

## **ARTICLE I. ENACTMENT**

## SECTION 1 GENERAL PROVISIONS

### 1.1 TITLE

This Ordinance shall be known as the Land Use Ordinance for Kent County, Maryland. It provides a unified, comprehensive approach to *regulations* that affect land use including Zoning, *Subdivision*, *Forest Conservation*, *Floodplain* Management, *Sediment* and *Erosion* Control, *Stormwater Management*, and the Chesapeake Bay *Critical Area*.

### 1.2 PURPOSE AND INTENT

The purpose of this Ordinance is to implement the Kent County *Comprehensive Plan* and to promote the health, safety, general welfare, and prosperity of the present and future inhabitants of Kent County, by:

- (A) Giving effect to policies and proposals of the Kent County *Comprehensive Plan*.
- (B) Reducing financial burdens imposed on the community by preventing unwise land use that requires costly *infrastructure*, harms existing communities, or is in areas of natural hazards such as *floodplains*, *shoreline cliffs*, *steep slopes*, and areas subject to *erosion*.
- (C) Minimizing damage to public and private property.
- (D) Providing for the preservation and enhancement of the attractiveness of Kent County through good design and arrangement, and the provision of adequate *public utilities*, *open space*, services, and facilities.
- (E) Enhancing the County's employment base.
- (F) Protecting and preserving Kent County's agricultural industry and the prime agricultural *soils* essential to the conduct of this industry.
- (G) Providing efficiency in the process of *development*.
- (H) Protecting Kent County's significant *historic structures* and areas from destruction or encroachment.
- (I) Protecting the biological and environmental quality of Kent County, including *forest*, water quality, habitat, and *wetlands*.
- (J) Reducing the effects of land use on land *erosion* or stream *channel erosion*.
- (K) Dividing the territory of Kent County, Maryland into zoning districts; governing the use of the land and the intensity of such use, including *bulk* and height.
- (L) Implementing the *Floodplain* Management provisions to provide public awareness for *flooding* prevention, to protect individuals from unknowingly buying land and *structures* subject to *flood* hazard, and to encourage appropriate construction practices in order to prevent or minimize future *flood* damage.

- (M) Implementing the *Stormwater Management* provisions to reduce local *flooding*, to control *adverse impacts* associated with increased *stormwater*, and to improve or substantially maintain after *development* the predevelopment runoff characteristics of the *site*.

### 1.3 APPLICABILITY

- (A) The provisions of this Ordinance shall apply to the unincorporated territory of Kent County, Maryland.
- (B) Except as otherwise provided by this Ordinance, all land use that occurs within the unincorporated territory of Kent County, Maryland shall comply with the applicable terms and requirements of this Ordinance.
- (C) No *lot* shall be created which does not conform to the applicable requirements of this Ordinance, unless a variance is granted by the Board of Appeals.

### 1.4 COMPLIANCE WITH REGULATIONS

Hereafter, the following shall not take place unless in conformity with the *regulations* set forth in this Ordinance:

- (A) Change of a use of any land and *structures*, except that existing *structures* may be used for any permitted use, special exception, or *accessory use* allowed in the zoning district where they are located.
- (B) Construction, reconstruction, modification, extension, expansion, or relocation of *buildings* or *structures*.
- (C) Placement of fill, grading, and land *excavation*.
- (D) Land and forest *clearing*.
- (E) Dumping or storage of materials.
- (F) *Subdivisions* including lot line adjustments.

### 1.5 VALIDITY OF ORDINANCE

If any section, paragraph, subsection, clause, phrase, or provision of this Ordinance shall be judged invalid or held unconstitutional, the same shall not affect the validity of this Ordinance as a whole or any part of the provisions thereof, other than the part so decided to be invalid or unconstitutional.

### 1.6 REPEAL OF CONFLICTING ORDINANCES

The Kent County Land Use Ordinance adopted December 3, 2002, and all amendments are hereby replaced by this Ordinance and any amendments from time to time.

## 1.7 CONFLICT WITHIN ORDINANCE

In the event of any conflict between the limitations, requirements, or standards contained in different provisions of this Ordinance, the more restrictive provision shall apply, unless context would imply otherwise. In the case of any ambiguities or discrepancies within or between these provisions, such matters shall be explained and interpreted, if possible, in a manner which gives effect to each part and which avoids or minimizes conflicts among such parts, as may be possible.

## 1.8 CONFLICT WITH OTHER REGULATIONS

In the event that this regulation conflicts with other federal, State, or local *regulations*, the more restrictive regulation shall prevail.

