within or adjacent to mature dense *tree* growth and understory vegetation that provides an effective year round visual buffer and should only be considered elsewhere on the property when technical or aesthetic reasons indicate there are no other preferable locations. Where necessary, the Board shall require the installation of a vegetated buffer of sufficient height and depth to create to an effective year round visual buffer.
 - j. Towers shall be lighted only if required by the FAA. Lighting of equipment shelters and other facilities on *site* shall be shielded from other properties.
 - k. *Signs* shall be limited to identify the property owner, emergency contact, and to warn of danger.
 - l. A tower shall not be within a 5-mile radius of any existing towers used for *personal wireless facilities* unless the applicant demonstrates a public need due to capacity or other service limitations.
 - m. The special exception shall be valid for a period of five years from the date that the decision of the Board of Appeals is signed.
 - n. The tower shall be used continuously for personal wireless communications. In the event the tower ceases to be used for personal wireless communications for a period of six months, the approval will terminate. The property owner shall insure the tower removal within ninety days after the termination.
 - o. After the personal wireless facility is operational, the applicant shall submit, within 90 days of beginning operations, and at annual intervals from the date of approval of the special exception, a report listing the carriers using the facility.
 - p. The facility shall comply with all FCC and ANSI standards.
 - q. The applicant shall demonstrate that a tower shall not unreasonably interfere with the view of, or from, *sites* of significant public interest such as public parks, a national or state

- designated scenic byway, a *structure* listed in the Kent County Historic *Site*'s survey, an historic district, or the Chesapeake Bay and its tributaries.
- r. All applications for approval of a *personal wireless facility tower* shall include:
 - i. A description of the facility and proposed licensed carriers. A licensed carrier shall be the applicant, the co-applicant or have a binding agreement with the tower company.
 - ii. Coverage maps showing the area to be served by the proposed facility and the coverage available under existing facilities, approved facilities, and other appropriate *structures*.
 - iii. A master plan of the applicants proposed communication's network for the entire county.
 - iv. Siting elevations, existing photography, and a photo simulation from all directions.
 - v. A coverage, interference, and capacity analysis. The Director of Emergency Management shall review the interference analysis.
 - vi. A copy of all reports required by or provided to the Federal Communications Commission including, but not limited, to the Environmental Assessment, NEPA Review, and SHPO Review.
 - vii. Computer modeling used in selecting the *site*.
 - viii. A narrative that explains how the *site* will not unreasonably interfere with the view of, or from, *sites* of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic *Site*'s survey, an historic district, or the Chesapeake Bay and its tributaries.
36. Poultry houses on parcels where the owner cannot handle the waste generated by the poultry houses in AZD provided:
- a. All *buildings* and waste management *structures* are 600 feet from the nearest property line.
 - b. No part of the operation shall be in the *100-year floodplain*.
 - c. The operation is managed according to a waste and nutrient management plan approved by the Natural Resources Conservation Service, the University of Maryland Extension Service, and the Kent County Health Department. Where the phosphorus index, developed by the University of Maryland, indicates that phosphorus is a problem or is likely to become a problem, the plan shall use phosphorus based nutrient management. When in the opinion of the Board of Appeals, *Planning Commission*, or Planning Director additional review is needed by an outside agency, the application and waste and nutrient management plan may be forwarded to the Maryland Department of the Environment or any other appropriate agency.
 - d. Sediment and *stormwater management plans* are approved by the appropriate agency and are implemented.
 - e. The applicant shall prepare a management plan that demonstrates that the poultry houses will be operated in a safe and environmentally sound manner and will not create a hazard to the surrounding area and *waterways*.
 - f. To assure continued compatibility with the surrounding area, the Board may place additional restrictions on the following:
 - i. Screening and landscaping from adjacent properties and public *roads*
 - ii. Exterior displays, lighting, and *signs*
 - iii. The location of access routes to the *site*, both on and *off-site*
 - iv. The type of waste disposal, e.g. injection, disk, etc.
 - v. Monitoring wells and surface water testing where appropriate
 - vi. Manner and route of moving waste from one *site* to another
 - vii. Waste and nutrient management plans for properties receiving waste

37. Printing and publishing in V, IVCA, and IV provided that the operation is in compliance with the *regulations* of the State of Maryland.
38. *Private clubs* in RCD, RC, RR, CAR, CR, V, IV, IVCA, and M
In RCD, private clubs shall be limited to 15% *impervious surface*.
39. Private schools in AZD, RC, RR, CAR, CR, V, IV, and IVCA
- 39.5 Production of biofuels in I provided:*
- a. The facility shall be located within 2½ miles of US Route 301
 - b. The applicant demonstrates a clear, identifiable market for the byproducts of the facility
 - c. The operation does not disturb the minimum 100-foot buffer or stream protection corridor
 - d. The operation does not adversely affect a non-tidal wetland directly or hydrologically
 - e. To assure continued compatibility with the surrounding area, the Board may place additional restrictions on the following:
 - i. Screening and landscaping from adjacent properties and public roads
 - ii. Exterior displays, lighting and signs
 - iii. The location of access routes to the site, both and off-site
40. *Public landings* in AZD, RCD, RC, RR, CAR, CR, and IVCA provided:
- a. Adequate sanitary facilities exist.
 - b. Service facilities are to the extent possible outside the 100-foot *buffer*.
 - c. Permeable surfaces are used to extent practicable, if no degradation of groundwater would result.
 - d. Disturbance to *natural vegetation* is minimized.
 - e. Areas for passive recreation, such as nature study, and for education, may be permitted in the *buffer* within the Resource Conservation Areas, if service facilities for these uses are outside the *buffer*.
41. *Public utilities* and *structures* as defined in Article XI of this Ordinance in AZD, RCD, RC, RR, CAR, and CR.
42. Pubs, taverns and bars in IV, IVCA, and M provided:
- a. The project is designed to minimize impact on neighboring properties, particularly residential properties either with *open space*, landscaping, or *structure* design.
 - b. Measures are taken to limit any adverse effects of the use on *development* of the surrounding area due to noise, odor, traffic, lights, or any other reason.
 - c. Loading areas, dumpsters, and other unsightly *site* elements shall be screened from adjacent properties and the public view.
43. Radio and television towers, commercial in C, EC and I provided:
- a. The applicant demonstrates alternatives of consolidating the facility on an existing tower *structure* or incorporating the facility on a *structure* or water tower have been fully exhausted.
 - b. The applicant demonstrates a public need for the tower.
 - c. The height of the tower, including antennas and appurtenances shall not exceed 199 feet unless a *variance* is granted.
 - d. All towers and their accessory *buildings* shall comply with the building setback provisions of the applicable zoning district. In addition, the minimum from the ground base of any tower to any property line, road, or public recreational area shall be the height of the tower including any antennas or other appurtenances. This setback is considered a “fall zone.”

- The Board of Appeals may reduce the fall zone by 50% of the required distance if it finds that a substantially better design will result from such a reduction. In making such a finding, the Board shall consider both the visual and safety impacts of the proposed use.
- e. Monopoles or lattice towers shall be the preferred tower *structure* in the County.
 - f. The appearance of the tower *structure* shall be minimized by the reasonable use of commercially available technology to reduce visual impact, with specific reference to size, color, and silhouette properties.
 - g. Equipment shelters shall be designed consistent with traditional Eastern Shore architectural styles and materials with a pitched roof of at least 10/12. The shelters shall be camouflaged behind an effective year round buffer of existing dense vegetation that exceeds the height of the proposed *buildings*. The *Planning Commission* may waive the requirements for shelter design when it finds that the existing vegetation will provide adequate year round screening of the *buildings*.
 - h. The tower shall be sited within or adjacent to mature dense *tree* growth and understory vegetation that provides an effective year round visual buffer and should only be considered elsewhere on the property when technical or aesthetic reasons indicate there are no other preferable locations. Where necessary, the Board shall require the installation of a vegetated buffer of sufficient height and depth to create to an effective year round visual buffer.
 - i. Towers shall be lighted only if required by the FAA. Lighting of equipment shelters and other facilities on *site* shall be shielded from other properties.
 - j. *Signs* shall be limited to identify the property owner, emergency contact, and to warn of danger.
 - k. The special exception shall be valid for a period of five years from the date that the decision of the Board of Appeals is signed.
 - l. The tower shall be used continuously. In the event, the tower ceases to be used for a period of six months, the approval will terminate. The property owner shall insure the tower removal within ninety days after the termination.
 - m. The facility shall comply with all FCC and ANSI standards.
 - n. The applicant shall demonstrate that a tower shall not unreasonably interfere with the view of, or from, *sites* of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic *Site's* survey, an historic district, or the Chesapeake Bay and its tributaries.
 - o. All applications for approval of radio and television towers shall include:
 - i. A description of the facility and proposed licensed carriers. A licensed carrier shall be the applicant, the co-applicant or have a binding agreement with the tower company.
 - ii. Coverage maps showing the area to be served by the proposed facility and the coverage available under existing facilities, approved facilities, and other appropriate *structures*.
 - iii. A master plan of the applicants proposed communication's network for the entire county.
 - iv. Siting elevations, existing photography, and a photo simulation from all directions.
 - v. A coverage, interference, and capacity analysis. The Director of Emergency Management shall review the interference analysis.
 - vi. A copy of all reports required by or provided to the Federal Communications Commission including, but not limited, to the Environmental Assessment, NEPA Review, and SHPO Review.
 - vii. Computer modeling used in selecting the *site*.
 - viii. A narrative that explains how the *site* will not unreasonably interfere with the view of or from *sites* of significant public interest such as public parks, a national or

state designated scenic byway, a *structure* listed in the Kent County Historic *Site's* survey, an historic district, or the Chesapeake Bay and its tributaries.

