

ARTICLE IV. PROCESSES

SECTION 1 GENERAL PROVISIONS

1.1 STATEMENT OF INTENT

These provisions are intended to provide general standards for all review and approval processes in this Land Use Ordinance, in order to streamline and standardize the process and public notice. A Section is provided for each process type; elements in common are addressed in this Section.

The Goals and Objectives below are specifically included as part of the review of subdivisions and site plans. The remaining processes have other standards delineated in their individual sections. Although not directly linked to all other formal reviews, these Goals and Objectives provide an overview of the spirit and intent of the Land Use Ordinance approach to *development* in general.

1.2 GOALS

1. These procedures are to protect the health, safety, convenience, and general welfare of the inhabitants of the County. Subdivision and *site plan* review regulates the *development* of *sites* and *structures* in a manner which considers the following concerns and, where necessary, requires modification of *development* proposals to eliminate or minimize potential problems and nuisances. The principal areas of concern are:
 - (A) The balancing of landowners' rights to use their land, with the corresponding rights of abutting and neighboring landowners to live without undue disturbances (noise, smoke, fumes, dust, odor, glare, *stormwater* runoff, etc.);
 - (B) The convenience and safety of vehicular and pedestrian movements within the *site*, and in relation to adjacent areas or *roads*;
 - (C) The adequacy of disposal methods and protection from pollution of surface or groundwater; and;
 - (D) The protection of historic, natural, and environmental features on the *site* under review and in adjacent areas.

1.3 OBJECTIVES

1. At each stage of the development review of subdivision plats and site plans, the *Planning Commission*, Planning Director, or the Planning Director's designee shall review the *applicant's* submitted *development* proposal and supporting documents, taking into consideration the reasonable fulfillment of the following objectives:

FOR SUBDIVISIONS

- (A) Conformance with the *Comprehensive Plan*.
- (B) Conformance with the provisions of all applicable rules and *regulations* of county, State, and federal agencies.
- (C) Convenience and safety of both vehicular and pedestrian movement within the *site* and in relation to adjoining ways and properties.

- (D) Reasonable demands placed on public services and *infrastructure*.
- (E) Adequacy of methods for sewage and refuse disposal, and the protection from pollution of both surface waters and groundwater. This includes minimizing *soil erosion* both during and after construction.
- (F) Minimizing the area over which existing vegetation is to be removed. Where *tree* removal is required, special attention shall be given to planting of replacement *trees*.
- (G) The *applicant's* efforts to integrate the proposed *development* into the existing landscape through design features such as vegetative *buffers*, *roadside* plantings, and the *retention of open space* and agricultural land.
- (H) The *building setbacks*, area, and location of parking, *architectural* compatibility, signage, and landscaping of the *development*, and how these features harmonize with the surrounding townscape and the natural landscape.

ADDITIONAL OBJECTIVES FOR SITE PLANS

- (I) Provisions for the off-*street* loading and unloading of vehicles incidental to the normal operation of the establishment, adequate lighting, and internal traffic control.
- (J) Protection of abutting properties and County amenities from any undue disturbance caused by excessive or unreasonable noise, smoke, fumes, dust, odors, glare, *stormwater* runoff, etc.
- (K) The applicant's efforts to design the development to complement and enhance the rural and historic nature of the County including incorporating into the project forms and materials that reflect the traditional construction patterns of neighboring communities.

1.4 CRITICAL AREA COMMISSION REVIEW AND COMMENT REQUIRED

1. As required by the State of Maryland, Kent County will send copies of applications for all *developments*, subdivisions, and *site plans*, wholly or partially within the Critical Area, as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment. This includes all applicable projects located in the RCD, CAR, CCA, M, ECCA, and MXDCA zoning districts.
2. Until Kent County has received notice of receipt from the Critical Area Commission or the appropriate waiting period per the State of Maryland has expired, the County may not approve an application that has been sent to the Critical Area Commission for notification.
3. Per the State of Maryland, any action by Kent County in violation of these State-required procedures shall be void.

1.5 TECHNICAL ADVISORY COMMITTEE (TAC)

1. Applications shall be filed with the Department on an official application form, together with the fee prescribed by County Commissioners, a narrative including a Citizen Participation Plan or “CPP” (please refer to the Department for a CPP brochure) and all supporting documents as required in the sections below for each specific process.
2. A pre-submission conference with the Department is recommended but not required.
3. The Department will schedule the project for the next, monthly meeting of the *Technical Advisory Committee* and circulate the completed application and all supporting documents to the various agency members of the *Technical Advisory Committee*.
4. The *Technical Advisory Committee* will review the proposal and submit formal comments to the *applicant*. The Department will provide a summary of the comments submitted.
5. *Plot Plans* regulated by Section 3 are not reviewed by the *Technical Advisory Committee*.
6. Waivers regulated by Section 6 are not reviewed by the *Technical Advisory Committee*.

1.6 PUBLIC NOTICE

This public notice section relates to approval processes described within this Article including subdivisions, site plans, special exceptions, variances, waivers, and permits. The zoning text amendment process for the Land Use Ordinance is in Article I and refers to this section. Waivers in Section 6 do not require public notice beyond that already given for subdivisions and site plans. Building permits in Section 7 do not require public notice. Minor processes require follow-up notice, while major processes, special exceptions, and variances require advance notice. The Land Use Ordinance does not regulate the comprehensive rezoning process.

For clarification, when this Ordinance refers to public hearings, these are required to be noticed in the newspaper as public hearings indicating the date, time, and place of the hearing, as opposed to public meetings for which a newspaper notice is not required.

1. MAILED NOTICE

- (A) For MINOR processes only (subdivision and site plan), the Department will send a notice by regular mail of the proposed project, after TAC review, to adjacent property owners using the address of record from the Maryland Department of Assessments and Taxation. Adjacent property owners have ten days from the date on the notice to comment on the project. No other notice is required.
- (B) For MAJOR subdivisions, MAJOR site plans, special exceptions, and variances, at least twenty (20) days before the initial meeting of the *Planning Commission* or the hearing by the Board of Appeals on variances special exceptions, and nonconformities, the Department will send written notice by regular mail to adjacent property owners, which briefly describes the proposal and uses the address of record with the Maryland Department of Assessments and Taxation.

- (C) For any three-part development review processes in Section 1.7 or any combination sub-set thereof, notice is only provided at the initial step, except for delays per § 5 below.

2. POSTING THE SUBJECT PROPERTY

- (A) For MAJOR subdivisions, MAJOR site plans, special exceptions, and variances, the Department will post the subject property in a conspicuous manner with a sign within a reasonable timeframe of the mailing. Properties will only be posted one time.
- (B) For any three-part development review processes in Section 1.7 or any combination sub-set thereof, notice is only provided at the initial step, except for delays per § 5 below.
- (C) After issuance, building permits require a placard to be posted by the applicant.

3. NEWSPAPER ADVERTISEMENTS

- (A) All hearings for special exceptions, *variances*, and nonconformities by the Board of Appeals shall be advertised in the newspaper of record in advance of the hearing.
- (B) All hearings for administrative-type special exceptions and *variances* shall be advertised in the newspaper of record in advance of the hearing.
- (C) Before granting final approval of a major subdivision on land designated as Tier III on the County Septic Tier Map, the *Planning Commission* shall hold a public hearing advertised in the newspaper of record in advance of the hearing.
- (D) Review of proposed zoning text amendments by the *Planning Commission* may be advertised in the newspaper of record in advance of the hearing, at the discretion of the Department, depending on the substance of the matter. Housekeeping and non-substantive matters need not incur advertising costs.

4. DIGITAL NOTICE

The Department will post online all agendas, minutes, and packets in a timely fashion.

5. LONG DELAYS BETWEEN MEETINGS

In any case, where a proposal has not appeared before the *Planning Commission* or the Board of Appeals for six months, the Department will send another notice by regular mail regarding the proposed project to the adjacent property owners as specified above. No other re-notification is required including property posting or newspaper advertisements.

1.7 SUBDIVISION AND SITE PLAN PROCESSES

1. ADMINISTRATIVE REVIEW

For MINOR processes only, the Planning Director, or Planning Director's designee, has the authority to approve, approve with conditions, or disapprove projects. At the Director's

discretion, a minor project may be submitted to the *Planning Commission* for approval. The Planning Director, or Planning Director's designee, shall consider and prepare findings of fact concerning the reasonable fulfillment of the goals and objectives listed in §1.2 and 1.3. In the absence of a Planning Director, the *Planning Commission* shall approve, approve with conditions, or disapprove minor projects. Minor projects comprise only one step.

2. DECISIONS BY PLANNING COMMISSION

For all other subdivisions and site plan reviews, a MAJOR process is required. *Applicants* submit projects for review in three stages including *stormwater management* as follows.

(A) CONCEPT

- i. After determining that the application is substantially complete, the Department will place the project on the appropriate meeting of the *Planning Commission* for concept review. The concept review process will review at a conceptual level, the feasibility, design, conceptual *stormwater management*, and environmental characteristics of the proposal based on the standards set forth in this Land Use Ordinance, the *Comprehensive Plan*, with the understanding that additional technical *engineering*, design material, survey work, and preparation of other documents will be submitted for review at later steps in the review process.
- ii. The *Planning Commission* shall comment and provide guidance as to the feasibility, design, and environmental characteristics of the proposal based on the standards set forth in this Land Use Ordinance, the *Comprehensive Plan* and taking into consideration the reasonable fulfillment of the goals and objectives listed in §1.2 and 1.3 above.

(B) PRELIMINARY

- i. After determining the preliminary application is substantially complete, the Department will place the project on the appropriate meeting of the *Planning Commission* for preliminary review. The preliminary review process will review the project for compliance with the Land Use Ordinance, *Comprehensive Plan*, and its feasibility, environmental, and design characteristics based a specific proposal that complies with the requirements for a preliminary review. At this stage, the *applicant* shall demonstrate adequate provisions for water supply and sewage disposal, proposed methods for fire protection, preliminary *stormwater management*, and *Forest Conservation Plans*.
- ii. The *Planning Commission* may approve, approve with conditions, or disapprove the preliminary project taking into consideration and making findings concerning the reasonable fulfillment of the goals and objectives listed in §1.2 and 1.3 above. Conditional approval of the preliminary project shall include a complete list and clear explanation of all conditions. Denial

of the preliminary project shall include a listing of reasons for denial. If the *Planning Commission* determines that more information is required for a decision to be made on the proposal, the *Planning Commission* may defer its consideration of the project, until such information is furnished.