# SECTION 2 ZONING MAP

## 2.1 MAP INCORPORATION INTO ZONING CODE

The boundaries of zoning districts as shown on the official zoning maps of Kent County are hereby made a part of this chapter. The official zoning maps, together with amendments thereto, shall be kept by the Planning Department in both digital and printed form. In the event of a conflict between the digital and printed versions, the digital version shall control. Copies of the Official Zoning Map shall be available for inspection in the Department of Planning and Zoning.

## 2.2 REVISION OF THE DISTRICT MAP

No later than March 31 of the year following adoption of this Ordinance, printed copies of the map shall be available to the public upon request.

## 2.3 PERIODIC REVIEW

Following adoption of a new or revised Kent County Comprehensive Plan, the *Planning Commission* and County Commissioners shall review the land use *regulations* and zoning district map for consistency with the *Comprehensive Plan*, deficiencies or difficulties in administration, or any other reason the County Commissioners may determine. This Ordinance does not provide regulations for the Comprehensive Rezoning process. The Comprehensive Rezoning process may be set forth independently of this Ordinance by policy, practice, or if desired by adopted Resolution.

## SECTION 3 AMENDMENTS

### 3.1 APPLICATION FOR ZONING MAP AMENDMENT

1. The application for an amendment to the Zoning Map of this Land Use Ordinance shall, at a minimum, specify the map and parcels sought to be amended, the current and proposed zoning classification, and recite the reasons for the proposed amendment.
2. Applications for map amendments to change the zoning classification of a property may only be submitted by the property owner or owners of the subject property for which a zoning map amendment is being requested, or by the County Commissioners of Kent County. The Planning Commission may make a recommendation to the County Commissioners to request the initiation of an application.
3. Per Md. Code Ann., Land Use, § 4-204, an application for a zoning map amendment, other than an amendment proposed during a Comprehensive Rezoning process, must meet the requirements of the change or mistake rule. Applicants are advised to seek legal counsel.
4. Except in the case of a Countywide comprehensive rezoning, the County Commissioners may grant an amendment to change the zoning classification for a property based on a finding that there was either: (a) a substantial change in the character of the neighborhood where the property is located; or (b) a mistake in the existing zoning classification.
5. An application may not be filed for a reclassification of all or part of any land for which a reclassification has been denied by the legislative body on the merits in the 12 months before the date of the application, per Md. Code Ann., Land Use, § 4-204.

### 3.2 APPLICATION FOR ZONING TEXT AMENDMENT

1. The County Commissioners may amend, supplement, or change the regulations of this Ordinance. Any zoning text amendment may be initiated by resolution of the County Commissioners, motion of the *Planning Commission*, submittal by County staff, or petition of any person using forms specified by the Department.
2. The application for a zoning text amendment to this Ordinance will state the article, section, and paragraph sought to be amended. The application shall contain the text of the proposed amendment and shall recite the reasons for such proposed change.

### 3.3 AMENDMENT PROCESS

1. The Board of County Commissioners will submit its own proposals for amendments to the *Planning Commission* for review and recommendation, before taking any action on any of its own proposed zoning map or text amendments, revisions, supplements, or changes.
2. Applications for zoning map or text amendments initiated by members of the public, the Planning Commission, or staff will first be submitted to the Planning Commission for review and recommendation. The Planning Commission may choose not to forward its

own applications; all other applications will be forwarded to the County Commissioners and presented for introduction. The Board of County Commissioners may choose whether to introduce amendments at its discretion. Applications not introduced may be submitted again at any time. Failure to introduce amendments does not constitute denial.

3. The *Planning Commission* may hold a public hearing with notice in a newspaper having general circulation in Kent County on any proposed map or text amendment, revision, supplement, or change before submitting its recommendation to the County Commissioners. The *Planning Commission* may request any pertinent data and information, as it deems necessary.
4. For a zoning map amendment, the property shall also be conspicuously posted prior to the hearing. Published notices shall refer to places where the zoning map amendment may be examined.
5. When reviewing a zoning text amendment, the *Planning Commission* shall address:
  - (A) How the proposed zoning text amendment would serve the public interest in general; and
  - (B) The extent to which the proposed text amendment complies with or deviates from the Comprehensive Plan and the *Critical Area Law*.
6. When reviewing a zoning map amendment, the *Planning Commission* will also address the suitability of the property in question for the uses permitted in the proposed district.
7. The *Planning Commission* will not recommend the adoption of the amendment unless it finds that the adoption of the amendment is in the public interest, in that, it furthers the health, safety, and general welfare of the community, as well as the interests of an individual landowner.
8. Failure of the *Planning Commission* to report to the County Commissioners within 60 days following its first meeting after the proposal was referred will be deemed approval.
9. Before approving any proposed zoning map or text amendment, the Board of County Commissioners shall hold a public hearing. Notice of any public hearing shall be given prior to the date of the hearing and published in a newspaper having general circulation in Kent County. For a zoning map amendment, the property shall also be conspicuously posted prior to the hearing. The published notices shall refer to places where the plans, ordinances, or zoning map or text amendments may be examined.
10. The County Commissioners shall render a decision within a reasonable timeframe. An application may be deferred for additional research.
11. Petitions for zoning map or text amendments, revisions, supplements, or changes denied by the County Commissioners on their merits, or substantially similar petitions, shall not be allowed to be filed by an applicant for 12 months after the denial. The Board of County Commissioners itself may propose a similar petition of its own at any time.
12. Any persons aggrieved by any decision of the County Commissioners may within 30 days after such decision appeal to the Circuit Court of Kent County.