44. Raising of livestock and fowl but not including commercial *feedlots*, confinement dairies, or poultry houses in RC and RR provided:
 - a. All *buildings* for the housing of animals are 200 feet from the property line.
 - b. Waste management *structures* are 600 feet from the nearest property line.
 - c. No part of the operation shall be in the *100-year floodplain*.
 - d. The operation is managed according to a waste and nutrient management plan approved by the Natural Resources Conservation Service, the University of Maryland Extension Service, and the Kent County Health Department. Where the phosphorus index, developed by the University of Maryland, indicates that phosphorus is a problem or is likely to become a problem, the plan shall use phosphorus based nutrient management. When in the opinion of the Board of Appeals, *Planning Commission*, or Planning Director additional review is needed by an outside agency, the application and waste and nutrient management plan may be forwarded to the Maryland Department of the Environment or any other appropriate agency.
 - e. Sediment and *stormwater management plans* are approved by the appropriate agency and are implemented.
 - f. The applicant shall prepare a management plan that demonstrates that the facility will be operated in a safe and environmentally sound manner and will not create a hazard to the surrounding area and *waterways*.
 - g. To assure continued compatibility with the surrounding area, the Board may place additional restrictions on the following:
 - i. Screening and landscaping from adjacent properties and public *roads*
 - ii. Exterior displays, lighting, and *signs*
 - iii. The location of access routes to the *site*, both on and *off-site*
 - iv. The type of waste disposal, e.g. injection, disk, etc.
 - v. Monitoring wells and surface water testing where appropriate
 - vi. Manner and route of moving waste from one *site* to another
 - vii. Waste and nutrient management plans for properties receiving waste
45. Raising of small animals, commercial, including birds, bees, fish, rabbits or other creatures but not including dog kennels in RC, RR, CAR, and CR.
46. Recreational facilities, privately or commercially owned, but not including major sports arenas for football, baseball, drag racing, motocross, or other major sports activities in RC, RR, CAR, CR, CC, C, and CCA.
47. *Resort* in RCD, RC, RR, CAR, CR, IV, and IVCA provided:
 - a. The parcel(s) on which the *resort* is proposed shall be at least 250 acres.
 - b. The *resort* shall not exceed 750 acres.
 - c. The *resort* has at least 40 but not more than 225 guest rooms.
 - d. The project includes a regulation par 72, 18-hole golf course. The golf course shall meet all the requirements found in Article VII, Section 7.26 of this Ordinance.
 - e. Permanent theme parks, amusement parks, and/or stadiums are prohibited.
 - f. Where applicable, the applicant has applied for growth allocation from the County. Special exception approval will not be valid without the granting of growth allocation.
 - g. The Board shall make specific findings on the availability of public and governmental services.
 - h. Where they exist, historic *structures* shall be incorporated into the overall project.

- i. Significant view corridors, both from the *site* and onto the *site* shall be preserved in so much as possible.
 - j. The height of all *structures* shall not exceed 38 feet.
 - k. The design of the *resort* and *accessory uses* shall reflect and complement the rural character of the area.
 - l. The number of *dwelling units* shall not exceed that which is permitted in the applicable zoning district. *Dwelling units* may be detached or attached.
 - m. Continuous residential *lot development* aligned with golf course fairways shall be prohibited within the *Critical Area* and discouraged elsewhere.
 - n. Parking lots shall be landscaped as required for commercial developments in Article V, Section 11 of this Ordinance.
 - o. Permitted *accessory uses* include *restaurants*, recreational facilities such as tennis courts and *swimming pools*; spas; retail use provided the establishments are in the main *building* with the entrance to the retail use from the inside the *building*; stables, equestrian center, other recreation amenities but not including trap, skeet, clay birds, paint ball or other similar firearm activities, *piers* and; other *accessory uses* that are customarily associated with a *resort*. The applicant shall describe all proposed *accessory uses* in the application for a special exception. The Board of Appeals may deny or limit the size and extent of *accessory uses*.
 - p. The number of *slips* on the accessory *pier* is limited to 25% of the number of guest rooms and is limited to use by those using the *resort* facilities. Accessory *piers* must meet all requirements applicable to *marinas* such as pumpouts, restrooms, and showers.
 - q. All *structures* shall comply with the minimum 100-foot *buffer* from mean high tide and 500 feet from all side and rear property lines whichever is greater.
 - r. In RCD, RC, RR, and CAR at least 60% of the property shall be in *open space*. A golf course shall be considered *open space*. However, additional *open space* beyond that provided by the golf course is required.
 - s. The Board of Appeals may place additional restrictions on the following:
 - i. Additional *yard* requirements for all *structures*, including patios, and places of public assembly
 - ii. Lighting
 - iii. Landscaping and screening
 - iv. Outdoor activities, outdoor music, and their hours of operation
 - v. Access
 - t. Application for a *resort* shall include a sketch plan and renderings of all primary and each type of *accessory structure*.
48. Retail businesses, supplying on the *premises*, household goods, new automotive parts, agricultural supplies and commodities, sporting goods, and the like, including department, outlet and discount stores with a gross *floor area* that exceeds 60,000 square feet in C provided:
- a. The proposed *development* will not adversely affect existing commercial centers and businesses as demonstrated by an economic impact study.
 - b. The traffic impact will not lower the level of service more than one level of service or in any case below Level of Service C as demonstrated by a traffic impact study.
 - c. The proposed *development* will not adversely affect the environment as demonstrated by an environmental impact study.
 - d. All retail sales and/or storage shall be conducted entirely within a *building* except where otherwise approved by the *Planning Commission*
 - e. The *Planning Commission* has reviewed the preliminary *site plan*.
 - f. The Board of Appeals may place additional restrictions on the following:
 - i. Additional *yard* requirements for all *structures*.

- ii. Lighting
 - iii. Landscaping and screening
 - iv. Access
 - g. The application shall include a preliminary plan and renderings of all primary and *accessory structures*.
49. *Retreat* in AZD, RCD, RC, RR, CAR, CR, and V provided:*
- a. The project shall collectively consist of at least 15 acres.
 - b. In AZD, the *retreat* uses *buildings* that existed prior to August 1, 1989. *Buildings* are limited to a 50% expansion of the *gross floor area* of each individual *building* above that which existed as of August 1, 1989.
 - c. The *retreat* has at least 10 but not more than 40 guest rooms.
 - d. Permanent theme parks, amusement parks, and/or stadiums are prohibited.
 - e. Where applicable, the applicant has applied for growth allocation. Special exception approval will not be valid without the granting of growth allocation.
 - f. The Board shall make specific findings on the availability of public and governmental services.
 - g. Where they exist, historic *structures* shall be incorporated into the overall project.
 - h. Significant view corridors, both from the *site* and onto the *site* shall be preserved in so much as possible.
 - i. The height of all *structures* shall not exceed 38 feet.
 - j. The design of the *retreat* and *accessory uses* shall reflect and complement the rural character of the area.
 - k. One residential unit for use by an employee of the *retreat* may be provided.
 - l. Permitted *accessory uses* include kitchen and dining facilities for guests only, recreational facilities such as tennis courts and *swimming pools*; spas; other recreation amenities but not including trap, skeet, clay birds, paint ball or other similar firearm activities, *piers*; and other *accessory uses* that are customarily associated with a *retreat*. The applicant shall describe all proposed *accessory uses* in the application for a special exception. The Board of Appeals may deny or limit the size and extent of *accessory uses*.
 - m. The number of *slips* on an accessory *pier* may not exceed 5.
 - n. The *retreat* shall be limited to 10 *buildings*. In AZD, the *retreat* is limited to existing *buildings*.
 - o. All *structures* shall comply with the minimum 100-foot *buffer*. Primary *buildings* shall be 100 feet from all property lines or comply with the minimum 100-foot *buffer*, whichever is greater. *Accessory structures* may be 5 feet from the rear or side property line.
 - p. At least 60% of the property shall be in *open space*.
 - q. Parking lots shall be landscaped as required for commercial developments in Article V, Section 11 of this Ordinance.
 - r. The Board of Appeals may place additional restrictions on the following:
 - i. Additional *yard* requirements for all *structures*, including patios and places of public assembly
 - ii. Lighting
 - iii. Landscaping and screening
 - iv. Outdoor activities and outdoor music and their hours of operation
 - v. Access
 - s. The application for a *retreat* shall include a sketch plan and renderings of all primary and each type of *accessory building* and *structure*.