(C) FINAL

- i. After determining that the final project and supporting documents including all required estimates of sureties are substantially complete, the Department will place the project on the appropriate meeting of the *Planning Commission* for final review. The final review process will review the final project and supporting documents for compliance with all applicable *regulations* and shall include approved final plans, deed restrictions, *conservation easements*, irrevocable letters of credit or other sureties as acceptable to the County Commissioners of Kent County, and any other reports or studies as necessary. The *Planning Commission* attorney will review legal documents.
- ii. The *Planning Commission* shall take into consideration and make findings concerning the reasonable fulfillment of the goals and objectives listed in §1.2 and 1.3.

(D) COMBINATIONS

Where deemed appropriate by the Planning Commission, the final project may be combined with a preliminary project. In unusual cases where there is a minor impact on the community, with approval of the Planning Director, the concept, preliminary, and final projects may be combined.

(E) PLOT PLAN EXCEPTION

Single family dwellings, residential *accessory uses* and *accessory structures* associated with a *single family dwelling*, agricultural *buildings* on farms in AZD, and alterations and remodeling of these types of existing *structures*, and other projects are eligible for *Plot Plan* review. Such projects have minor impacts and require less information for review. *Plot plans* are reviewed and approved by the Planning Director or the Planning Director's designee without Public Notice. This process is handled as a building permit review and not a formal site plan.

1.8 FINAL SUBMISSIONS

1. The *applicant* shall submit to the Department, at least two mylars and three paper copies of the approved final subdivision drawings, or three paper copies of approved final site plan drawings for signatures and copies of any deed restrictions, covenants, or easements. If deemed necessary, the Planning Director may require additional paper copies of any documents.

2. One paper copy of the approved drawings shall remain on file in the Department. Other paper copies of the signed documents shall be distributed to the Kent County Health Department and other applicable agencies.
3. *Applicants* are responsible for recording approved subdivisions and easements in the Land Records with the Clerk of the Circuit Court and submitting proof to the Department following recordation. Lot line adjustments are subdivision documents; site plans are not recorded.

1.9 SPECIAL EXCEPTIONS AND VARIANCES

1. After receiving a substantially complete application for a special exception, administrative special exception, *variance*, or administrative *variance*, the Department will schedule the application for the next *Technical Advisory Committee*, and after a recommendation by the TAC that the project may proceed, an administrative hearing, or a review by the *Planning Commission*, and/or hearing before the Board of Appeals will be scheduled, as may be appropriate. Such applications are advertised as hearings of the Board of Appeals or as an administrative hearing, and information on the Planning Commission will be included in the mailed notices, if the Planning Commission will make recommendations.
2. For administrative processes, a signed decision will be provided to the applicant by the end of 30 days following the date of the meeting. Building permits on file or submitted after the hearing may be reviewed and processed; however, permits cannot be issued, at a minimum, until thirty (30) days after the date of the hearing when the decision is made, per the Appeals process in Section 1.15 below. In some cases, if a decision is not made at the public hearing, then the date for appeal purposes is the date of the signature on the decision.
3. For all decisions in the Critical Area:
 - (A) Within ten working days after a written decision is signed and issued regarding a variance and/or special exception application, the Critical Area Commission shall receive a copy of the decision.
 - (B) The Department shall not issue a permit for the activity that was the subject of the variance or special exception until the applicable 30-day appeal period has elapsed following the issuance of the signed, written decision.

1.10 DECISIONS BY BOARD OF APPEALS

1. Each case shall be decided, and a decision issued no later than 30 days after the hearing is concluded. The decision shall be in writing and be signed by the Board of Appeals per its bylaws. This decision shall be based on competent and substantial evidence and when applicable shall contain findings as to whether the applicant has overcome the presumption that development in the Critical Area does not conform to this Ordinance or Critical Area Law. 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.

2. The Department will email a copy of the decision to the *applicant*.
3. For all decisions in the Critical Area:
 - (A) Within ten working days after a written decision is signed and issued regarding a variance and/or special exception application, the Critical Area Commission shall receive a copy of the decision.
 - (B) The Department shall not issue a permit for the activity that was the subject of the variance or special exception until the applicable 30-day appeal period has elapsed following the issuance of the signed, written decision.
4. In accordance with Natural Resource Article §8-1808, Critical Area variances must be tied to written decisions.
5. The decision will be made part of the public record of the proceedings on file in the Department.

1.11 WAIVERS

The *Planning Commission*, or where applicable County staff, are authorized to approve waivers as a form of alternative compliance for specific aspects of a project, as set forth in Section 6 on waivers below. Waivers are not variances nor are they special exceptions. Waivers are set forth in their own section; they are not advertised, nor are they noticed. Waivers are a stand-alone process. Waivers are subject to appeal per §1.15 below.

1.12 LAPSE OF APPROVALS

The date of approval related to lapses is the date of the administrative action taken. This includes meeting dates of the Technical Advisory Committee, *Planning Commission*, or Board of Appeals, when these are the last formal step in an approval, or where a formal decision is signed, the date of the signed decision. In determining the date related to lapses, the latest date possible is used.

1. SUBDIVISIONS: SIX MONTHS

Signed plats shall be recorded by applicants within six months of approval, or they expire after six months, unless otherwise extended. All sureties shall be received, and proof of all required recordation submitted to the Department, prior to signing by the County.

2. SITE PLANS: TWO YEARS

After site plan projects have been approved, said approval will lapse after the expiration of two years, if no substantial action has taken place in accordance with the approved project for which said approval was granted. Completion of footings are considered to constitute such an action in the State of Maryland. Final site plan drawings shall be submitted for signature within the two-year timeframe. All sureties shall be received, and

proof of all required recordation submitted to the Department, prior to signing by the County. If a project is not constructed and final inspection and/or certificate of occupancy obtained after two years, the site plan expires. In some circumstances, major code changes could require modifications to a site plan to be undertaken when life/safety issues are involved.

3. VARIANCES: ONE YEAR

After a *variance* has been granted, said approval will lapse after the expiration of one year if no substantial action has taken 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. Adopted decisions may grant longer periods, as appropriate.

4. SPECIAL EXCEPTIONS: TWO YEARS

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

SPECIAL EXCEPTION: 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.

5. APPROVALS PRIOR TO LAND USE ORDINANCE ADOPTION: SIX MONTHS

Drawings approved prior to adoption of this Land Use Ordinance, which would no longer comply with newly adopted provisions due to changes in said provisions, shall be signed or recorded within six months after the date of adoption, or expire, unless otherwise extended.

6. WAIVERS

Waivers are granted as part of the approval in another process. Waiver approvals lapse when project approval lapses. For example, a waiver by the *Planning Commission* granted as part of a concept site plan, preliminary site plan, or final site plan would lapse in tandem with the lapse of said approved site plan; a stormwater waiver would lapse when the building permit by which it was administratively approved lapses.

7. BUILDING PERMITS

A building permit will be valid for six months from the date issued. Each request for an inspection extends the building permit for six additional months. A six-month extension may be granted at any time by the Planning Director, or the Planning Director's designee. An extension may be granted after expiration. More than one extension may be granted.

1.13 EXTENSIONS FOR SUBDIVISIONS AND SITE PLAN APPROVALS

1. Approved projects under appeal will be automatically extended for twelve months without a request from the *applicant*. Projects may receive more than one extension.
2. When the *applicant* can show that the project is in the process of obtaining permits from County, State, or federal agencies and that these permits have been pursued diligently, or other mitigating circumstances, the *Planning Commission* may grant a 12-month extension. A project may receive more than one extension. Extensions may be approved following expiration as may be needed at the discretion of the Planning Commission depending on the circumstances involved.

1.14 AMENDMENTS

1. MINOR: A project approved under this Ordinance or under any prior Ordinance, including any conditions or guarantees attached to its approval, may be amended in accordance with this section. If the Planning Director determines that the proposed amendment does not represent a significant change from the use or character of a project as originally approved or in previously approved amendments, the Planning Director may approve the amendment after the amendment is reviewed by the *Technical Advisory Committee*.
2. MAJOR: If the Planning Director determines that the amendment represents a significant change from the use or character of the original project and any previously approved amendments, or that the amendment requires more detailed review, the amendment may be regarded as an original application and follow the procedures for the review of a new project.
3. PARTIAL: If the Planning Director determines that an amendment represents changes to only one portion or phase of a project, such as changes to a single building on a site plan with more than one building, then the revised portion or phase may be submitted and reviewed as either a major or minor amendment.
4. VARIANCES: The procedure for the amendment of an approved *variance* or a request for a change of conditions attached to an approval shall be the same as for a new application.
5. SPECIAL EXCEPTIONS: The procedure for amendment of an approved special exception use, including extension, enlargement, or expansion of principal and accessory structures and/or the addition of new structures and buildings, or a request for a change of conditions attached to an approval, will be the same for a new application.

1.15 APPEALS

1. Within thirty (30) days of any *Planning Commission* decision, any person aggrieved by a decision of the *Planning Commission* may file a notice of appeal with the Circuit Court.
2. Within thirty (30) days of any decision of the Board of Appeals, any person aggrieved by a decision of the Board of Appeals may file a notice of appeal with the Circuit Court.

3. Within thirty (30) days of any decision or determination by the Planning Director, Planning Director's designee, a member of the Department, or the *Technical Advisory Committee*, including stormwater management waivers, any person may appeal the decision to the Kent County Board of Appeals. Appeals are handled as a public meeting and noticed pursuant to the requirements above.

1.16 STANDING

1. In accordance with Natural Resources Article, §8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.
2. If a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.
3. A person that has standing under subparagraph 2 of this paragraph (above) may:
 - (A) Participate as a party in an administrative proceeding at a board of appeals even if the person was not a party to the original administrative proceeding; and
 - (B) Petition for judicial review and participate as a party even if the person was not a party to the action which is the subject of the petition.

1.17 EMERGENCY PROVISIONS

Subject to any declaration by the County, State, or federal government of an emergency, or by the order of any Court of competent jurisdiction, or by written decision by County staff with good cause shown, any of these general provisions, deadlines, timelines, extensions, and any other requirements may be suspended or altered to provide for contingencies, as may be needed.