13. Amendments dealing with *Critical Area* Districts or *Critical Area* related items shall not be effective, until effective under Md. Code Ann., Natural Resources § 8-1809, as the same may be amended from time to time.

## SECTION 4 BOARDS AND COMMISSIONS

It is the intent of this section to identify the duties of the Board of Appeals and *Planning Commission*. Each Board or Commission shall adopt rules of its business, such rules to be made available to the public upon request.

### 4.1 BOARD OF APPEALS

The Board of Appeals shall have the following powers:

1. Administrative Appeals - To hear and decide appeals of any decision or determination made by the Department or any County staff member in the enforcement and administration of this Ordinance, unless clearly specified otherwise in this Ordinance.
2. Special Exceptions - To hear and decide applications for special exceptions as set forth herein.
3. *Variances* - To authorize, upon application, *variances* related to *yard setbacks*, height, *bulk*, parking, signs, loading, *shoreline cliff*, *15% slope*, *pier length*, *impervious surface*, *stream protection corridor*, *forest conservation retention* provisions, *floodplain* requirements, *buffer* requirements, and any non-use-related provision of this Ordinance.
4. Other Powers - The Board may have additional powers as may be designated by the County Commissioners of Kent County.
5. Conditions - In the granting of *variances*, appeals, and special exceptions, the Board may limit the approval by such conditions as the case may require.
6. Right of Entry - The Board of Appeals is hereby authorized to enter upon open land in Kent County for the purpose of reviewing applications pending before the Board. Such entry is only to be in the form of a publicly noticed and ADA-accessible public meeting on the site.

### 4.2 PLANNING COMMISSION

The *Planning Commission* shall have the following powers:

1. *Comprehensive Plan* – To develop and approve a plan which shall be recommended to the legislative body for adoption. The plan is the principal document outlining County direction, policy, and action regarding land use. While other plans and ordinances provide more detailed information and policy, all plans and laws shall be consistent with and conform to the *Comprehensive Plan* in the manner as prescribed by Maryland State law, as set forth in Md. Code Ann., Land Use, §1-303.

2. Recommendations to County Commissioners – To make recommendations to the County Commissioners on Land Use Ordinance text amendments, zoning map amendments, and courses of actions necessary to implement the *Comprehensive Plan*.
3. Recommendations to the Board of Appeals – To make recommendations to the Board of Appeals on *variances* and certain special exceptions as set forth in this Ordinance. The Commission shall address the extent to which the *variance* or special exception complies with or deviates from the *Comprehensive Plan*. The Commission may recommend conditions and limitations on the approval of *variances* and special exceptions.
4. *Subdivisions* – To review and approve *subdivisions* of land as set forth in this Ordinance and Md. Code Ann., Land Use, §5-105.
5. *Site plans* – To review and approve *site plans* as set forth in this Ordinance.
6. Other Powers – The *Planning Commission* may have additional powers as may be designated by the County Commissioners of Kent County.
7. Conditions – In the granting of *subdivisions* and *site plans*, the *Commission* may limit the approval by such conditions as the case may require.
8. Right of Entry – The *Planning Commission* is hereby authorized to enter upon open land in Kent County for the purpose of reviewing applications pending before the Commission. Such entry is only to be in the form of a publicly noticed and ADA-accessible public meeting on the site.

## SECTION 5 NONCONFORMITIES

### 5.1 PURPOSE.

1. This article is intended to allow lawfully established nonconforming lots, uses and structures to continue, but to limit the number and extent of nonconforming uses and structures by prohibiting or restricting enlargement, reestablishment after abandonment, reconstruction or change in use.
2. Except as otherwise provided in this article, any nonconforming lot, structure or use may continue, provided it remains otherwise lawful.