50. Rifle and pistol ranges, trap and skeet shooting, sporting clays or similar activities such as paint ball, including accessory snack bars and retail sales of shooting supplies and equipment, commercial or *private club* in AZD provided:
- a. The surrounding area is predominately undeveloped.
 - b. Such uses shall be for the period of time as determined by the Board. However, outdoor night shooting is prohibited at rifle and pistol ranges.
 - c. Proposed *accessory uses*, such as stores, snack bars, and *recreational vehicle* parking are included in the application and specifically approved by the Board.
51. Rural Inn in AZD, RC, RR, CR, and V provided:*
- a. The project shall collectively consist of at least 20 acres.
 - b. In AZD, the Rural Inn uses buildings that existed prior to August 1, 1989. Buildings are limited to a 50% expansion of the gross floor area of each individual building above that which existed as of August 1, 1989.
 - c. The Rural Inn has at least 10 but not more than 25 guest rooms. Overnight lodging shall not exceed 45 consecutive days.
 - d. Permanent theme parks, amusement parks, and/or stadiums are prohibited.
 - e. The Board shall make specific findings on the availability of public and governmental services.
 - f. Where they exist, historic structures shall be incorporated into the overall project.
 - g. Significant view corridors, both from the site and onto the site shall be preserved in so much as possible.
 - h. The height of all structures shall not exceed 38 feet.
 - i. The design of the Rural Inn and accessory uses shall reflect and complement the rural character of the area.
 - j. Two residential units for use by employees of the Rural Inn may be provided.
 - k. Permitted accessory uses include kitchen and dining facilities. Dining facilities may be provided to patrons in addition to guests registered for overnight lodging provided seating shall not exceed 40 seats over and above those seats needed to accommodate the maximum number of lodging guests based on two (2) individuals per room; recreational facilities such as tennis courts and swimming pools; other recreational amenities but not including trap, skeet, clay birds, paint ball or other similar firearm activities; and other accessory uses that are customarily associated with a Rural Inn. The applicant shall describe all proposed accessory uses in the application for a special exception. The Board of Appeals may deny or limit the size and extent of accessory uses.
 - l. The Rural Inn may not exceed 15 buildings. In AZD, the Rural Inn is limited to existing buildings.
 - m. At least 60% of the property shall be in open space.
 - n. Parking lots shall be landscaped as required for commercial developments in Article V, Section 11 of this Ordinance.
 - o. All building associated with the principal uses of the Rural Inn, as well as the permitted accessory uses listed in paragraph (k) of this subsection, shall be a minimum of 100 feet from all property lines.
 - p. The Board of Appeals may place additional restrictions on the following:
 - i. Additional yard requirements for all structures, including patios and places of public assembly
 - ii. Lighting
 - iii. Landscape and screening
 - iv. Outdoor activities and outdoor music and their hours of operation
 - v. Access

- vi. Location and hours of operation of kitchen and dining facilities open to the public
 - q. The application for a Rural Inn shall include a sketch plan and renderings of all primary and each type of accessory building and structure.
52. Sand and gravel pits, *excavation* or extraction (not including the removal of sod, and *excavation* for foundations, *swimming pools*, *soil* and water conservation practices, and those removals approved in connection with farm use, *street* construction, *subdivision* or planned residential development) in AZD, RCD, RC, RR and CAR provided:
- a. The special exception shall be for a period not to exceed five years
 - b. Material is not brought from *off-site* for processing, mixing, or similar uses
 - c. The *excavation* or extraction operation shall be controlled to offer reasonable protection to surrounding properties and the neighborhood, particularly as regards to use of residential *streets* for access to the *site*
 - d. There are no known threatened or *endangered species*, areas of specific value, or rare assemblages of species or other vital habitat at the *site*
 - e. In RCD and CAR, *highly erodible soils* are not disturbed at the *site*
 - f. The operation will not disturb for future use prime agricultural lands or *forest* and *developed woodlands* of more than one acre
 - g. The operation will not degrade water quality
 - h. The operation does not disturb the minimum 100-foot *buffer* or *stream protection corridor*
 - i. The operation is under an approved operating and restoration plan from the State of Maryland
 - j. The operation does not adversely affect a *non-tidal wetland* directly or hydrologically
 - k. The location of the *excavation* or extraction with respect to property lines, the depth of *excavation*, and relation to the water table or *flood* criteria and the *slope* of the sides of the *excavation* shall be controlled to prevent a continuing, unsightly, hazardous, or wasteful condition of the land.
53. *Sanitary landfill* or rubblefill owned or managed by Kent County in AZD provided a 100-foot vegetative *screen* is provided along all property lines.
- 53.5 School bus parking lot in V, IV, and C provided:*
- a. No part of the school bus parking facility shall be in the *100-year floodplain*.
 - b. Areas for school bus parking, fueling, or repair are a minimum of 100 feet from any residence.
 - c. Areas for school bus parking are 100 feet from *wetlands*.
 - d. Areas for school bus repair are enclosed in a *building*. Outdoor repair or storage of materials or products is prohibited.
 - e. All buses must have current licenses and be operable.
 - f. The Board determines that all access *roads* are capable of handling the traffic generated and that a safe route for school buses traveling to and from the facility is provided.
 - g. Areas for parking and cartways are paved.
 - h. The site is screened from adjacent properties and public *roads*.
 - i. Adequate rest room facilities shall be provided.
54. Seafood processing, including wholesale and retail sales in M provided:
- a. Open or uncovered storage of shells, bones, and refuse does not occur on *site*.
 - b. No curing or smoking occurs on *site*.
 - c. All *structures* for processing and all disposal areas for materials and byproducts of processing are a minimum of 300 feet from all property lines and 600 feet from residential district boundaries.
 - d. Seafood processing facilities and disposal areas are not in the *100-year floodplain*.

- e. The operation is managed according to a management plan approved by the Natural Resources Conservation Service, University of Maryland Extension Service, and the Kent County Health Department.
 - f. Parking, processing and disposal areas are screened from adjacent properties and public roads.
 - g. Access roads are capable of handling the type of traffic generated by the operation.
- 54.5 Septic tank maintenance and excavation in V provided:*
- a. Buildings associated with the use are not visually intrusive or inappropriate to the setting.
 - b. New buildings and expansions shall be designed in keeping with or to enhance the character of other buildings on the property or adjacent to the property.
 - c. All vehicles and equipment associated with the business must be kept within a building or screened from the view of public roads and adjacent properties.
 - d. All fences and landscaping must be approved by the Planning Commission as part of site plan review.
55. Sewage sludge land application in AZD provided:
- a. Prior approval by the Maryland Department of the Environment pursuant to the Annotated Code of Maryland and the COMAR regulations, as amended, shall be obtained. Any conditions imposed by the Maryland Department of the Environment shall be made a part of any approval by the Board of Appeals.
 - b. No land application shall be permitted within the environmental quality corridor designated on the Land Suitability Maps of Kent County, Maryland. (These maps are on file in the Kent County Department of Planning and Zoning.)
 - c. An approved conservation plan for such sludge application, using the universal soil loss equation for computation of soil loss, shall be on file with the Natural Resources Conservation Service of Kent County and implemented.
 - d. The applicant shall prepare an environmental impact statement and submit it with the application. This statement shall include, but is not limited to:
 - i. A site plan as required in Article VI, Section 5 of this Ordinance.
 - ii. Description of the project, including application rates, soil conservation measures, sludge source, means of transportation to the site(s), biological and chemical composition of the sludge as determined by the State Department of Agronomy and a comparison to the existing maximum concentrations and limits of its contents according to the Maryland Department of the Environment permissible limits, applicable methods, and the name of the contractor who will apply the sludge.
 - iii. An analysis of the project's short and long term positive and negative environmental impacts relating to but not limited to ground water quality, surface water runoff, sediment transport, soil chemistry, heavy metals, pathogens, toxic organic, odor and wildlife.
 - iv. A monitoring program to assure uniform methods of application and the nature of sludge material as approved by the Board. The program must also provide data on soil pH, ground water, and surface water conditions using the American Water Works Association method or other approved standard or scientific method.
 - v. Description of all permits required by federal, state and local agencies and their status.
 - e. A system of test wells and surface water testing stations is installed to provide data on surface water and ground water conditions. A surface and ground water monitoring program is to be initiated prior to land application to provide base line data. There shall be a minimum of one ground water monitoring well and one surface water quality testing station per drainage sub-basin. The Board may require additional wells or stations. The adequacy of all monitoring facilities is to be determined by the Board who may request the assistance of the County's technical planning staff. The applicant shall provide suggested locations and number of

monitoring facilities which the applicant feels are adequate and in the best interest of pursuing the monitoring function outlined in this section.

- f. Land application shall be carried out using only those types of equipment which will result in a uniform application of sludge. Any such equipment must have calibration capability.
 - g. A sludge storage facility may be approved when the capacity of the storage facility does not exceed one half ($\frac{1}{2}$) of the annual total volume approved by the Maryland Department of the Environment. The facility may only be used for the storage of *sewage sludge* to be applied on the fields delineated within the application. The storage facility shall be a minimum of 1,000 feet from the nearest residence and 200 feet from the property lines.
 - h. The Zoning Administrator may take *on-site* samples of sludge from transport trucks or the land. The Zoning Administrator is to be notified at least 3 days prior to the initiation of the land application of sludge.
 - i. A manifest is to accompany each truck load of *sewage sludge* and shall include the following information:
 - i. Origin of sludge
 - ii. Amount of sludge
 - iii. Most recent official analysis of sludgeThe manifest shall be delivered to the Zoning Administrator within 7 days of delivery of the sludge to the *site*.
 - j. The special exception shall be reviewed on a yearly basis.
56. *Shopping centers* in C provided:
- a. All retail sales shall be conducted within a *building* except where otherwise approved by the *Planning Commission*.
 - b. A traffic study shows that the traffic generated will not cause the level of service on adjacent roads to drop below Level C.
57. *Single family dwellings* in CC, C, and CCA
- 57.25 *Solar energy systems, utility scale, on farms* in AZD and RCD provided:*
- a. A solar collection device or combination of devices are designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.
 - b. Screening, capable of providing year-round screening, is provided along all sides that do not collect energy.
 - c. Roof mounted solar collection devices shall not extend more than 10 feet from the top of the roof. The total height of the *building*, including the solar collection devices, shall comply with the height regulations established for each zoning district.
 - d. Solar collection devices shall not exceed 38 feet in height.
 - e. The solar collection system shall be incidental to the use of the farm.
 - f. Installation of the solar collection system shall not adversely impact adjacent properties.
 - g. All *structures* associated with the solar collection system shall be neither visually intrusive nor inappropriate to their setting.
 - h. All solar collection devices shall register with the Department of Emergency Services and shall submit a map noting the location of the solar collection devices and the panel disconnect.
 - i. Other than wire size, there shall be no alteration of utility infrastructure to accommodate the system.
 - j. The area of solar panel arrays may not exceed 5 acres. The area of the solar panel arrays shall be measured as to the area within the solar panel arrays' security fence. Adjacent properties shall not aggregate solar collection panels to achieve an area exceeding 5 acres.**