SECTION 2 SUBDIVISIONS

2.1 STATEMENT OF INTENT

Subdivision review has been established for the purpose of guiding and accomplishing the coordination and harmonious *development* of the unincorporated area of Kent County, in order to promote the health, safety, and welfare of the residents of the County. *Subdivision* review is required to ensure that new *development* complies with the *Comprehensive Plan*, Land Use Ordinance, and other various agency requirements.

1. Any owner who subdivides land into *lots*, blocks, *streets*, *alleys*, public ways, or public grounds shall prepare a plat of *subdivision* to be made in accordance with the *regulations* set forth herein and the laws of the State of Maryland and shall record a copy of the plat with the Kent County Clerk of Court.
2. A plat of *subdivision* shall not be recorded by the Clerk of Court until the plat is approved by the Kent County *Planning Commission* or, where applicable the Planning Director.
3. No parcel of land in a *subdivision* created after December 23, 1969, shall be transferred, sold, or offered for sale, nor will a *building* permit be issued for any *structure* thereon, until a plat of *subdivision* is recorded with the Kent County Clerk of Court.

2.2 CRITICAL AREA COMMISSION REVIEW AND COMMENT REQUIRED

1. As required by the State of Maryland, Kent County will send copies of applications for all *developments*, subdivisions, and *site plans*, wholly or partially within the Critical Area, as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment. This includes all applicable projects located in the RCD, CAR, CCA, M, ECCA, and MXDCA zoning districts.
2. Until Kent County has received notice of receipt from the Critical Area Commission or the appropriate waiting period per the State of Maryland has expired, the County may not approve an application that has been sent to the Critical Area Commission for notification.
3. Per the State of Maryland, any action by Kent County in violation of these State-required procedures shall be void.

2.3 YIELD CALCULATIONS FOR ORIGINAL TRACTS

All subdivision submittals shall include yield calculations based on the subsections below:

1. **LOT COUNT DETERMINATION.** All *lots*, parcels, tracts, *sites*, and other divisions of land recorded after December 23, 1969, from an original *lot*, *tract*, or parcel of land described in the Land Records of Kent County, will be counted in determining the number of *lots* in a *subdivision*. An original/remainder *lot* is also counted in determining the number of *lots*.
2. **NON-CRITICAL AREA DENSITY.** Outside the Chesapeake Bay *Critical Area*, all *lots*, parcels, *sites*, and other divisions of land recorded after August 1, 1989, from an original *lot*, *tract*,

or parcel of land described in the Land Records of Kent County, will be counted in determining the permitted *density* of a parcel of land.

3. **CRITICAL AREA DENSITY.** Within the Chesapeake Bay *Critical Area*, all *lots*, parcels, *sites*, and other divisions of land recorded after December 1, 1985, will be counted in determining the permitted *density* of a parcel of land.
4. **ORIGINAL PARCEL.** The original parcel is counted when determining *density* both within and outside the Chesapeake Bay *Critical Area*, per section 2 and 3 immediately above.

2.4 TYPES OF SUBDIVISIONS

1. LOT LINE ADJUSTMENTS (LLA)

Lot line adjustments between adjoining property owners and within single properties, which do not create additional *building lots* are reviewed and may be approved by the Planning Director, or Planning Director's designee, and are subject to the following:

- (A) Transfer of these *lots* is not counted in determining the number of *lots* in a *subdivision*.
- (B) Drawing requirements are at the discretion of the Planning Director but may not exceed those required for a minor *subdivision*.
- (C) Procedures shall be the same as that for a minor *subdivision* and minor project.
- (D) Lot Line Adjustments to property in the Agricultural Zoning District, which has not been the subject of a subdivision action that was approved after August 19, 2003, which created new lots, will not be subject to the restrictions of the 10% Rule as set forth under Article II, Section 2, § 2.3, "Maximum percentage of property in *lots*."
- (E) Lot consolidation and reconfiguration provisions in Article VI. Section 2.15 for nonconforming parcels or lots within the Critical Area.

2. MINOR SUBDIVISIONS

Minor *subdivisions* contain seven or fewer *lots*, *sites*, parcels, tracts, or other divisions of land from the original lot, per §2.2, 1. **LOT COUNT DETERMINATION** (above). The Planning Director, or Planning Director's designee, may approve minor *subdivisions* following Technical Advisory Committee review. At the Director's discretion, a minor *subdivision* may be submitted to the *Planning Commission* for approval. In the absence of a Planning Director, the *Planning Commission* shall approve, approve with conditions, or disapprove minor *subdivisions*.

Note: *Private roads* are only allowed in minor subdivisions. A *private road* may serve no more than seven (7) parcels unless granted a waiver. *Private roads* shall comply with the Kent County Road Design and Construction Standards. Please see Subdivision Design Requirements section below.

3. MAJOR SUBDIVISIONS

Major *subdivisions* contain eight or more *lots*, parcels, *sites*, tracts, or other divisions of land from the original lot, per §2.2, 1. LOT COUNT DETERMINATION (above). The *Technical Advisory Committee* reviews and the *Planning Commission* approves major *subdivisions* at three stages - Concept, Preliminary, and Final.

4. SPECIAL INSTRUCTIONS FOR RESUBDIVISIONS

When recording resubdivisions or combining *lots* in recorded *subdivisions*, letters rather than numbers should be used to indicate *lots* whose boundary and area have been affected. The numerical sequence shall remain intact to avoid confusion in the future.

2.5 SPECIAL CIRCUMSTANCES - INTRAFAMILY TRANSFERS IN THE CRITICAL AREA

1. A bona fide *intrafamily transfer* will be permitted only from parcels of land in the Resource Conservation District that:
 - (A) Were of record on March 1, 1986;
 - (B) Are seven (7) acres or more and less than sixty (60) acres in size.
2. Land shall be subdivided as indicated:
 - (A) A parcel that is seven (7) acres or more and less than twelve (12) acres in size may be subdivided into two *lots*;
 - (B) A parcel that is twelve (12) acres or more and less than sixty (60) acres in size may be subdivided into three *lots*. The *lots* may be created at different times.
3. As a condition of approval, the following will be required:
 - (A) The owner of the subdivided parcel attests to the bona fide *family* relationship and that the intent is not for ultimate transfer to a third party.
 - (B) Any deed for a *lot* that is created by a bona fide *intrafamily transfer* shall contain a covenant stating that the *lot* is created subject to the provisions of this section.
 - (C) A *lot* created by a bona fide *intrafamily transfer* shall not be conveyed subsequently to any *person* other than a member of the owner's immediate *family* except under procedures established herein.
 - (D) This subsection does not prevent the conveyance of the *lot* to a third party as security for a mortgage or a deed of trust, or subsequent conveyance resulting from a foreclosure.
4. Subsequent conveyance of *lots* to *persons* other than immediate *family* members:
 - (A) The *lot* was created as a part of a bona fide *intrafamily transfer* and not with the intent of subdividing the original parcel of land for purposes of ultimate transfer to a third party; and

- (B) The owner of the transferred property dies; or
- (C) A change in circumstances has occurred since the original transfer was made that is not inconsistent with the *Critical Area Law* and that warrants an exception, or other circumstances that are consistent with the *Critical Area Law* and the *Critical Area Law Criteria* to maintain land areas necessary to support the protective uses of *agriculture, forestry, open space*, and natural habitats in Resource Conservation Areas warrant an exception as determined and approved by the *Planning Commission*.

2.6 SUBMITTAL REQUIREMENTS

Minor and Major subdivisions have similar requirements. Please see chart below for submittals.

TYPE:	1. Narrative	2. Preview	3. Summary	4. Detailed	5. Concluding
MINOR/LLA	X	X	X		
MAJOR					
• Concept	X	X			
• Preliminary	X	X	X	X	
• Final	X	X	X	X	X

The following documents are required to be submitted along with an application for subdivision.

1. NARRATIVE ITEMS LIST FOR WRITTEN DESCRIPTIONS

All applications shall contain a narrative. The *applicant* shall provide a narrative that addresses the following. The Planning Director may not require some elements of the narrative that are not applicable to the proposed *subdivision*.

- (A) Name and address of the landowner, the *developer* and/or representative, if different from the owner.
- (B) *Street* address, tax map, parcel number, and *subdivision* if any.
- (C) Zoning of the *site*.
- (D) Current and proposed use of the property.
- (E) An explanation of the viewshed, *open space*, and conservation analysis undertaken during the design of the *site plan*
- (F) How the proposed *development* complies with the *Comprehensive Plan* and the design and environmental standards of this Land Use Ordinance.
- (G) Proposed type of water and sewer service.
- (H) The proposed *development* schedule and phases of *development* for all proposed construction.

- (I) A statement of provisions for ultimate ownership and maintenance of all parts of the *development* including *streets, structures, and open space*.
- (J) *Critical Area* and/or non-*Critical Area density* calculations based on the original parcel and *subdivision* history of the original parcel dating back to December 23, 1969.
- (K) Proposed *lot* coverage for the *subdivision* and where applicable, *lot* coverage allotted to each *lot*.
- (L) Citizen Participation Plan (please refer to the Department for a CPP brochure) Citizen Participation meetings are held once, prior to initial project submittal.
- (M) Analysis of the cost of providing local government services to the proposed *subdivision*.

2. PREVIEW ITEMS LIST FOR PLANS

- (A) Scale – 1 inch = 100 feet or greater detail. The Planning Director may authorize the use of a different or not require a scale drawing, if, in the Director’s opinion, the information shown on the plat can be presented with equal clarity by the use of a different scale or drawing.
- (B) North arrow
- (C) Vicinity Map, with *site* location clearly marked.
- (D) Surveyor’s signature and seal.
- (E) Title Block that includes:
 - i. *Subdivision* name
 - ii. Names of owners of record and where applicable, names of *developer, architect, surveyor, planner, and/or engineer*
 - iii. Location by *Street* Address, Election District, County and State
 - iv. Date of plan and all revisions
- (F) Names of adjoining property owners with Liber and Folio or name, recording reference, and *lot* numbers of adjoining recorded *subdivision*.
- (G) Property boundaries and boundary survey.
- (H) *Critical Area* and/or non-*Critical Area density* calculations based on the original parcel and *subdivision* history of the original parcel dating back to December 23, 1969.
- (I) Where applicable, the *Critical Area* boundary and *any required Buffer; Stream Protection Corridor; Habitat Protection Area; Forest Stand Delineation and Forest Conservation Plan; 100-year floodplain* boundary, *flood* elevation and the *Airport Safety Zone*.