### 5.2 CERTIFICATION OF NONCONFORMING STATUS

1. Authority; certification required for development

The Board of Appeals shall have the authority to certify that a lot, structure, or use is legally nonconforming. An application to the Department of Planning, Housing, and Zoning for certification of nonconforming status for a lot, structure or use:

- (A) May be submitted by a property owner at any time.
- (B) A public hearing will be required, and the process for notice will be utilized as set forth in Article IV, Section 1.6.



2. Application

The application shall include, as applicable:

- (A) Documentation that the lot was legally created.
- (B) Documentation that the structure was legally constructed, including all structure dimensions and lot coverage.
- (C) Documentation that the use was legally established, continuously maintained and not abandoned since its establishment, including documentation of the area of land and structures devoted to the nonconforming use.

3. Burden of proof

- (A) The burden of establishing the legal nonconforming status shall be upon the owner of the land.
- (B) The casual, temporary, intermittent or illegal use of land is insufficient to establish the existence of a nonconforming use or structure.
- (C) The existence of a nonconforming use shall not be construed to establish a nonconforming use on the entire premises. The portion of the premises where legal nonconforming use exists must be defined.

4. Certificate of nonconformity

Upon finding that a legal nonconforming lot, structure, or use exists, the Board of Appeals shall issue a certificate of nonconformity. The certificate shall specify the nature and extent of the legal nonconformity, including the land and building area devoted to a nonconforming use, the extent of nonconforming lot coverage, the dimensions of nonconforming structures, and other dimensions as applicable.

5. Appeal

The Board of Appeal's determination may be appealed to the Circuit Court within 30 days of certificate issuance.

6. Register of certificates

The Department shall maintain a register of certificates issued for nonconforming lots, structures, and uses.

## NONCONFORMING USES

### 5.3 LEGAL NONCONFORMING USES, DEFINED

1. Any use of a *lot* shall be considered a legal nonconforming use, if it:

- (A) Does not conform to one or more use *regulations* of this Ordinance;
- (B) Existed on the effective date of this Ordinance;

- (C) Has not been abandoned; and
  - (D) Either conformed to the *regulations* of or was considered to be a legal nonconforming use by the Land Use Ordinance in effect the day before the effective date of this Land Use Ordinance.
- 2. The existence of a legal nonconforming use shall be presumed valid, based on documents that indicate evidence of the use prior to the adoption of this Ordinance, submitted by the property owner, lessee, or other relevant party, unless specifically determined by the Board to be insufficient to validate the presence of the use.
  - 3. The intermittent or illegal use of a *lot* shall not be sufficient to establish the existence of a legal nonconforming use.
  - 4. The existence of a use on a part of a *lot* shall not be construed to establish a legal nonconforming use on any other part of such *lot*.

#### 5.4 CONTINUANCE OF LEGAL NONCONFORMING USES

A legal nonconforming use shall be permitted to continue, subject to *regulations* of this Section.

#### 5.5 ABANDONMENT OF LEGAL NONCONFORMING USES

For the purposes of this Ordinance, the discontinuance of a use for a period exceeding two years shall constitute abandonment of such use. Whether a nonconforming use has discontinued is a question of fact and shall be decided by the Board of Appeals utilizing the process in §5.2. A public hearing will be required, and the process for notice will be utilized as set forth in Article IV.

#### 5.6 LEGAL NONCONFORMING USES IN THE CRITICAL AREA

Any legal nonconforming use within the *Critical Area* which existed on April 12, 1988, may continue without intensification or expansion unless such use has been abandoned for more than one year, or otherwise in accordance with Section 27.01.02.07 of the Code of Maryland *Regulations*.

#### 5.7 ENLARGEMENT OF LEGAL NONCONFORMING USES

Except in the case of private schools or *houses of worship* that existed prior to April 12, 1988, no legal nonconforming use may be enlarged, increased, or extended so as to occupy any portion of a *lot* or *structure* where the legal nonconforming use did not exist on the effective date of this Ordinance or so as to occupy any portion of a *lot* or *structure* where the use was abandoned.

#### 5.8 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 a legal nonconforming use. Life safety code updates and requirements for any improvements related to ADA accessibility, or any other required update, change, improvement,

or additional equipment that is required by any governmental agency or quasi-public agency will not be considered to affect the status of the use including any required expansions under such.