- k. In AZD, only the five-acre maximum area of solar panel arrays, as measured in Subsection j., is considered *development* and counted toward the maximum percentage of the property in lots.⁺
 - l. Tree removal shall be minimized and any removal shall be mitigated in accordance with the Critical Area Program requirements.
 - m. The applicant shall demonstrate that a utility scale solar energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Site Survey, an historic district, or the Chesapeake Bay and its tributaries.
- 57.5 *Solar energy systems, utility scale, in CC, C, and CCA provided:**
- a. A solar collection device or combination of devices are designed and located to avoid glare or reflection onto adjacent properties and adjacent roadways and shall not interfere with traffic or create a safety hazard.
 - b. Screening, capable of providing year-round screening, is provided along all sides that do not collect energy.
 - c. Roof mounted solar collection devices shall not extend more than 10 feet from the top of the roof. The total height of the *building*, including the solar collection devices, shall comply with the height regulations established for each zoning district.
 - d. Solar collection devices shall not exceed 45 feet in height
 - e. All solar collection devices shall register with the Department of Emergency Services and shall submit a map noting the location of the solar collection devices and the panel disconnect.
 - f. The applicant shall demonstrate that a utility scale solar energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Site Survey, an historic district, or the Chesapeake Bay and its tributaries.
58. *Structures* for the buying, processing, and sale of animal products in AZD, commercial, provided:
- a. *Structures*, retention, and disposal areas shall be 600 feet from the nearest property line.
 - b. The front of the *site* shall be appropriately landscaped.
 - c. All activities shall be completely enclosed.
 - d. The operation is managed according to a waste management plan approved by the Natural Resources Conservation Service, University of Maryland Extension Service, and the Kent County Health Department.
59. *Structures* for the buying, processing, or sale of farm products related to agriculture, including the sale of fertilizer and seed but not including animal products, in *structures* that exceed 10,000 square feet but are less than 50,000 square feet in AZD ***
- 59.5 Tie-out pilings of private piers, *community piers*, and private shared piers, installed at a distance not to exceed 25% of the width of the waterway, the edge of the channel, or 180 feet from the mean high water mark, whichever is less, for the exclusive mooring use by tall ships as safe-harbors from hurricanes and other severe weather-related threats in RCD and CAR provided: **
- a. Private piers, *community piers*, and private shared piers in RCD and CAR are subject to the stipulations and *regulations* of Article VI, Section 3.7 of this Ordinance.
 - b. No portion of a pier consisting of any combination of nonfloating fixed platforms, and/or floating structures, with decking extending out over the water to provide pedestrian access,

may exceed 25% of the width of the waterway, the edge of the channel, or 150 feet in length, whichever is less.

- c. Any tie-out pilings installed more than 150 feet from the mean high water mark shall be for the exclusive mooring use by tall ships and for no other use.
 - d. The term “tall ships” means any large traditionally-rigged sailing vessels, including schooners, which are federally documented with home ports located in Kent County, Maryland.
 - e. The term “hurricanes and other severe weather-related threats” means weather events which are the subjects of a Tropical Storm Watch, Tropical Storm Warning, Hurricane Watch, or Hurricane Warning issued by the National Oceanic and Atmospheric Administration.
60. Truck parking lot in CC and C provided:
- a. No part of the truck parking facility shall be in the *100-year floodplain*.
 - b. Areas for truck parking, fueling, or repair are a minimum of 100 feet from any residential district.
 - c. Areas for truck parking are 100 feet from *wetlands*.
 - d. Areas for truck repair are enclosed in a *building*.
 - e. The Board determines that all access *roads* are capable of handling the traffic generated and that a safe route for trucks traveling to and from the facility is provided.
 - f. Areas for parking and cartways are paved.
 - g. The *site* is screened from adjacent properties and public *roads*.
 - h. Adequate rest room facilities shall be provided.
61. *Truck stops* in C and CCA provided:
- a. No part of the truck parking facility shall be in the *100-year floodplain*.
 - b. Areas for truck parking, fueling, or repair are a minimum of 300 feet from any residential district.
 - c. Areas for truck parking are 100 feet from *wetlands*.
 - d. Areas for truck repair are enclosed in a *building*.
 - e. The Board determines that all access *roads* are capable of handling the traffic generated and that a safe route for trucks traveling to and from the facility is provided.
 - f. Areas for parking and cartways are paved.
 - g. The *site* is screened from adjacent properties. The *front yard* and all areas adjacent to public *roads* shall be extensively landscaped.
 - h. Adequate rest room facilities, driver rooms, and telephones shall be provided.
62. *Truck terminals* in C provided:
- a. No part of the truck parking facility shall be in the *100-year floodplain*.
 - b. Areas for truck parking, fueling, or repair are a minimum of 100 feet from any residential district.
 - c. Areas for truck parking are at least 100 feet from *wetlands*.
 - d. Areas for truck repair are enclosed in a *building*.
 - e. The Board determines that all access *roads* are capable of handling the traffic generated and that a safe route for trucks traveling to and from the facility is provided.
 - f. Areas for parking and cartways are paved.
 - g. The *site* is screened from adjacent properties and public *roads*.
 - h. Adequate rest room facilities shall be provided.

63. *Wind energy systems, small*, with a height that exceeds 80 feet or on parcels less than 20 acres in AZD, RCD, RC, RR, CAR and CR provided:*
- a. If an alternative energy source can produce equal energy, then that should be used rather than a tall tower which impacts the landscape.
 - b. If co-location with a *personal wireless facility* is proposed, then a need for a *personal wireless facility tower* must be documented and all appropriate studies submitted. In addition, the proposed tower must comply with all standards for both wind turbines and personal wireless facilities.
 - c. The applicant shall provide a report documenting that the wind energy system does not significantly impact migratory bird pathways.
 - d. The wind energy system shall not be located within the air path of a private or public airstrip.
 - e. The height of the *structure* to the tip of the blade at its highest point does not exceed 120 feet.
 - f. A small energy system shall not have more than one wind turbine per parcel.
 - g. Monopoles or lattice towers shall be the preferred tower *structure* in the county.
 - h. Guy wires are strictly prohibited.
 - i. Small wind energy systems may not be located within the *buffer* or within a *stream protection corridor*.
 - j. Small wind energy systems shall not be artificially lit unless such lighting is required by the Federal Aviation Administration.
 - k. Small wind energy systems shall be galvanized steel, brushed aluminum finish, or a non-garish color or finish that conforms to the environment and architecture of the community, unless Federal Aviation Administration regulations require otherwise.
 - l. All *signs*, including flags, streamers and decorative items, both temporary and permanent, are prohibited on a small wind energy system except the manufacturer or installer's identification or appropriate warning signs or placards.
 - m. Any free standing *structure* is located a minimum of 1.5 times its total height from a property line.
 - n. Either towers are not readily climbable from the ground up to 12 feet or are fenced.
 - o. All access doors to towers and electrical equipment shall be lockable.
 - p. Appropriate warning signage is placed on the tower and electrical equipment.
 - q. The blade tip at its lowest point has a ground clearance of at least 25 feet.
 - r. Any small wind energy system that is not operable for a period of 12 consecutive months or more shall be removed at the landowner's expense.
 - s. Small wind energy systems shall be sited in a manner that does not result in significant *shadow flicker*.
 - t. Small wind energy systems, including wind turbine and tower, shall comply with all applicable construction and electrical codes.
 - u. Audible sound due to wind turbine operations shall not exceed 55 dB(A) except during short-term events such as utility outages and/or severe windstorms. The sound level shall be measured at ground level at the property line.
 - v. Any small wind energy system found to be unsafe shall be repaired by the property owner to meet these regulations and any applicable federal, state and local safety standards or be physically removed within 90 days.
 - w. The applicant shall demonstrate that a small wind energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Sites Survey, an historic district, or the Chesapeake Bay and its tributaries.
 - x. The following submittals are required for approval:
 - i. *Site plan*, at a standard scale, to adequately show:

1. Property lines and dimensions of subject property.
 2. Property lines and owner information for all abutting properties.
 3. Locations of all existing *buildings, structures*, and underground and overhead utilities on the subject property.
 4. Locations of all existing *buildings* on abutting properties.
 5. Location of the proposed small wind energy system with distances to show required setbacks.
 6. Certification by a licensed professional engineer or property owner that the information shown on the *site plan* is accurate.
 7. A *shadow flicker* study documenting compliance with the *shadow flicker* impact definition per Article VII, Section 7.63.s.
- ii. The small wind energy system manufacturer's specification sheet, including photograph, sound analysis and mounting recommendations.
 - iii. Engineered drawings showing the small wind energy system *structure*, including the tower, turbine, base and footings, and an engineering analysis showing compliance with the International Building Code certified by a licensed professional engineer. This analysis may be supplied by the manufacturer.
 - iv. Siting elevations, existing photography, and a photo simulation from all directions.
 - v. Any additional information as may be required by the Board of Appeals as appropriate to demonstrate compliance with the regulations.
 - vi. A narrative that explains how the site will not unreasonably interfere with the view or, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Sites Survey, an historic district, or the Chesapeake Bay and its tributaries.
64. *Wind energy systems, small*, in V, IV, IVCA provided:*
- a. If an alternative energy source can produce equal energy, then that should be used rather than a tall tower which impacts the landscape.
 - b. If co-location with a *personal wireless facility* is proposed, then a need for a *personal wireless facility tower* must be documented and all appropriate studies submitted. In addition, the proposed tower must comply with all standards for both wind turbines and personal wireless facilities.
 - c. The applicant shall provide a report documenting that the wind energy system does not significantly impact migratory bird pathways.
 - d. The wind energy system shall not be located within the air path of a private or public airstrip.
 - e. The height of the *structure* to the tip of the blade at its highest point does not exceed 120 feet.
 - f. A small energy system shall not have more than one wind turbine per parcel.
 - g. Monopoles or lattice towers shall be the preferred tower *structure* in the county.
 - h. Guy wires are strictly prohibited.
 - i. Small wind energy systems may not be located within the *buffer* or within a *stream protection corridor*.
 - j. Small wind energy systems shall not be artificially lit unless such lighting is required by the Federal Aviation Administration.
 - k. Small wind energy systems shall be galvanized steel, brushed aluminum finish, or a non-garish color or finish that conforms to the environment and architecture of the community, unless Federal Aviation Administration regulations require otherwise.