- (J) For any subdivision approved within the Agriculture Zoning District and/or the Resource Conservation District, or abutting an existing agricultural operation, the plat shall contain a statement on the plat acknowledging the existence of Chapter 84 "Farming" of the Local Public Laws of Kent County, Maryland.
- (K) Existing features, whether natural or manmade, that may influence the design of the project including but not limited to the following:
 - i. *Natural features* to be preserved in accordance with these *regulations*
 - ii. *Slopes* in excess of 15% separate from those in excess of 25%
 - iii. *Watercourses*, including both *perennial* and *intermittent streams*
 - iv. *Forest, tree groves, and significant trees*
 - v. Outstanding natural topographic features
 - vi. Tidal, State, and private, and *non-tidal wetlands*
 - vii. Scenic, cultural and/or historic areas
 - viii. Existing *buildings*, parking, and other *impervious surfaces*
- (L) Proposed layout of *streets, lots* (including estimate dimensions and *lot area*), *stormwater management areas, forest conservation areas, and open space*.
- (M) A tabulation of the following:
 - i. Total acreage
 - ii. Acreage in *100-year floodplain*
 - iii. Acreage in *Critical Area*
 - iv. Acreage in recreation and *open space*
 - v. Acreage in *forest*, if applicable delineated as inside and outside the Critical Area
 - vi. *Acreage of proposed clearing in the Critical Area*
 - vii. *Acreage of existing and proposed lot coverage in the Critical Area*
 - viii. Acreage in *lots and streets*
- (N) Location of any municipal or corporate limits, election district lines, or *Critical Area* boundaries close to or crossing the *tract*.

3. SUMMARY ITEMS LIST FOR PLANS

- (A) Signature Blocks for Director of Planning, Kent County *Health Officer*, and where applicable, the Director of Water and Wastewater Services.

Note: Preliminary Plats **DO NOT** need to include Signature Blocks for the Director of Planning, Kent County *Health Officer*, and the Director of Water and Wastewater Services.

- (B) *Easements, covenants, right of ways, Public Drainage Association ditches, and stormwater management structures and devices and the purpose for which these easements, covenants, and rights-of way were established.*
- (C) Boundary of *subdivision* shown in heavy outline.
- (D) Distances of courses to hundredths of a foot.
- (E) Bearings accurate to one second.
- (F) Location, width, and names of existing or proposed *roads* within or abutting the *subdivision*.
- (G) Identification of *private roads*.
- (H) Curve data in tabular form, if applicable.
- (I) Area of each *lot* in acres and thousandths.
- (J) No distance marked “more or less” except mean high water.
- (K) Location and description of all monuments and markers as required.
- (L) Location of water and sewer, or septic reserve area and well, where applicable.
- (M) Where applicable, statement: “*Private roads* are not the responsibility of Kent County.”
- (N) Width of *waterway*, depth measurements, *channel*, adjacent *piers*, or landings, and 25% of the *waterway*, where applicable.
- (O) *Topography*, if required by the Planning Director.

4. DETAILED ITEMS LIST FOR PLANS

- (A) *Topography* via field survey work or LiDAR (Light Detection and Ranging) and a boundary survey. The Planning Director, or the Planning Director’s designee, may not require submittal of field *topography*. When field topography is not required for submittal, then a written explanation shall accompany the plat.
- (B) Soil classifications mapped, if required for stormwater management review.
- (C) Sewer, water mains, culverts, fire hydrants, power transmission towers and the approximate location, pipe size, and direction of flow of each underground utility that exists in or is contiguous to the property.
- (D) The location, width, and name of each existing or proposed *street* or *alley* within or abutting the *subdivision*.
- (E) Layout of all existing and proposed *lots* including:

- i. *Lot* numbers
 - ii. Scaled areas
 - iii. Scaled dimensions
- (F) Location, dimensions, and areas of property reserved for public or community use, where applicable
- (G) A tabulation of the following:
 - i. Total number of *lots*
 - ii. Acreage of each *lot*
 - iii. Acreage in *100-year floodplain*
 - iv. Acreage in *Critical Area*
 - v. Acreage in recreation and *open space*
 - vi. Acreage in *forest*
 - vii. Acreage of existing and proposed *forest*
 - viii. Total area of *roadways* and other lands to be dedicated.
 - ix. Total acreage of *subdivision*
- (H) Conceptual and schematic plans for:
 - i. Water and sewer services
 - ii. The storm drainage system, including the overall *drainage area*.
 - iii. *Grading* and *sediment* control measures
 - iv. Landscaping
 - v. *Forest Conservation Plan*
- (I) Proof that the required utilities, i.e., electric and telephone, are available to the proposed *development*.
- (J) The method and type of sewer and water service.
- (K) Where applicable, the width of *waterway*, depth measurements, *channel*, adjacent *piers*, or landings, and 25% of the *waterway*.
- (L) Delineation of *development* staging, if any.

5. CONCLUDING ITEMS LIST FOR PLANS

- (A) Signature Blocks for the Chairman of the Kent County *Planning Commission*, Director of Planning, *Health Officer*, Kent Soil & Water Conservation District Director, and where applicable, Director of Water and Wastewater Services.

- (B) Owner's *certification* and dedication.
- (C) Location and description of all monuments and markers as required by the Annotated Code of Maryland.
- (D) Final landscape, *forest conservation, stormwater management, sediment control* and other applicable improvement plans.
- (E) Deed restrictions and Public Works Agreements.
- (F) Signed Forest Conservation deeds, covenants, and easement for recordation.
- (G) Signed Stormwater Management easements and maintenance requirements.
- (H) All sureties required by Public Works, Health Department, and the Department.

2.7 SUBDIVISION DESIGN REQUIREMENTS

ZONING REGULATIONS

1. *Subdivisions* shall comply with requirements in Article V. *Zoning Regulations* that include General Provisions, Parking and Loading, Signage Provisions, and Standards for Utility-Scale Solar Energy Systems. Additional requirements are included in the sections below.

ENVIRONMENTAL REGULATIONS

2. *Subdivisions* shall comply with requirements in Article VI. *Environmental Regulations* that include General Provisions, Forest Interior Birds, Habitat Protection Areas, Shoreline and Cliff Areas, Water Dependent Uses, Critical Areas, Forest Conservation, Erosion and Sediment Control, Stormwater Management, and Floodplain Management. Additional requirements are included in the sections below.

LAYOUT

3. All reasonable efforts should be made to protect adjacent residential areas from nuisances that could occur in commercial, industrial, and marine subdivisions by providing adequate depth in parcels adjacent to residential zoning.
4. Proposed street layout, blocks, and parcels shall be suitable in area and dimension for the type of development anticipated.
5. The total area of lots shall be sufficient to provide adequate space for off-street parking, loading, landscaping, and other facilities.
6. Whenever possible, subdivisions shall be designed to minimize adverse impacts on nearby agricultural operations.
7. The lot arrangement, design, and orientation of subdivisions shall be such that lots will provide satisfactory building sites, properly related to topography, the character of surrounding development, and avoid facing the rear of properties to the existing roadways as much as possible.

8. Topography, tree cover, and natural drainage ways will be treated as fixed determinants of road and lot configuration rather than malleable elements that can be changed to follow a preferred development scheme.

OPEN SPACE

9. When required by the relevant zoning district(s), proposed open space inside subdivisions shall provide for connections to existing, planned, or platted open space on adjacent tracts, unless proposed connections of open space are found by the Planning Commission to be unnecessary for the coordination of development between the subdivision and such adjacent tract.
10. Whenever possible, in residential subdivisions where open space is required, the majority of lots designed for houses shall abut on undivided open space.
11. Open space, playgrounds, or other recreational areas shall be set aside at a rate of 1/10 acre per dwelling unit. Playground equipment is to be indicated on the plans. If the land is not of significant quality and size for the purpose of providing or developing parks and recreational facilities, the Planning Commission, or where applicable the Planning Director, may permit a developer to pay a fee equal to the assessed value of the area of the land required for open space and the value of the appropriate equipment, estimated by an independent third-party, in lieu of providing land and equipment for recreational purposes. Recreational land required within a subdivision will be located so as to be reasonably accessible from all lots in the subdivision in accordance with the following:
 - (A) *Steep slopes, streams, lakes, watercourses, and floodplains* may constitute up to 40% of the recreational land.
 - (B) At least 60% of the recreational land will be suitable for dry ground recreational use.
12. Only in CR, Major subdivisions will include 40% of the adjusted tract acreage in open space unless all of the parcels are 10 acres or more in size. The adjusted tract acreage will be determined by subtracting the acreage in slopes over 25%, tidal and non-tidal wetlands, required buffers, and stormwater management areas. The Planning Commission may set aside this requirement when the total amount of open space, including steep slopes, wetlands, buffers, and stormwater management areas exceeds 60% of the site. When all of the parcels in the subdivision exceed 10 acres in size, the developer shall pay a fee of for each lot in lieu of providing land for recreational purposes, as calculated in §11 above.

LANDSCAPING - STREET TREES

13. **Required.** *Street trees* shall be included in each *subdivision*. *Street trees* may be clustered, evenly spaced, or when *building* envelopes are within 20 feet of the public road *right of way*, as *front yard landscape trees*. The number of *trees* will be calculated as follows:
 - (A) Small *trees* (*trees* less than 25 feet in height at maturity) – 1 per 25 linear feet of *lot* or *open space* along public or *private roads*

- (B) Medium or large *trees* (25 feet or taller at maturity) – 1 per 40 linear feet of *lot* or *open space* along public or *private roads*.
14. **Standards.** At the time of planting, deciduous *trees* will have at least a 2-3-inch *caliper* at 6 inches above *grade*; coniferous *trees* will be at least 5 to 6 feet in height.
15. **Exemption.** Where existing trees serve as *street trees*, the *Planning Commission*, or where applicable the Planning Director, may accept them as *street trees*.