## NONCONFORMING STRUCTURES

### 5.9 LEGAL NONCONFORMING STRUCTURES, DEFINED

1. Any *structure* shall be considered a legal nonconforming *structure* if it:
  - (A) Does not conform to one or more non-use *regulations* of this Ordinance;
  - (B) Existed on the effective date of this Ordinance;
  - (C) Is not a *sign*; and
  - (D) Either conformed to the *regulations* of or was considered to be a legal nonconforming *structure* by the Land Use Ordinance in effect the day before the effective date of this Land Use Ordinance.

### 5.10 CONTINUANCE OF LEGAL NONCONFORMING STRUCTURES

A legal nonconforming *structure* may continue to exist, subject to the *regulations* of this Section.

### 5.11 ORDINARY REPAIR AND MAINTENANCE OF LEGAL NONCONFORMING STRUCTURES

The normal maintenance and repair of a legal nonconforming *structure* may be performed, provided that any portion of the *structure* undergoing such maintenance or repair either (1) conforms to all non-use *regulations* of this Ordinance, or (2) does not increase its degree of structural nonconformity.

### 5.12 REPAIR OR RECONSTRUCTION OF LEGAL NONCONFORMING STRUCTURES AFTER CALAMITY

1. There shall be no repair or reconstruction of a damaged legal nonconforming *structure* unless all of the following conditions are met:
  - (A) The damage, destruction, or removal of the *structure* was not voluntarily caused by the property owner or property owner's agent;
  - (B) A permit is obtained prior to repair or reconstruction of the damaged or destroyed *structure*;
  - (C) Repair or reconstruction begins within two years after the calamity; and
  - (D) The repair or reconstruction does not result in an increase in the degree of nonconformity.

2. Nothing in this Ordinance shall be deemed to prevent the strengthening or restoring of a *structure* to a safe condition by order of a public official.

#### 5.13 ALTERATIONS OR ENLARGEMENTS TO LEGAL NONCONFORMING STRUCTURES

No legal nonconforming *structure* may be altered or enlarged unless one or more of the following conditions are met:

1. The portion of the *structure* that is proposed to be altered or enlarged will, after the *alteration* or enlargement, comply with all standards and *regulations* in this Ordinance and will not increase the percent of *impervious surface* on the *lot* above that percent which is permitted by the Ordinance. If no regulatory maximum is established in the Ordinance, then this provision will not apply;
2. The legal nonconforming *structure* has been used as a private school without abandonment since April 12, 1988;
3. The legal nonconforming *structure* has been used as a *house of worship* without abandonment since April 12, 1988.
4. The legal nonconforming *structure* is a *dwelling* that existed as of April 12, 1988, and is located in the *modified buffer* and conforms to the standards set forth in this section.

#### 5.14 EXPANSION OF EXISTING DWELLINGS IN THE MODIFIED BUFFER

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

1. All opportunities for expansion outside the minimum 100-foot *buffer* are exhausted; and
2. The enlargement is no closer to the *mean high-water line* than the current dwelling; and
3. An area of *natural vegetation* equal to two 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.

#### 5.15 RELOCATION OF NONCONFORMING STRUCTURES

No legal nonconforming *structure* shall be relocated in whole or in part to another *lot* or to another location on the same *lot* unless, after relocation, every portion of the *structure* conforms to all applicable *site development regulations*.

## NONCONFORMING LOTS

### 5.16 NONCONFORMING LOTS, DEFINED

A *lot* which was legally created and properly recorded but which does not satisfy the minimum *lot area* and/or the minimum *lot width* applicable to the zoning district in which it is located shall be considered a nonconforming *lot*.

### 5.17 CONTINUANCE OF NONCONFORMING LOTS

1. Nonconforming *lots* may continue to exist, subject to the *regulations* of this Section.
2. Nonconforming *lots* may be occupied by any use permitted by the *regulations* for the district in which it is located.
3. Nonconforming *lots* may be developed with *structures* that comply with all *site development regulations* set forth by this Ordinance.
4. A variance for minimum lot area will not be required for any permitted use, allowable special exception, or permitted accessory use to be located on such a *lot*.

### 5.18 SUBDIVISION OF NONCONFORMING LOTS

A nonconforming *lot* may not be subdivided unless each resulting *lot* conforms to the minimum *lot area* and the minimum *lot width regulations* applicable to the zoning district in which it is located, unless a variance is granted by the Board of Appeals per this Ordinance.

## NONCONFORMING SIGNS

### 5.19 NONCONFORMING SIGNS

*Regulations* concerning nonconforming signs may be found in Article V. Zoning, Section 3.16 of this Ordinance.

[THIS PAGE IS INTENTIONALLY BLANK.]