- l. All *signs*, including flags, streamers and decorative items, both temporary and permanent, are prohibited on a small wind energy system except the manufacturer or installer's identification or appropriate warning signs or placards.
- m. Any free standing *structure* is located a minimum of 1.5 times its total height from a property line.
- n. Either towers are not readily climbable from the ground up to 12 feet or are fenced.
- o. All access doors to towers and electrical equipment shall be lockable.
- p. Appropriate warning signage is placed on the tower and electrical equipment.
- q. The blade tip at its lowest point has a ground clearance of at least 25 feet.
- r. Any small wind energy system that is not operable for a period of 12 consecutive months or more shall be removed at the landowner's expense.
- s. Small wind energy systems shall be sited in a manner that does not result in significant *shadow flicker*.
- t. Small wind energy systems, including wind turbine and tower, shall comply with all applicable construction and electrical codes.
- u. Audible sound due to wind turbine operations shall not exceed 55 dB(A) except during short-term events such as utility outages and/or severe windstorms. The sound level shall be measured at ground level at the property line.
- v. Any small wind energy system found to be unsafe shall be repaired by the property owner to meet these regulations and any applicable federal, state and local safety standards or be physically removed within 90 days.
- w. The applicant shall demonstrate that a small wind energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Sites Survey, an historic district, or the Chesapeake Bay and its tributaries.
- x. The following submittals are required for approval:
 - i. *Site plan*, at a standard scale, to adequately show:
 1. Property lines and dimensions of subject property.
 2. Property lines and owner information for all abutting properties.
 3. Locations of all existing *buildings*, *structures*, and underground and overhead utilities on the subject property.
 4. Locations of all existing *buildings* on abutting properties.
 5. Location of the proposed small wind energy system with distances to show required setbacks.
 6. Certification by a licensed professional engineer or property owner that the information shown on the site plan is accurate.
 7. A *shadow flicker* study documenting compliance with the *shadow flicker* impact definition per Article VII, Section 7.63.s.
 - ii. The small wind energy system manufacturer's specification sheet, including photograph, sound analysis and mounting recommendations.
 - iii. Engineered drawings showing the small wind energy system *structure*, including the tower, turbine, base and footings, and an engineering analysis showing compliance with the International Building Code certified by a licensed professional engineer. This analysis may be supplied by the manufacturer.
 - iv. Siting elevations, existing photography, and a photo simulation from all directions.
 - v. Any additional information as may be required by the Board of Appeals as appropriate to demonstrate compliance with the regulations.
 - vi. A narrative that explains how the site will not unreasonably interfere with the view or, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Sites Survey, an historic district, or the Chesapeake Bay and its tributaries.

65. *Wind energy systems, small*, with a height that exceeds 80 feet in CC, C, CCA, EC, I, ICA-LDA and ICA provided:*
- a. If an alternative energy source can produce equal energy, then that should be used rather than a tall tower which impacts the landscape.
 - b. If co-location with a *personal wireless facility* is proposed, then a need for a *personal wireless facility tower* must be documented and all appropriate studies submitted. In addition, the proposed tower must comply with all standards for both wind turbines and personal wireless facilities.
 - c. The applicant shall provide a report documenting that the wind energy system does not significantly impact migratory bird pathways.
 - d. The wind energy system shall not be located within the air path of a private or public airstrip.
 - e. The height of the *structure* to the tip of the blade at its highest point does not exceed 120 feet.
 - f. A small energy system shall not have more than one wind turbine per parcel.
 - g. Monopoles or lattice towers shall be the preferred tower *structure* in the county.
 - h. Guy wires are strictly prohibited.
 - i. Small wind energy systems may not be located within the *buffer* or within a *stream protection corridor*.
 - j. Small wind energy systems shall not be artificially lit unless such lighting is required by the Federal Aviation Administration.
 - k. Small wind energy systems shall be galvanized steel, brushed aluminum finish, or a non-garish color or finish that conforms to the environment and architecture of the community, unless Federal Aviation Administration regulations require otherwise.
 - l. All *signs*, including flags, streamers and decorative items, both temporary and permanent, are prohibited on a small wind energy system except the manufacturer or installer's identification or appropriate warning signs or placards.
 - m. Any free standing *structure* is located a minimum of 1.5 times its total height from a property line.
 - n. Either towers are not readily climbable from the ground up to 12 feet or are fenced.
 - o. All access doors to towers and electrical equipment shall be lockable.
 - p. Appropriate warning signage is placed on the tower and electrical equipment.
 - q. The blade tip at its lowest point has a ground clearance of at least 25 feet.
 - r. Any small wind energy system that is not operable for a period of 12 consecutive months or more shall be removed at the landowner's expense.
 - s. Small wind energy systems shall be sited in a manner that does not result in significant *shadow flicker*.
 - t. Small wind energy systems, including wind turbine and tower, shall comply with all applicable construction and electrical codes.
 - u. Audible sound due to wind turbine operations shall not exceed 55 dB(A) except during short-term events such as utility outages and/or severe windstorms. The sound level shall be measured at ground level at the property line.
 - v. Any small wind energy system found to be unsafe shall be repaired by the property owner to meet these regulations and any applicable federal, state and local safety standards or be physically removed within 90 days.
 - w. The applicant shall demonstrate that a small wind energy system shall not unreasonably interfere with the view of, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Sites Survey, an historic district, or the Chesapeake Bay and its tributaries.
 - x. The following submittals are required for approval:

- i. *Site plan*, at a standard scale, to adequately show:
 1. Property lines and dimensions of subject property.
 2. Property lines and owner information for all abutting properties.
 3. Locations of all existing *buildings, structures*, and underground and overhead utilities on the subject property.
 4. Locations of all existing buildings on abutting properties.
 5. Location of the proposed small wind energy system with distances to show required setbacks.
 6. Certification by a licensed professional engineer or property owner that the information shown on the site plan is accurate.
 7. A *shadow flicker* study documenting compliance with the *shadow flicker* impact definition per Article VII, Section 7.63.s.
- ii. The small wind energy system manufacturer's specification sheet, including photograph, sound analysis and mounting recommendations.
- iii. Engineered drawings showing the small wind energy system *structure*, including the tower, turbine, base and footings, and an engineering analysis showing compliance with the International Building Code certified by a licensed professional engineer. This analysis may be supplied by the manufacturer.
- iv. Siting elevations, existing photography, and a photo simulation from all directions.
- v. Any additional information as may be required by the Board of Appeals as appropriate to demonstrate compliance with the regulations.
- vi. A narrative that explains how the site will not unreasonably interfere with the view or, or from, sites of significant public interest such as public parks, a national or state designated scenic byway, a *structure* listed in the Kent County Historic Sites Survey, an historic district, or the Chesapeake Bay and its tributaries.

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ARTICLE VIII. NONCONFORMITIES

SECTION 1. NONCONFORMING USES

1.1 CONTINUANCE

The lawful use of land, including existing nonconforming uses, 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:

- a. The use is not enlarged, increased, or extended to occupy a greater area than that occupied by such use on the effective date of this Ordinance.
- b. That if any use ceases for a period of two years the subsequent use of such lands shall be in conformity to the *regulations* specified for the district in which the land is located.

1.2 DISCONTINUANCE OF NONCONFORMING USE

No *building* or portion thereof used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of two years whether or not the fixtures or equipment are removed, shall not again be used except in conformity with the *regulations* of the district in which such *building* or land is located. Whether a nonconforming use has ceased is a question of fact and shall be decided by the Zoning Administrator. At the Zoning Administrator's discretion, a review of a nonconforming use may be submitted to the Board of Appeals for a determination of whether a nonconforming use has ceased.

1.3 NONCONFORMING USES IN THE CRITICAL AREA

Any lawful use existing on April 12, 1988 may continue unless the use is abandoned for more than one year.

1.4 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 two years after the occurrence. This provision does not apply to *structures* that are voluntarily removed or destroyed by the property owner or the property owner's agent.

1.5 INTERMITTENT USE

The casual, intermittent, or illegal use of the land or *buildings* shall not be sufficient to establish the existence of a nonconforming use. 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*.

1.6 ORDINARY REPAIR AND MAINTENANCE

The normal maintenance and repair or the replacement, installation, or relocation of nonbearing partitions, fixtures, wiring, or plumbing may be performed on any *structure* that is devoted in whole or in part to the nonconforming use. 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 in violation of the provisions of any subsection of this section.

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 such *structure* to be unsafe and orders its restoration to a safe condition.

1.7 EXISTENCE OF A NONCONFORMING USE

Whether a nonconforming use exists is a question of fact and shall be decided by the Zoning Administrator after public notice. At the Zoning Administrator's discretion, a review of a nonconforming use may be submitted to the Board of Appeals for a determination of whether a nonconforming use exists. Those nonconforming uses in existence prior to November 18, 1969 are hereby validated, albeit the nonconforming use failed to obtain a *certification* from the *Administrator*.