ROADWAYS

16. New public roads shall be provided with a minimum of 50 feet total right-of-way; planned roads designated as requiring additional right-of-way will be provided by the proposal.
17. Where a subdivision adjoins or embraces any part of a major thoroughfare as designated on the Kent County Major Thoroughfare Map, the layout of such subdivision will provide for the platting and dedication of such part of the major thoroughfare in the location and at the width indicated on the major thoroughfare plan, except that the subdivider will not be required to dedicate that part of such major thoroughfare in excess of eighty (80) feet in width of the subdivider's own property.
18. Where deemed desirable to the layout of the subdivision and adjoining area, the Planning Commission may require the platting and dedication of one or more collector streets or parts thereof, to serve the subdivision.
19. The Department will review and approve street names proposed by applicants. A street name may not be approved if it duplicates or is too similar to the name of another roadway in the County or in one of the five incorporated Towns.
20. Every lot will abut and have access to a public road or approved private road.
21. Lots adjoining major thoroughfares and railroad lines should be designed with extra depth and provision for an appropriate means of buffer or deeper building setbacks.
22. Where land in a subdivision adjoins a railroad line, the street layout shall make allowance for future grade separated railroad crossings at appropriate locations by providing extra street right of way widths for such crossings and by restricting intersecting streets at locations where they would cause interference with necessary approaches to such crossings.
23. Proposed streets in a subdivision shall provide for the continuation of existing, planned, or platted streets on adjacent tracts, unless such continuation will be prevented by topography or other physical feature or unless such extension is found by the Planning Commission to be unnecessary for the coordination of development between the subdivision and such adjacent tract.
24. Where the Planning Commission deems it desirable or necessary to provide access to adjacent tracts not presently subdivided, proposed streets in the subdivision shall be extended to the boundary lines with such tracts.

25. Private roads are permitted only in minor subdivisions and are subject to the following conditions:
- (A) Each road will serve no more than seven parcels. In the event that an eighth parcel is created, the eighth parcel and all further divisions of land will front on a public road.
 - (B) The *subdivision* will provide a 50-foot *right-of-way* for each *private road*.
 - (C) The construction of all lanes and *private roads* will adhere to the requirements established by the Kent County Department of Public Works and *sediment control* and *stormwater management regulations*.
 - (D) The plat shall identify all *private roads* and shall state: "The road is private and not the responsibility of Kent County."
 - (E) The deed and contract of sale of all *lots* in the *subdivision* shall state: "The road is private and not the responsibility of Kent County."

SHORELINE AND CLIFF AREAS

26. Subdivisions shall meet the provisions set forth in Article VI, Section 4, related to conditions for new subdivisions and existing lots of three acres or greater.

SUBDIVISIONS IN VILLAGE AND INTENSE VILLAGE – ADDITIONAL REQUIREMENTS

- 27. New developments should be an extension of the overall village development pattern rather than stand in contrast to it.
- 28. New designs should consist of small, understandable neighborhood segments rather than a single, large suburban theme.
- 29. New developments should reflect the unordered, historical growth of the village and avoid the cookie-cutter sameness of many new residential subdivisions.
- 30. Any opportunities for a strong, central focus should be studied and developed. These central places are usually a key to establishing community identity.
- 31. The types of open space provided should be a reflection of how passive and active open spaces are now used in the village, whether they are adequate, and how they may be complemented.
- 32. Strong provisions should be made for walking as opposed to vehicular connections both within and outside of the new community.
- 33. Street widths and alignments should be carefully scaled to neighborhood size and be patterned after the character of existing residential streets.
- 34. The streetscape of new developments should be designed in detail to avoid repetitious setbacks, driveways, elevations, and landscaping; and,
- 35. When deemed necessary by the Planning Commission, or where applicable the Planning Director, unobstructed easements of at least 10 feet shall be provided to facilitate

walkways to commercial facilities, community areas, schools, parks, playgrounds, or other public areas.

36. New developments should carefully study and reflect the physical diversity of the existing village in regard to the mixture of housing types; a mixture of housing styles; and a mixture of lot sizes and shapes.

AIRPORTS – NOTE: NO AIRPORT SAFETY ZONE IS ADOPTED IN KENT COUNTY, MARYLAND.

This section applies to properties that fall within the Kent County *Airport* Safety Zone as designated on the Kent County *Airport* Safety Zone Map. The Kent County *Airport* Safety Zone Map is incorporated into and made a part of this Ordinance. It is the purpose of this section to promote the public safety of the residents and visitors of Kent County by prohibiting to the extent possible, the creation or establishment of obstructions that are a hazard to air navigation.

1. No new ponds shall be constructed within 5,000 feet of the runway.
2. No new solid waste disposal sites will be permitted within 5,000 feet of any publicly licensed airport. New solid waste disposal sites will not be permitted within the limits of the airport safety zone if the FAA determines the site to be a hazard.
3. Developments which produce lights, illumination, or other visual hazards or which produce electronic interference with airport/airplane navigation signals are subject to the standards specified in the FAA procedure manual 7400-2C.
4. Except as otherwise provided in this Ordinance, no structure shall be erected, altered, or maintained and no tree or other vegetation will be allowed to grow in excess of the height limitations as designated on the Kent County Airport Safety Zone Map.

SECTION 3 SITE PLANS

3.1 STATEMENT OF INTENT

Site Development Plans are required to ensure *development* complies with the *Comprehensive Plan*, the Land Use Ordinance and various agency requirements, thereby promoting the health, safety, and general welfare of Kent County's residents.

3.2 PARCEL OF RECORD - ONE MAIN STRUCTURE

Every new structure or any structure that is relocated shall be on a parcel of record; in no case will there be more than one main structure on a single parcel in a primarily residential district, except for accessory dwelling units, or unless otherwise provided by this Land Use Ordinance.

3.3 CRITICAL AREA COMMISSION REVIEW AND COMMENT REQUIRED

1. As required by the State of Maryland, Kent County will send copies of applications for all *developments*, subdivisions, and *site plans*, wholly or partially within the Critical Area, as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment. This includes all applicable projects located in the RCD, CAR, CCA, M, ECCA, and MXDCA zoning districts.
2. Until Kent County has received notice of receipt from the Critical Area Commission or the appropriate waiting period per the State of Maryland has expired, the County may not approve an application that has been sent to the Critical Area Commission for notification.
3. Per the State of Maryland, any action by Kent County in violation of these State-required procedures shall be void.

3.4 TYPES OF SITE PLANS

1. PLOT PLAN – FOR PROJECTS EXEMPT FROM *TECHNICAL ADVISORY COMMITTEE* REVIEW
One single family dwelling, residential *accessory uses* and *accessory structures* associated with a *single-family dwelling*, agricultural *buildings* on farms, and alterations and remodeling of such existing *structures* may be eligible for a *Plot Plan* review process.

These projects have relatively minor impacts and thus require less information. *Plot plans* are reviewed and approved by the Planning Director or the Planning Director's designee.

The following minor, non-residential projects may also be eligible for *Plot Plan* review:

- (A) Changes to internal parking lot layouts involving only changes to painted lines.
- (B) Changes to landscaped areas that do not reduce credit amounts for plantings and if changes do not affect specific conditions placed by *Planning Commission*.
- (C) Freestanding signs – new, altered, and relocated, when only signs are involved.
- (D) Other minor projects where no other agency review will be needed or required.

In most cases, *Plot Plans* are not reviewed by the *Technical Advisory Committee* (TAC), and sealed drawings are not required; however, at the Planning Director's discretion, TAC review and sealed drawings may be required, depending on project scope and complexity.

Pursuant to State Law, projects eligible for *Plot Plan* review may not be exempted from *stormwater management* review, if Limits of Disturbance (LOD) exceed 5,000 square feet.

2. MINOR SITE PLAN – FOR PROJECTS EXEMPT FROM *STORMWATER MANAGEMENT*

The following uses and *developments* are eligible for *Minor Site Plan* review. These projects have less impact on the community, require less information, and may be allowed a modified review and approval process, which is exempt from *stormwater management*. The *Technical Advisory Committee* reviews these projects. The Planning Director, or Planning Director's designee, may approve *minor site plans*. At the Director's discretion, a *minor site plan* may be submitted to the *Planning Commission* for approval. In the absence of a Planning Director, the *Planning Commission* shall approve, approve with conditions, or disapprove *minor site plans*. *Minor site plan* eligibility includes:

- (A) Adaptive Reuse Projects with additions to *buildings* and/or changes to site layouts with a Limit of Disturbance (LOD) of less than 5,000 square feet.
- (B) Changes of use that do not include *building* additions or changes to site layout.
- (C) Changes in vehicular access points in an existing non-residential or multi-family *development* with a Limit of Disturbance (LOD) of less than 5,000 square feet.
- (D) A new Duplex on a single lot with a Limit of Disturbance (LOD) of less than 5,000 square feet.
- (E) A non-residential addition that increases the size of the existing *building* with a Limit of Disturbance (LOD) of less than 5,000 square feet.
- (F) A new non-residential *building* with a Limit of Disturbance (LOD) of less than 5,000 square feet.
- (G) Special exceptions with additions to *buildings* and/or changes to site layouts with Limits of Disturbance (LOD) of less than 5,000 square feet.

3. MAJOR SITE PLAN – FOR REVIEW BY ALL AGENCIES AND *STORMWATER MANAGEMENT*

Commercial and industrial *development*, *multi-family dwellings*, special exceptions, public facilities, and quasi-public facilities require *major site plan* review including *concept plan*, preliminary site plan, and final site plan. The *Technical Advisory Committee* reviews these projects. The *Planning Commission* reviews and approves *major site plans*. *Major site plans* include all projects that are not eligible for the *minor site plan* review process above.

3.5 SUBMITTAL REQUIREMENTS

MINOR AND MAJOR SITE PLANS

Minor and Major site plans have similar requirements. Please see chart below for submittals.

TYPE:	1. Narrative	2. Preview	3. Summary	4. Detailed	5. Concluding
MINOR	X	X	X		
MAJOR					
• Concept	X	X			
• Preliminary	X	X	X	X	
• Final	X	X	X	X	X
PLOT PLAN – see Section 6 below					

The following documents are required to be submitted along with an application for site plans.