1.8 PRIVATE SCHOOLS AND *HOUSES OF WORSHIP*

Private schools and *houses of worship* that existed prior to April 12, 1988 may be enlarged or expanded notwithstanding the provisions of Section 1.1 of this Article.

SECTION 2 NONCONFORMING STRUCTURES

2.1 CONTINUANCE

A lawful nonconforming *structure*, including existing nonconforming *structures*, existing on the effective date of this Ordinance may be continued, repaired, maintained, or altered, subject to the provisions of this section.

2.2 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:

- a. The proposed addition when considered independently of the existing *structure* complies with the standards and *regulations* of this Ordinance.
- b. The nonconforming *structure* is not expanded beyond its current footprint, including adjoining patios, driveways, and sidewalks. *Impervious surfaces* on the *site* shall not be increased as a result of the addition. The *structure*, after the addition, conforms to the height *regulations* applicable to its zoning district.
- c. The addition does not project any further into a required *side yard* setback than the existing *structure* and the enlarged *building* complies with the *impervious surface* and height *regulations*. This provision does not apply to additions in the *Critical Area buffer*.
- d. The addition is permitted by other provisions of this Ordinance.
- e. The Board of Appeals grants a *variance*.

2.3 EXPANSION OF EXISTING DWELLINGS IN THE *MODIFIED BUFFER*

Dwellings existing as of April 12, 1988 and in the *modified buffer* may be expanded provided:

- a. All opportunities for expansion outside the minimum 100-foot *buffer* are exhausted.
- b. An area of *natural vegetation* equal to 3 times the footprint of the expansion shall be planted in the 100-foot *buffer*. If there is not enough area in the *buffer* to accommodate the required planting, the required planting shall occur on the same property.

2.4 MOVING OF NONCONFORMING *STRUCTURES*

A lawful nonconforming *building* or *structure* shall not be moved in whole or part to another location on its *lot* unless every part of the *structure* conforms to all applicable *site development regulations* or unless a *variance* is granted by the Board of Appeals

- 2.5 REPAIR OR RECONSTRUCTION OF NONCONFORMING *STRUCTURES*
Nothing in these *regulations* shall prevent the repair or reconstruction of a lawful nonconforming *structure* 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 is begun within two years after the occurrence. This does not apply to *structures* removed or destroyed voluntarily by the property owner or property owner's agent.
- 2.6 EXISTENCE OF A NONCONFORMING *STRUCTURE*
Whether a *structure* is nonconforming, shall be a question of fact and shall be decided by the Zoning Administrator. At the Zoning Administrator's discretion, a review of a nonconforming use may be submitted to the Board of Appeals for a determination of whether a nonconforming *structure* exists.
- 2.7 PRIVATE SCHOOLS AND *HOUSES OF WORSHIP*
Private schools and *houses of worship* that existed prior to April 12, 1988 may be enlarged or expanded notwithstanding the provisions of Section 1.1 of this Article.

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* requirements 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 by this Ordinance. Whether a *lot* is nonconforming shall be a question of fact and shall be decided by the Zoning Administrator.

SECTION 4 NONCONFORMING SIGNS

Regulations concerning nonconforming *signs* may be found in Article VI, Section 2 of this Ordinance.

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ARTICLE IX. VARIANCES AND WAIVERS

SECTION 1. STATEMENT OF INTENT

The purpose of this section is to set forth the procedures and standards for *variances* and waivers from certain enumerated provisions of this Ordinance.

SECTION 2. *VARIANCES*

2.1 Administrative Variances

1. The Planning Director, or Planning Director's designee, may authorize, upon application, *variances* from the *yard* (*front, side, or rear*), but not *buffer*, except as provided below, height, parking, and loading requirements, in an amount that does not exceed 50% of the required *yard* for the applicable zoning district so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance. At the Director's discretion, a *variance* of this nature may be submitted to the Board of Appeals for approval.

The Planning Director, or Planning Director's designee, may authorize, upon application, *variances* from the *buffer* requirements on parcels that existed on or before December 1, 1985, in order to repair, replace, or install septic systems for the applicable zoning district so as to relieve unwarranted hardships or other injustices arising out of the strict application of the provisions of this Ordinance. At the Director's discretion, a *variance* of this nature may be submitted to the Board of Appeals for approval.*

2. Upon application for an administrative *variance*, the Planning Director or the Planning Director's designee shall hold a public hearing on the application. At least 15 days before the hearing, the Department of Planning and Zoning shall send a notice to adjacent property owners using the most recent address as found in the records of the Kent County Treasurer's Office and shall post the property.
3. The *variance* shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable practical difficulties as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.
4. In order to grant a *variance*, the Planning Director, or Planning Director's designee, must find all of the following:
 - a. That the *variance* will not cause a substantial detriment to adjacent or neighboring property.
 - b. That the *variance* will not change the character of the neighborhood or district.
 - c. That the *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
 - d. That the practical difficulty or other injustice was caused by the following:
 - i. Some unusual characteristic of size or shape of the property.
 - ii. Extraordinary topographical or other condition of the property.
 - iii. The use or *development* of property immediately adjacent to the property, except that this criterion shall not apply in the *Critical Area*.
 - e. That the practical difficulty or other injustice was not caused by the applicants own actions.

- f. That within the Critical Area for *variances* from the *buffer* requirements on parcels that existed on or before December 1, 1985, in order to repair, replace, or install septic systems:
 - i. The granting of a *variance* will be in harmony with the general spirit and intent of the *Critical Area Law* and the *regulations* adopted by Kent County.
 - ii. That the granting of a *variance* will not adversely affect water quality or adversely impact fish, wildlife, or *plant habitat*.
 - iii. That the application for a *variance* will be made in writing with a copy provided to the *Critical Area Commission*.
 - iv. That the strict application of the Ordinance would produce an *unwarranted hardship*.
 - v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - vi. The authorization of such *variance* will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the *variance*.
 - vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the *Critical Area* of Kent County.
 - viii. That the granting of a *variance* will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or *structures*.
 - ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or *structure*, a literal enforcement of this Ordinance would result in *unwarranted hardship* to the applicant.
 - x. The Planning Director, or Planning Director's designee, finds that the applicant has satisfied each one of the *variance* provisions.
 - xi. Without the *variance*, the applicant would be deprived of a use of land or a *structure* permitted to others in accordance with the provisions of the critical area program.
- g. In considering an application for a *variance*, the Planning Director, or Planning Director's designee, shall consider the reasonable use of the entire parcel or lot for which the *variance* is requested.
- h. In considering an application for a *variance*, the Planning Director, or Planning Director's designee, 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 this Ordinance and the Critical Area Law.*
- i. The Planning Director, or Planning Director's designee, may consider the cause of the *variance* request and if the *variance* request is the result of actions by the applicant, including the commencement of *development* activity before an application for a *variance* has been filed.*

5. Conditions Attached to Approvals

In the granting of *variances*, the Planning Director, or Planning Director's designee, may limit the approval by such conditions as the case may require, including but not limited to, the imposition 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 spaces*.

- e. Cleaning or painting.
- f. Gable roof or other type.
- g. Construction and materials.
- h. Connected or disconnected to other *buildings*.
- i. Exits or entrances, doors and windows.
- j. Paving, shrubbery, landscaping, ornamental or screening fences, walls, or hedges.
- k. Time of day or night for operating.
- l. No structural changes.
- m. Control or elimination of smoke, dust, gas, noise, or vibration caused by operations.
- n. Requirements for termination of a use based on lapse of time or such other conditions as the Planning Director, or Planning Director's designee, may specify.

6. Decision and Order

Each case shall be decided and a decision and order issued no later than 30 days after the hearing is concluded. The decision and order granting or denying the administrative *variance* shall be in writing and shall be signed by the Planning Director or Planning Director's designee. This decision and order shall contain a summary of the hearing testimony, findings of fact, conclusions of law, and the final order. The Department of Planning and Zoning shall mail a copy of the decision to the applicant. The decision and order shall be made a part of the public record of the proceedings on file in the Department of Planning and Zoning.

7. Lapse of Administrative *Variance*

After the Planning Director has granted a *variance*, the *variance* so granted shall lapse after the expiration of one year if no substantial construction has taken place in accordance with the plans for which such *variance* was granted or if the order does not specify a longer period than one year for good cause shown.

8. Amendment of Administrative *Variance*

The procedure for amendment of a *variance* already approved or a request for a change of conditions attached to an approval, shall be the same as for a new application.

9. Appeals

Within thirty days of the decision, any *person* aggrieved by the decision of the Planning Director, or Planning Director's designee, may appeal the decision to the Kent County Board of Appeals.

2.2 *Variances*

- 1. The Kent County Board of Appeals may authorize, upon application, *variances* from the *yard (front, side, or rear)*, height, *bulk*, parking, loading, *shoreline cliff*, 15% *slope*, *pier length*, *impervious surface*, *stream protection corridor*, and *buffer* requirements so as to relieve practical difficulties or other injustices arising out of the strict application of the provisions of this Ordinance.

Such granting of a *variance* shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable practical difficulties as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

In the *Critical Area*, for a *variance* of 15% *slope, impervious surface, or buffer* requirements, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional *unwarranted hardship* as distinguished from variations sought by applicants for purposes or reasons of convenience, profit, or caprice.

2. Upon receiving a substantially complete application for a *variance*, the Department of Planning and Zoning shall schedule the *variance* for review by the *Planning Commission* and at least 15 days before the meeting, shall send a notice to adjacent property owners using the most recent address as found in the records of the Kent County Treasurer's Office and shall post the property.