1. NARRATIVE LIST ITEMS FOR WRITTEN DESCRIPTION

All applications for site plans shall contain a narrative. The *applicant* shall provide a narrative that addresses the following. The Planning Director may not require elements of the narrative that are not applicable to the proposed project.

- (A) Name and address of the landowner, the *developer* and/or representative, if different from the owner.
- (B) *Street* address, tax map, parcel number, and *subdivision* if any.
- (C) Zoning of *site*.
- (D) Current and proposed use of the property.
- (E) An explanation of the viewshed, *open space*, and conservation analysis undertaken during the design of the *site plan*.
- (F) How the proposed *development* complies with the *Comprehensive Plan* and the design and environmental standards of this Ordinance.
- (G) Proposed type of water and sewer service.
- (H) Number of employees.
- (I) The proposed *development* schedule and phases of *development* for all proposed construction.
- (J) A statement of provisions for ultimate ownership and maintenance of all parts of the *development* including *streets*, *structures*, and *open space*.
- (K) *Critical Area density* calculations based on the original parcel.
- (L) For water dependent uses and facilities in the *Critical Area*, the narrative will include the documentation as required in Article VI, Section 2, §2.14.6.

- (M) For any site plan that includes proposed manufacturing or industrial uses:
 - i. The type of raw materials, waste products, and other by-products associated with the process.
 - ii. The identity of all chemicals and solids to be discharged into the sewage system.
 - iii. The type and amount of traffic expected to be generated by the operation.
 - iv. The proposed hours of operation.
 - v. The proposed *architectural* design (graphic or narrative) of all *structures*.
- (N) Citizen Participation Plan or “CCP” (please refer to the Department for a CPP brochure) Citizen Participation meetings are held once, prior to initial project submittal. Citizen Participation Plans are not required for *Plot Plans*.

2. PREVIEW LIST ITEMS FOR PLANS

- (A) Scale – 1 inch = 100 feet or greater detail. The Planning Director may authorize the use of a different scale or not require a scale drawing, if, in the Director’s opinion, the information shown on the plat can be presented with equal clarity by the use of a different scale or drawing.
- (B) North arrow
- (C) Vicinity map, with *site* location clearly marked.
- (D) Title Block that includes:
 - i. Names of owners of record and where applicable, names of *developer*, *architect*, surveyor, planner, and/or *engineer*
 - ii. Location by *Street* Address, Election District, County and State
 - iii. Date of plan and all revisions
- (E) Names of adjoining property owners with Liber and Folio or name, recording reference, and *lot* numbers of adjoining recorded *subdivision*.
- (F) Property boundaries.
- (G) Where applicable, the *Critical Area* boundary and any required *Buffers*; *Stream Protection Corridor*; Habitat Protection Area; *Forest Stand Delineation*; *100-year floodplain* boundary and *flood* elevation.
- (H) Existing features, whether natural or manmade, that may influence the design of the project including but not limited to the following:
 - i. *Natural features* to be preserved in accordance with these *regulations*
 - ii. *Slopes* in excess of 15% separate from those in excess of 25%

- iii. *Watercourses*, including both *perennial* and *intermittent streams*
- iv. *Forest, tree groves*, and significant *trees*
- v. Outstanding natural topographic features
- vi. Tidal, State, and private, and *non-tidal wetlands*
- vii. Scenic, cultural and/or historic areas
- viii. Existing *buildings*, parking, and other *impervious surfaces*
- (I) Proposed use, *street* layout, parking and loading areas, *building setback* lines, *building* location, if known, and recreation and *open space* areas.
- (J) Conceptual *stormwater management*.
- (K) *Optional*: Photographs of similar projects and/or previous work for reference.

3. SUMMARY LIST ITEMS FOR PLANS

- (A) Signature Blocks for Director of Planning, Kent County *Health Officer*, and where applicable, the Director of Water and Wastewater Services.
Note: Preliminary Site Plans **DO NOT** need to include Signature Blocks for the Director of Planning, Kent County *Health Officer*, and the Director of Water and Wastewater Services.
- (B) *Easements*, covenants, *right of ways*, Public Drainage Association ditches, and *stormwater management structures* and devices and the purpose for which these *easements*, covenants and rights-of way were established
- (C) Existing and proposed *lot* coverage, existing *forest* and proposed *clearing* and *soils*.
- (D) The layout of all the proposal with the following:
 - i. Location, height and dimensions of *buildings* and *lots*
 - ii. The proposed use
 - iii. Proposed *setbacks*
 - iv. Proposed driveways, parking, and loading areas including the number of spaces
 - v. Areas reserved for public use, recreation, *open space*, utilities, other *easements*
 - vi. *Stormwater management* for Limits of Disturbance (LOD) that exceed 5,000 square feet
 - vii. Signs and lighting
- (E) A tabulation of the following:

- i. Total acreage
 - ii. Acreage in *100-year floodplain*
 - iii. Acreage in the *Critical Area*
 - iv. Acreage in recreation and *open space*
 - v. Acreage of *impervious surfaces*
 - vi. Acreage of forest coverage in the Critical Area
 - vii. Acreage of proposed clearing in the Critical Area
 - viii. Acreage of existing and proposed lot coverage in the Critical Area
 - ix. The total number of *dwelling units* or *building types*
 - x. Total area of *buildings*
 - xi. The number and type of multi-*family* units for each *structure* and the total number of units with the subtotal of each type
 - xii. The total number of parking and *loading spaces*, the number of parking and *loading spaces* in each *off-street parking* area, and total of number of handicap parking spaces
 - xiii. Where applicable, maximum number of employees
- (F) Location of any municipal or corporate limits, election district line, or *Critical Area* boundary close to or crossing the *tract*.
- (G) Proof that the required utilities, i.e., electric and telephone are available to the proposed *development*
- (H) The method and type of sewer and water service.
- (I) The current zoning classifications.
- (J) Width of *waterway*, depth measurements, *channel*, adjacent *piers*, or landings, and 25% of the *waterway*
- (K) Front, side, and rear elevations of all exterior walls, where applicable.
- (L) Traffic Study may be required by the *Planning Commission* or Planning Director.

Note: Minor Site Plans shall include *stormwater management* for Limits of Disturbance (LOD) that exceed 5,000 square feet. These plans are divided into three phases for other site plans.

4. DETAILED LIST ITEMS FOR PLANS

- (A) *Topography* via field survey work or LiDAR (Light Detection and Ranging) and a boundary survey. The Planning Director, or the Planning Director's designee, may not require submittal of field *topography*.

- (B) *Soil* classifications mapped
- (C) Sewer, water mains, culverts, fire hydrants, power transmission towers and the approximate location, pipe size, and direction of flow of each underground utility that exists in or is contiguous to the property.
- (D) Where applicable, approved septic and septic reserve areas and well locations
- (E) The location, width, and name of each existing improved or unimproved *street* or *alley* within 200 feet of the proposal.
- (F) Conceptual and schematic plans for:
 - i. Water and sewer services
 - ii. The storm drainage system, including the overall *drainage area*.
 - iii. *Grading* and *sediment* control measures
 - iv. Landscaping
- (G) Preliminary *stormwater management*.
- (H) Delineation of *development* staging, if any.

5. CONCLUDING LIST ITEMS FOR PLANS

- (A) Signature Blocks for the Chairman of the Kent County *Planning Commission*, Director of Planning, *Health Officer*, Kent Soil & Water Conservation District Director, and where applicable, Director of Water and Wastewater Services.
- (B) Location and description of all monuments as may be required.
- (C) No distances marked “approximate” except mean high water.
- (D) The exact dimensional layout of the project including *buildings*, parking, *loading spaces*, driveways, use, all *easements*, etc.
- (E) Registered surveyor’s, *architect’s*, and/or *engineer’s* signature and seal.
- (F) All landscaping, lighting, and signage.
- (G) Renderings and elevations, if applicable, including signs.
- (H) Deed restrictions and Public Works Agreements.
- (I) Signed Forest Conservation deeds, covenants, and easement for recordation.
- (J) Signed Stormwater Management easements and maintenance requirements.
- (K) All sureties required by Public Works, Health Department, and the Department, such as bonds, irrevocable letters of credit, or other surety accepted by the County Commissioners of Kent County.

6. PLOT PLANS – LIMITED SUBMITTAL ITEMS

This information shall be presented in a clear and legible manner but does not have to be to scale. The Planning Director or the Director's Designee may determine if any information is not needed.

- (A) Plat showing existing and proposed *topography*, location and dimensions of the *lot*, *lot* and block number, and name of *subdivision*, if any.
- (B) Road name(s), width of *right of way*, centerline, road widths, and *grades*.
- (C) *Front*, *side*, and *rear yard* widths, and *easements*.
- (D) *Sediment* control measures and limit of work.
- (E) Discharge and storm drainage measures including rights and *easements*.
- (F) *Stormwater management* plans and calculations for any Limit of Disturbance (LOD) that exceeds 5,000 square feet.
- (G) Legal restrictions (such as *easements*, existing covenants, zoning boundaries, etc.)
- (H) *Critical Area* boundary and acreage in the *Critical Area*.
- (I) Location of existing and proposed *structures*, *new construction*, driveways, other access, septic systems, and wells including the distance to all property lines.
- (J) Where applicable, areas of *afforestation* and/or *forest retention*.
- (K) Where applicable, the width of the *waterway*, location of the *channel*, riparian right lines, *tidal wetlands*, State, and private, and *non-tidal wetlands*.
- (L) Where applicable, existing and proposed *impervious surface* coverage, existing *forest* and proposed *clearing*, the minimum 100-foot *buffer*, *topography*, and *soils*.

3.6 GENERAL DESIGN STANDARDS – ALL ZONING DISTRICTS

The general design standards are re-organized into five categories: design guidelines for projects in all districts with additional guidelines for residential districts (AZD, RCD, RC, CAR, and CR), small-scale commercial and mixed-use districts (C, CCA, V, and IV), and large-scale commercial and industrial districts (M, EC, ECCA-IDA). These required design standards are **CUMULATIVE**. MXD and MXDCA proposals must draw from and combine applicable standards based on uses.

All projects proposed for *Plot Plan* or *Site Plan* review shall comply with the following standards.