The Department of Planning and Zoning shall schedule the *variance* for review by the Board of Appeals and at least 15 days before the hearing, shall send a notice to adjacent property owners using the most recent address as found in the records of the Kent County Treasurer's Office and shall post the property.

3. In order to grant a *variance*, the Board of Appeals must find all of the following:
 - a. That the *variance* will not cause a substantial detriment to adjacent or neighboring property.
 - b. That the *variance* will not change the character of the neighborhood or district.
 - c. That the *variance* is consistent with the *Comprehensive Plan* and the general intent of this Ordinance.
 - d. That the practical difficulty or other injustice was caused by the following:
 - i. Some unusual characteristic of size or shape of the property.
 - ii. Extraordinary topographical or other condition of the property.
 - iii. The use or *development* of property immediately adjacent to the property, except that this criterion shall not apply in the *Critical Area*.
 - e. That the practical difficulty or other injustice was not caused by the applicants own actions.
 - f. That within the *Critical Area* for *variances* of 15% *slope, impervious surface, or buffer* requirements:
 - i. The granting of a *variance* will be in harmony with the general spirit and intent of the *Critical Area Law* and the *regulations* adopted by Kent County
 - ii. That the granting of a *variance* will not adversely affect water quality or adversely impact fish, wildlife, or *plant habitat*.
 - iii. That the application for a *variance* will be made in writing with a copy provided to the *Critical Area Commission*.
 - iv. That the strict application of the Ordinance would produce an *unwarranted hardship*.
 - v. Such hardship is not shared generally by other properties in the same zoning district and the same vicinity.
 - vi. The authorization of such *variance* will not be a substantial detriment to adjacent property and that the character of the district will not be changed by the granting of the *variance*.
 - vii. That a literal interpretation of this Ordinance deprives the applicant of rights commonly enjoyed by other properties in similar areas within the *Critical Area* of Kent County.
 - viii. That the granting of a *variance* will not confer upon an applicant any special privilege that would be denied by this Ordinance to other lands or *structures*.

- ix. Due to special features of a site, or special conditions or circumstances peculiar to the applicant's land or *structure*, a literal enforcement of this Ordinance would result in *unwarranted hardship* to the applicant.
- x. The Board of Appeals finds that the applicant has satisfied each one of the *variance* provisions.
- xi. Without the *variance*, the applicant would be deprived of a use of land or a *structure* permitted to others in accordance with the provisions of the critical area program.
- g. In considering an application for a *variance*, the Board shall consider the reasonable use of the entire parcel or lot for which the *variance* is requested.
- h. In considering an application for a *variance*, the Board of Appeals 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 this Ordinance and the Critical Area Law.*
- i. The Board may consider the cause of the *variance* request and if the *variance* request is the result of actions by the applicant, including the commencement of *development* activity before an application for a *variance* has been filed.*

4. Conditions Attached to Approvals

In the granting of *variances*, the Board may limit the approval by such conditions as the case may require, including but not limited to, the imposition 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 spaces*.
- e. Cleaning or painting.
- f. Gable roof or other type.
- g. Construction and materials.
- h. Connected or disconnected to other *buildings*.
- i. Exits or entrances, doors and windows.
- j. Paving, shrubbery, landscaping, ornamental or screening fences, walls, or hedges.
- k. Time of day or night for operating.
- l. No structural changes.
- m. Control or elimination of smoke, dust, gas, noise, or vibration caused by operations.
- n. Requirements for termination of a use based on lapse of time or such other conditions as the Board may specify.

5. Decision and Order

Each case shall be decided and a decision and order issued no later than 30 days after the hearing is concluded. The decision and order granting or denying the *variance* shall be in writing and shall be signed by the Board of Appeals. This decision and order shall be based on competent and substantial evidence and when applicable shall contain findings as to whether the applicant has overcome the presumption established in Article IX, Section 2.2.3h of this Ordinance. With due regard of the person's experience, technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by the applicant, any government agency, or any other person deemed appropriate by the Board. The Department of Planning and Zoning shall mail a copy of the decision to the applicant. The decision and order shall be made a part of the public record of the proceedings on file in the Department of Planning and Zoning.*

6. Lapse of *Variance*

After the Board of Appeals has granted a *variance*, the *variance* so granted shall lapse after the expiration of one year if no substantial construction has taken place in accordance with the plans for which such *variance* was granted or if the order does not specify a longer period than one year for good cause shown.

7. Amendment of *Variance*

The procedure for amendment of a *variance* already approved or a request for a change of conditions attached to an approval shall be the same as for a new application.

8. Appeals

Appeals to courts from a decision of the Board may be filed in the manner prescribed by law.

2.3 Floodplain Variance

1. The Kent County Board of Appeals may authorize, upon application, *variances* from the *floodplain* provisions of this Ordinance. Such granting of a *variance* shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of the *floodplain regulations* and sound *floodplain* management, it being the purpose of this provision to authorize the granting of a *variance* only for reasons of *unwarranted hardship* as distinguished from variations sought for purposes of convenience, profit or caprice.
2. Upon receiving a substantially complete application for a *variance*, the Department of Planning and Zoning shall schedule the *variance* for review by the Board of Appeals. At least 15 days before the meeting, the Department of Planning and Zoning shall send a notice to adjacent property owners using the most recent address as found in the records of the Kent County Treasurer's Office and shall post the property. The Department of Planning and Zoning shall send a copy of the application to the Maryland Department of the Environment for comment.
3. In order to grant a *variance*, the Board must find:
 - a. There is a good and sufficient cause for granting the *variance*.
 - b. That the failure to grant a *variance* would result in exceptional hardship (not economic) to the applicant.
 - c. That the granting of the *variance* would not result in increased *flood* heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud, or victimization of the public.
 - d. That any *variance* including the placement of *fill* which encroaches on the *floodway* will not result in any increase in the 100-year *flood* levels.
 - e. That the *variance* is the minimum necessary, considering the *flood* hazard, to afford relief.
 - f. That the Board has received comments from the Maryland Department of the Environment.
 - g. That no new *buildings* will be constructed in the *floodway*.
 - h. That in the Coastal High Hazard Area, no *fill* for structural support is proposed.
 - i. For a functionally dependant use that there is sufficient proof that the *structure* cannot perform its intended function unless it is in close proximity to the water and may require wet *floodproofing* which allows the *structure* to *flood* without significant damage.
 - j. Reconstruction, rehabilitation, or restoration of *historic structures*, provided the *variance* is the minimum necessary and the *structure* will retain its listing on the Historic Register, Inventory, or Survey.

4. Conditions Attached to *Variances*

In the granting of a *variance*, the Board may limit the approval by such conditions as the case may require. Conditions include but are not limited to the following:

- a. That a record of the *variance* and any conditions are recorded with the Kent County Clerk of Court.
- b. That a letter shall be sent to the applicant which explains the increased risk of life and property as a result of the *variance* and that the cost of Federal Flood Insurance will be commensurate with the increased risk, with rates up to \$25 per \$100 of insurance coverage.**

5. Decision and Order

Each case shall be decided and a decision and order issued no later than 30 days after the hearing is concluded. The decision and order granting or denying the administrative *variance* shall be in writing and shall be signed by the Board of Appeals. This decision and order shall contain a summary of the hearing testimony, findings of fact, conclusions of law, and the final order. The Department of Planning and Zoning shall mail a copy of the decision to the applicant. The decision and order shall be made a part of the public record of the proceedings on file in the Department of Planning and Zoning. The Board shall maintain a record of all *variance* procedures which shall be available for review by FEMA

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

6. Lapse of *Floodplain Variance*

After the Board of Appeals has granted a *variance*, the *variance* so granted shall lapse after the expiration of one year if no substantial construction has taken place in accordance with the plans for which such *variance* was granted or if the order does not specify a period longer than one year for good cause shown.

7. Amendment of *Variance*

The procedure for amendment of a *variance* already approved or a request for a change of conditions attached to an approval shall be the same as for a new application.

8. Appeals

Appeals to courts from a decision of the Board may be filed in the manner prescribed by law.

2.4 *Stormwater Management Variances* *

1. The County, may grant, upon application a written *variance* from the *stormwater* requirements found in Articles V and VI, Section 10 of this Ordinance. A written request for *variance* shall be provided to the County and shall state the specific *variances* sought and reasons for their granting.

2. The *variance* shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable *unwarranted hardship* as distinguished from variations sought by *applicants* for purposes or reasons of convenience, profit, or caprice.
3. The County shall evaluate the cumulative effects of other developments that are relinquished from the requirements of *stormwater management*.
4. In order to grant a *variance*, the County must find the following:
 - a. Exceptional circumstances exist applicable to the *site* such that strict adherence to the provisions of this ordinance will result in unnecessary hardship and not fulfill the intent of the Ordinance.
 - b. Implementation of *ESD* to the *MEP* has been investigated thoroughly.
5. Decision

The decision granting or denying the *variance* shall be in writing and shall be signed by the County. The County shall mail a copy of the decision to the *applicant*. The decision shall be made a part of the public record of the proceedings on file in the Department of Planning, Housing and Zoning.

6. Lapse of *Variance*

After the County has granted a *variance*, the *variance* so granted shall lapse after the expiration of one year if no substantial construction has take place in accordance with the approved plan for which such *variance* was granted or if the decision does not specify a period longer than one year for good cause shown.

7. Amendment of *Variance*

The procedure for amendment of a *variance* already approved or a request for a change of conditions attached to an approval shall be the same as for a new application.

8. Appeals

Within thirty days of the decision, any *person* aggrieved by the decision of the County may appeal the decision to the Kent County Board of Appeals.