SITE ACCESS

Site access shall be subject to the following regulations to help ensure vehicle and pedestrian safety and alleviate congestion:

1. **Safe Access.** The *applicant* will demonstrate that access to the project is adequate and the *roads* which will be impacted have the capacity to handle the traffic generated by the proposed project and will not endanger the safety of the general public.
2. **Planned Access.** Where a proposed road is designated on an approved County or State map, *site plans* for *development* adjacent to the designated *roadway* will include provisions for future access to the *roadway*.
3. **Consolidated Access.** All *site plans* will provide access for projects to a public or approved *private road*, and access will be consolidated whenever possible.
4. **Elevated Access.** Whenever possible, *roads* will be constructed above the elevation of the 100-year *floodplain*.
5. **Multimodal Access.** Pedestrian and bicycle links to adjacent *developments*, recreational facilities, and other public or semi-public uses will be provided whenever possible.
6. **ADA Access.** The design and construction of walkways and bicycle paths will be evaluated on the basis of safety, accessibility, and suitability, for use by motor-impaired individuals, and surface suitability in terms of anticipated use and maintenance requirements, per the 2010 ADA Standards for Accessible Design, as may be amended from time to time.
7. **Primary Access.** Where property abuts a primary, secondary, or collector road, access shall be by way of the secondary or collector road. Exceptions to this rule will be instances where the *Planning Commission*, or where applicable the Planning Director, determines that direct access onto the *primary road* would promote traffic safety.
8. **Shared Access.** Where one or more contiguous parcels abutting a *primary road* are under single ownership and any one of the parcels abuts a *secondary road* or collector road, access to all of the parcels of the parcels under single ownership shall be by way of the secondary or collector road. Exceptions to this rule shall be instances when the *Planning Commission*, or where applicable the Planning Director, determines that direct access onto the *primary road* would promote traffic safety.
9. **Limited Access.** Only one direct access approach onto a *primary road* from an individual parcel of record as of August 1, 1989, will be permitted unless the *Planning Commission*, or where applicable the Planning Director, finds one of the following:
 - (A) The *Planning Commission* may, with approval of the State Highway Administration or Kent County Public Works Department, approve additional access if the additional access is deemed to be significantly beneficial to the safety and operation of the highway; or, if allowing only one access approach would be a safety hazard or increase traffic congestion;
 - (B) The *Planning Commission* may approve access when the parcel is bisected by *steep slopes*, bodies of water, or other topographic features in a manner as to render some portion of the property inaccessible without additional road access.

LIGHTING

10. **Dark sky.** Lighting will be dark-sky compliant, emitting no light above the horizontal plane.
11. **Color-corrected.** Lighting will use bulbs with a CRI (Color Rendering Index) of 90 or above.
12. **Glare-free.** Lighting will be designed to avoid glare onto adjacent properties, *roadways*, and any *waterway*. Lighting will not interfere with traffic or create a safety hazard.
13. **Safety-oriented.** Lighting will be sufficient to provide for the safety and security of businesses, employees, and customers.
14. **Height Limit.** Lighting will be designed at the human scale and will not exceed 18 feet in height, unless mounted on a *building*. The *Planning Commission*, or where applicable the Planning Director, may set aside the height limitation.

ZONING REGULATIONS

15. *Site plans* shall comply with requirements in Article V. *Zoning Regulations* that include General Provisions, Parking and Loading, Signage Provisions, and Standards for Utility-Scale Solar Energy Systems. Additional requirements are included in the sections below.

ENVIRONMENTAL REGULATIONS

16. *Site plans* shall comply with requirements in Article VI. *Environmental Regulations* that include General Provisions, Forest Interior Birds, Habitat Protection Areas, Shoreline and Cliff Areas, Water Dependent Uses, Critical Areas, Forest Conservation, Erosion and Sediment Control, Stormwater Management, and Floodplain Management. Additional requirements are included in the sections below.

3.7 GENERAL DESIGN STANDARDS – RESIDENTIAL (AZD, RCD, RC, CAR, AND CR)

In addition to the All-Zoning Districts Design Standards set forth above, all projects proposed for *Plot Plan* or *Site Plan* in this review category review will also comply with the following additional standards.

1. **Purpose.** The purpose of these standards is to give a sense of the physical aspects of the County's environment to those contemplating new development in the community. Pertinent to this physical appearance is the design of the *site*, *buildings* and *structures*, plantings, *signs*, *street* hardware, and miscellaneous other objects observed by the public.

These standards are not intended to restrict imagination, innovation, or variety, but rather assist in focusing on design principles which can produce creative solutions that will develop a satisfactory visual appearance within the County, preserve taxable values, and promote the public health, safety, and welfare.
2. **For AZD and RCD Zoning Districts only.** *Agriculture* is the preferred use in these districts; agricultural operations in all districts are protected by the Kent County Right-to-Farm Law.
3. **Good Stewardship.** The reuse of existing *buildings* is encouraged.

4. **Conservation-based Design Principles.** The landscape shall be preserved in its natural state, in so far as possible, by minimizing *tree* and *soil* removal.
 - (A) Any grade changes shall be in keeping with the general appearance of neighboring *development* areas.
 - (B) *Buildings* are encouraged to be located so as to maintain maximum natural *topography* and cover.
 - (C) *Topography*, *tree* cover, and natural drainage ways shall be treated as fixed determinants rather than malleable elements that can be changed to follow a preferred *development* scheme.
 - (D) Whenever possible, *development* shall be outside the *floodplain*.
 - (E) Internal *streets*, roadways, and lanes shall be designed and located in a manner so as to maintain and preserve natural *topography*, cover, significant landmarks, and trees; to minimize *cut* and *fill*; and to preserve and enhance views and vistas on and off the subject parcel.
 - (F) Proposed *development* shall be related harmoniously to the terrain and to the use, scale, and architecture of existing *buildings* in the vicinity that have functional or visual relationships to the proposed *buildings*.
5. **Preservation.** Whenever possible, adverse effects on historic, traditional, or significant uses and *structures* shall be minimized, whether these exist on the *site* or on adjacent properties.
6. **Open Space.** All *open space* (landscaped and usable) shall be designed to add to the visual amenities of the area by maximizing its visibility to *persons* passing the *site* or overlooking it from nearby properties. *Open space* and naturally vegetative areas will be located, insofar as possible, so as to connect and expand existing greenways on adjacent *sites*.
7. **Signs.** The color, size, height, lighting, and landscaping of appurtenant *signs* and *structures* shall be evaluated for compatibility with the local architectural motif and the maintenance of views and vistas of natural landscapes, recognized historic landmarks, parks, and landscaping.
8. **Rural Design.** Whenever possible, proposed developments should incorporate design elements such as single loaded *streets*, reverse curves, terminal vistas of *open space*, and foreground meadows.
9. **Public Utilities.** Where public water and sewer services are available, then connection to public water and sewer systems may be required by the *Planning Commission*.
10. **Supplemental.** The *Planning Commission* or the Planning Director may require additional standards and requirements to those stated in this Article as are necessary for the protection of the environment and the health and safety of the residents of the County.

3.8 GENERAL DESIGN STANDARDS – SMALL-SCALE COMMERCIAL AND MIXED-
USE DESIGN STANDARDS (C, CCA, V AND IV)

In addition to the All-Zoning Districts Design Standards and Residential Design Standards set forth above, all projects proposed for *Plot Plan* or *Site Plan* in this review category review will also comply with the following additional standards.

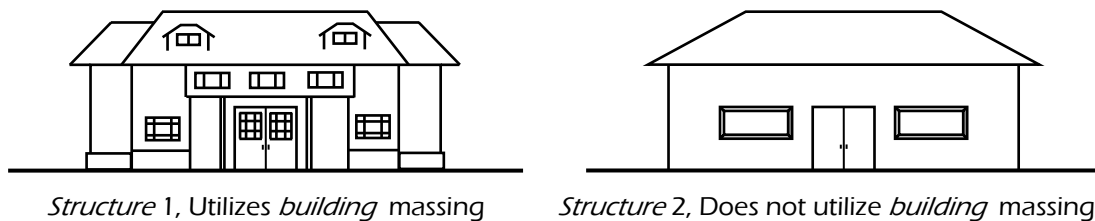
SITE DESIGN

1. **Purpose.** The purpose of imposing *regulations* governing *building* arrangement and *site* design is to help protect significant environmental and historic features, promote a sense of neighborhood and community identity and reduce the visual impact of high-density *development* on the surrounding area.
2. **Street Relationship.** Where existing *buildings* express a traditionally modest (pre-zoning) front *setback*, creating a characteristically close relationship with the *street* (as in village and town centers and along their approach *roads*), it is highly desirable to continue this pattern in order to retain the area's character. Therefore, the *setback* of *new construction* should harmonize with the average *setbacks* of existing *buildings*.
3. **Setback Variety.** Outside the areas of generally uniform *building setbacks* (where existing *structures* are at various distances from the *roadway*), front *setbacks* may vary to a greater degree, and principal *buildings* will generally be within 40 feet and no closer than 20 feet to the front line unless there are substantial counterbalancing considerations (such as irregular *topography*, *wetlands*, or the preservation of natural rural features, including pastures, crop land, meadows, or timber stands).
4. **Site Preservation.** Where significant *trees*, *groves*, *waterways*, historic, archeological, or prehistoric *sites* or unique habitats are within the property boundaries of a proposed project, the *Planning Commission*, or where applicable the Planning Director, may require that every possible means will be provided to preserve these features. In addition to identifying existing *natural features* per this Ordinance, an inventory of existing *on-site* historic and archeological features may be required.
5. **Building Variety.** Projects should reflect the unordered, historical growth of the village and avoid the cookie-cutter sameness of many new residential *subdivisions*.
6. **Pedestrian Emphasis.** Strong provisions should be made for walking as opposed to vehicular connections both within and outside of the new community.
7. **Streetscape Variety.** The *streetscape* of projects should be designed in detail to avoid repetitious *setbacks*, driveways, elevations, and landscaping.
8. **Design Diversity.** Projects should carefully study and reflect the physical diversity of the existing village in regard to the mixture of housing types; a mixture of housing styles; and a mixture of *lot* sizes and shapes.

9. **Supplemental.** The *Planning Commission* or the Planning Director may require additional standards and requirements to those stated in this Article as are necessary for the protection of the environment and the health and safety of the citizens of the County.