SECTION 3. WAIVERS

3.1 Subdivision/Private roads/Road Front Lots/ Designated Design Standards

1. The Kent County Planning Commission may authorize waivers of the *subdivision, private road, road front lots, protected lands* lot line setback, and certain designated design standard provisions of this Ordinance so as to relieve extraordinary hardship or other injustices arising out of the strict application of these provisions.

Such granting of a waiver shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Ordinance; it being the purpose of this provision to authorize the granting of

variation only for reasons of demonstrable extraordinary hardship as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

Such granting of a waiver shall not have the effect of nullifying the intent and purpose of these provisions or be contrary to the goals and objectives of the Kent County *Comprehensive Plan* and, where applicable, the Village Master Plans. In no case shall any waiver be more than a minimum easing of the requirements, and shall not result in a conflict with the proposals of the adopted Major Thoroughfare Map for the County or other provisions of this Ordinance.

2. Upon receiving a substantially complete application for a waiver, the Department of Planning and Zoning shall schedule the waiver for review by the *Planning Commission*. At least 20 days before the meeting, the Department of Planning and Zoning shall send a notice to adjacent property owners using the most recent address as found in the records of the Kent County Treasurer's Office and shall post the property.
3. In order to grant a waiver, the *Planning Commission* must find all of the following:
 - a. That the waiver will not cause a substantial detriment to adjacent or neighboring property.
 - b. That the waiver is consistent with the *Comprehensive Plan*, the Village Master Plan, and the general intent of this Ordinance.
 - c. That the extraordinary hardship or other injustice was caused by the following:
 - i. Unusual *topography*.
 - ii. The strict application of these provisions would result in inhibiting the achievement of the goals and objectives of the *Comprehensive Plan*, the Village Master Plan, and this Ordinance.
 - d. That the extraordinary hardship or other injustice was not caused by the applicants own actions.

4. Conditions

In granting waivers, the *Planning Commission* may require such conditions as will, in its judgement, substantially secure the objectives of the provisions so waived.

6. Decision

Waivers from the *subdivision* provision of this Ordinance shall be granted only by the affirmative vote of two-thirds of the members of the *Planning Commission*. Each case shall be decided and a decision issued no later than 30 days after the meeting is concluded. The decision granting or denying the waiver shall be in writing and shall be signed by the Chairman of the *Planning Commission*. The Department of Planning and Zoning shall mail a copy of the decision to the applicant. The decision shall be made a part of the public record of the proceedings on file in the Department of Planning and Zoning.

7. Lapse of Waiver

After the *Planning Commission* has granted a waiver, the waiver so granted shall lapse after the expiration of one year if no substantial construction has taken place in accordance with the approved *subdivision* for which such waiver was granted or if the decision does not specify a period longer than one year for good cause shown.

8. Amendment of Waiver

The procedure for amendment of a waiver already approved or a request for a change of conditions attached to an approval shall be the same as for a new application.

9. Appeals

Appeals to courts from a decision of the *Planning Commission* may be filed in the manner prescribed by law.

3.2 Stormwater Management Waivers *

1. The County may grant a *waiver* of the *stormwater management* requirements for individual developments based on a case by case review. A written *waiver* request shall be submitted by the *applicant* containing descriptions, drawings and any other information that is necessary to evaluate the proposed *development* and demonstrate that *ESD* has been implemented to the *MEP*. A separate written request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions or modifications to a *development* receiving a *waiver*.
2. Except as provided in Article VI, Section 10.4 of this Ordinance, *waivers* of *stormwater* quantitative control may be granted only to those projects that can conclusively demonstrate that:
 - a. The project is within an area where a *watershed* management plan has been developed consistent with this Ordinance.
 - b. If the project is not in an area where a *watershed* management plan has been developed consistent with this Ordinance, *waivers* may be granted to proposed *development* projects provided the *applicant* has demonstrated that *ESD* has been implemented to the *MEP*:
 - i. That have *direct discharges* to tidally influenced receiving waters
 - ii. When the County determines that circumstances exist that prevent the reasonable implementation of quantity control practices.
3. Except as provided in Article VI, Section 10.4 of this Ordinance, if watershed management plans consistent with Article VI, Section 10.4 of this Ordinance have not been developed, *stormwater* management quantitative control *waivers* may be granted to the following projects provided the *applicant* has demonstrated that *ESD* has been implemented to the *MEP*:
 - a. Projects that have direct discharge to tidally influenced receiving waters:
 - b. Infill *development* located in a Priority Funding Area where the economic feasibility of the project is tied to the planned density, and where implementation of the 2009 regulatory requirements would result in a loss of the planned *development* density provided that:
 - i. Public water and sewer and *stormwater* conveyance exist;
 - ii. The quantitative *waiver* is only applied to the project for the impervious cover that previously existed on the *site*;
 - iii. *ESD* to the *MEP* is used to meet the full water quality treatment requirements for the entire *development*; and
 - iv. *ESD* to the *MEP* is used to provide full quantity control for all new *impervious surfaces*: or
4. When the *approving agency* determines that circumstances exist that prevent the reasonable implementation of quantity control practices.

5. Except as provided in Article VI, Section 10.4 of this Ordinance, *waivers* of *stormwater management* qualitative control may be granted only to those projects that can conclusively demonstrate that:
 - a. The project is an in-fill *development* where *ESD* has been implemented to the *MEP* and other *BMPs* are not feasible.
 - b. The project is a *redevelopment* that satisfies the requirements of this Ordinance; or
 - c. Sites where the County determines that circumstances exist that prevent the reasonable implementation of *ESD* to the *MEP*.

6. *Stormwater* management quantitative and qualitative control *waivers* may be granted for phased *development* projects if a system designed to meet the 2000 regulatory requirements and the Kent County *Stormwater* Management Ordinance for multiple phases has been constructed by May 4, 2010. If the 2009 regulatory requirements cannot be met for future phases constructed after May 4, 2010, all reasonable efforts to incorporate *ESD* in future phases shall be demonstrated.

7. *Waivers* shall only be granted when it has been demonstrated that *ESD* has been implemented to the *MEP* and shall:
 - a. Be on a case by case basis;
 - b. Consider the cumulative effects of the Kent County *waiver* policy.
 - c. Reasonably assure the *development* will not adversely impact stream quality.

8. Kent County may develop quantitative *waiver* and *redevelopment* provisions for *stormwater management* that differ from the requirements of this Ordinance as a part of an overall *watershed* management plan. *Watershed* management plans developed for this purpose shall, at a minimum:
 - a. Include detailed hydrologic and hydraulic analyses to determine hydrographic timing;
 - b. Evaluate both quantity and quality management and opportunities for *ESD* implementation;
 - c. Include cumulative impact assessment of current and proposed *watershed development*;
 - d. Identify existing flooding and receiving stream channel conditions;
 - e. Be conducted at a reasonable scale determined by the County;
 - f. Specify where *on-site* or *off-site* quantitative and qualitative *stormwater management* practices are to be implemented;
 - g. Be consistent with the General Performance Standards for *Stormwater* Management in Maryland found in the Design Manual; and
 - h. Be approved by the Maryland Department of the Environment

3.3 Forest Conservation Waiver*

1. The Kent County *Planning Commission* may authorize waivers of the *forest conservation* retention provisions of this ordinance so as to relieve unwarranted hardship or other injustices arising out of the strict application of these provisions.

Such granting of a waiver shall comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this ordinance; it being the purpose of this provision to authorize the granting of variation only for reasons of unwarranted hardship as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

Such granting of a waiver shall not have the effect of nullifying the intent and purpose of these provisions or be contrary to the goals and objectives of the Kent County *Comprehensive Plan* and, where applicable, the Village Master Plans. In no case shall any waiver be more than a minimum easing of the requirements and shall not result in a conflict with other provisions of this ordinance.

2. Upon receiving a substantially complete application for a waiver, the Department of Planning and Zoning shall schedule the waiver for review by the *Planning Commission*. At least 20 days before the meeting, the Department of Planning and Zoning shall send a notice to adjacent property owners using the most recent address as found in the records of the State Department of Assessments and Taxation (SDAT) and shall post the property.

3. An applicant for a waiver shall:

- a. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- b. Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;

3. In order to grant a waiver, the *Planning Commission* must find all of the following:

- a. That the waiver will not confer on the applicant a special privilege that would be denied to other applicants;
- b. That the waiver request is not based on conditions or circumstances which are the result of actions by the applicant;
- c. That the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
- d. That the granting of the waiver will not adversely affect water quality.

4. Conditions

In granting waivers, the *Planning Commission* may require such conditions as will, in its judgment, substantially secure the objectives of the provisions so waived.

5. Decision

Waivers from the *forest conservation* retention provisions of this ordinance shall be granted only by the affirmative vote of two-thirds of the members of the *Planning Commission*. Each case shall be decided and a decision issued no later than 30 days after the meeting is concluded. The decision granting or denying the waiver shall be in writing and shall be signed by the chairman of the *Planning Commission*. The Department of Planning and Zoning shall mail a copy of the decision to the applicant. The decision shall be made a part of the public record of the proceedings on file in the Department of Planning and Zoning.

6. Lapse of waiver

After the *Planning Commission* has granted a waiver, the waiver so granted shall lapse after the expiration of one year if no substantial construction has taken place in accordance with the approved *project* for which such waiver was granted or if the decision does not specify a period longer than one year for good cause shown.

7. Amendment of waiver

The procedure for amendment of a waiver already approved or a request for a change of conditions attached to an approval shall be the same as for a new application.

8. Appeals

Appeals to courts from a decision of the *Planning Commission* may be filed in the manner prescribed by law.