BUILDING DESIGN

10. **Sense of Place.** *Buildings* should be designed to enhance the community's sense of place by varying building massing and roof treatments, and by using building components and architectural design that emphasize the human scale. Commercial establishments are encouraged to limit the visual impression of height by the use of roof treatments and varying the plane of exterior walls. Projects should be an extension of the overall village *development* pattern rather than stand in contrast to it.
11. **Context Sensitive.** *New construction* throughout the village should be compatible with the surrounding properties, in terms of formal characteristics such as height, massing, roof shapes and window proportions. When *new construction* is surrounded by existing historic *buildings*, *building* height and exterior materials will be harmonious with those of adjacent properties.
12. **Human Scale.** New *buildings* should not create large, *bulky*, masses but should be scaled down into groupings of smaller attached *structures* and modules that reflect proportions similar to historic *buildings*. Methods used to create intervals that reflect and respect *historic structures* include but are not limited to the following:
- (A) Façade modulation – stepping back or extending forward a portion of a façade.
 - (B) Repeating window patterns at established intervals.
 - (C) Providing a balcony or bay window at established intervals.
 - (D) Changing the roofline by alternating dormers, stepped roofs, gables, or other roof elements.
 - (E) Use of landscaping and *architectural* detailing at the ground level.



The above *structures* are the same height and width and are drawn to the same scale.

13. **Materials.** *Building* designs will be encouraged to utilize traditional materials (brick or wood) and contemporary interpretations of earlier styles.

14. **Identity-building.** The design of new *buildings*, *building* additions, *alterations*, and façade renovations should reflect the positive aspects of the existing design features of the County. *Buildings* should complement and improve the overall environment of the area
15. **Orientation and Scale.** The proposed *building* orientation will respect the orientation and scale of surrounding *buildings* and where deemed necessary by the *Planning Commission* serve as an orderly transition to a different scale.
16. **Rooftop Screening.** All rooftop equipment will be *screened* from public view by *screening* material of the same nature as the *building's* basic *building* materials.
17. **Multi-Family projects:**
 - (A) To avoid monotonous linear *development*, multi-*family development* will be in small clusters designed as neighborhood units. A cluster will not include more than 30 units.
 - (B) In multi-*family development*, the number of units in a row is to be limited to a maximum of eight.
 - (C) *Offsets* at party walls and/or front and rear facades or similar devices are required to visually reduce *building* mass and create individualized spaces (*courtyards*, seating areas, etc.) for all multi-*family* projects. Drawings of the *building* elevations will be required. The *Planning Commission*, or where applicable Planning Director, may set aside this requirement.

COMMERCIAL DESIGN

18. **Local Design.** Corporate or trademark architecture will not be permitted.
19. **Massing.** Varied building massing is encouraged to enhance the community's sense of place.
20. **Street Relationship.** Commercial *building* projects and *buildings* in *shopping centers* are encouraged to be arranged in varied clustered masses related closely to the road.
21. **Projections and Porches.** Arches, porches, arcades, overhangs, roofs, and varying façade *setbacks* are encouraged on *buildings* and *shopping centers*.
22. **Scale.** The scale within a *shopping center* will be consistent throughout the center. Where anchor or major tenants require larger *building* areas, the larger scale of these units will be broken down into comparable to the predominant unit in the *development*. The placement of anchor stores will consider the overall balance of the center.
23. **Fenestration.** Commercial establishments, offices, and financial institutions emphasize personal service as their primary products. These *structures* should reflect personal service by their architectural design which is at a human scale at entries and interior spaces. Building components such as windows, wooden doors, and decorative trim should emphasize the human scale in coordination with each other and the building scale.

24. **Articulation.** Each unit of *development*, and the total *development*, will create an environment of desirability and stability. Commercial establishments are encouraged to limit the visual impression of height by the use of roof treatments and varying the plane of exterior walls.
25. **Display Areas.** Whenever possible, display areas should be incorporated into the overall design of the *site*. Display areas will not be in the *front yard setback*.
26. **Auxiliary Facilities and Functions.** Loading docks, trash collection, and similar facilities and functions will be incorporated into the overall design of the *building* and landscaping so that the visual and acoustic impacts of these functions are fully contained and out of view from adjacent properties and public *streets*.

LANDSCAPE - GENERAL

27. **Total Requirement.** A minimum area of 15% of each new or redeveloped *site*, excluding *single family dwellings*, will be landscaped. Landscaping within the parking areas and *screening* may be counted toward this requirement. The *front yard* will be landscaped and maintained in a neat and attractive condition.
28. **Maintenance.** *Sites* will be permanently maintained in good condition with at least the same quality and quantity of landscaping as originally proposed.
29. **Professionals.** The *landscape plan* will be prepared by a registered professional *forester*, *landscape architect*, or other professional with equivalent experience and qualifications.
30. **Exemptions.** The *Planning Commission*, or where applicable the Planning Director, may reduce or set aside the landscape requirement when it is demonstrated that the spirit and intent of the requirement are accomplished through other means, or the nature of the change does not require additional landscaping.

LANDSCAPE – PERIMETER AND SCREENING

31. **Purpose.** *Yards*, fences, walls, or vegetative *screening* will be provided where needed to protect residential districts or public *streets* from undesirable views, lighting, noise, or other *off-site* influences. In particular, outdoor storage, extensive *off-street parking* areas, and service areas for loading and unloading vehicles, and for storage and collection of refuse and garbage will be effectively *screened*.
32. **Screening** is required to protect adjoining properties and *roadways* from noise, glare, and uses which are visually incompatible with neighboring land uses. *Screening* is required:
 - (A) On *sites* which involve loading or unloading (including the storage of vehicles and boats), trash, or disposal areas and where accessory *buildings* and *structures* are adjacent to residential properties.
 - (B) Where exterior storage areas are visible from *roadways*, sidewalks, or nearby residential properties.

- (C) When noise not typically occurring in residential areas is expected to project onto nearby properties.
 - (D) To *screen* parking areas, but not approved display areas, from motorists, pedestrians, and adjoining residential properties.
 - (E) Where the commercial or industrial *site* abuts a residential district or a primary or *secondary road*.
 - (F) Where the *Planning Commission* determines that additional *screening* is necessary to protect properties in the area.
33. **Integration.** Landscaped *screens* will be designed to complement other landscaping occurring naturally on the *site*, planted previously, or approved as a part of a *site plan*. Whenever possible, existing vegetation and landform will be used to create *screens*.
34. **Duration.** The *screen* will be capable of providing year-round *screening*.
35. **Noise.** When noise is likely to be a factor, the *screen* will be of sufficient construction to be an effective noise *buffer*.
36. **Components.** *Screening* will consist of *trees* and plants, and may include masonry, or wooden fencing used with or without *berms*. *Screening* will consist of a functional and well-designed combination of the following:
- (A) Vegetative ground cover
 - (B) Coniferous and deciduous shrubs, specimens of which will reach and maintain a minimum height of five (5) feet of full vegetative growth and which measure a minimum of three (3) feet in height at the time of planting and are expected to attain a minimum height of five (5) feet within three (3) years.
 - (C) Coniferous and deciduous *trees*, species and sizes of which will be chosen to best accomplish an adequate *screen* (i.e., evergreens used for visual *screening*, deciduous *trees* for seasonal *screening*).
37. **Substitutions.** Natural *slopes* and existing vegetation may be substituted for some or all of the requirements above, provided that these features serve to *screen* the area from adjoining properties and *roadways*. The *Planning Commission*, or where applicable the Planning Director, will determine the acceptability of using existing *slopes* and vegetation for this purpose. The *Planning Commission*, or where applicable the Planning Director, may set aside *screening* where it is physically impossible to accomplish.
38. **Maintenance.** *Screening* and fencing will be maintained in good condition and (with) in at least the same quality and quantity as initially approved.

3.9 GENERAL DESIGN STANDARDS – MAJOR-SCALE COMMERCIAL AND INDUSTRIAL DESIGN STANDARDS (M, EC, AND ECCA-IDA)

MARINE DESIGN STANDARDS

1. **General Standards.** Projects in the Marine district will comply with the Design Standards for All Zoning Districts and enumerated items 3-7 from the Residential Design Standards.
2. **Overall Landscape Requirement.** A minimum area of 10% of each new *development* will be landscaped. *Buffers* and *screening* count in the calculation of the landscaped area. This may be set aside by the *Planning Commission* or where applicable the Planning Director. All projects will meet the landscape requirements in the Design Standards above for Perimeters and Screening as well as the requirements set forth in Article V for Parking and Loading. All projects will comply with the General Landscape Requirements in the section above.
3. **Specific Design.** *Private Destination / Residence Clubs* will comply with the Mixed-Use Design Standards for Site Design and Building Design as well as Landscape requirements.

EMPLOYMENT CENTER AND ECCA-IDA DESIGN STANDARDS

In addition to the All-Zoning Districts Design Standards, Residential Design Standards, Small-Scale Commercial and Mixed-Use Design Standards set forth above, all projects proposed for *Site Plan* in this review category review will also comply with the following additional standards.

4. **Overall Landscape Requirement.** There is no minimum area of landscaping beyond the landscape requirements set forth in the Design Standards above for Perimeters and Screening, as well as the requirements set forth in Article V for Parking and Loading. All projects will comply with all landscape requirements in all Design Standards above.
5. **Curb Cut Limitations.** Projects in any Employment Center zoning district will not create or be a continuation of highway strip *development* with multiple access points or curb *cuts* within 3,000 feet of each other on a State or County Road, in so far as possible. The *Planning Commission* may waive this requirement, per the standards provided under the Waivers section below.
6. **Enclosed Structures.** In so far as possible, all uses will be conducted within a completely enclosed *structure* or be completely *screened*. Outdoor storage of materials and unfinished products is prohibited unless otherwise approved by the *Planning Commission* and subject to such conditions as may be determined by the *Planning Commission*. Finished or semi-finished products manufactured on the *premises* may be stored in the open if *screened* from the *street* and adjacent uses.
7. **Traffic Flow.** Principal vehicular access points will be designed to encourage smooth traffic flow with controlled turning movements and minimum hazards to vehicular or pedestrian traffic. Storage, turn lanes, or traffic dividers may be required by the *Planning Commission* where existing or anticipated heavy flows indicate need.
8. **Public Utilities.** Where public water and sewer are available, then connections to public water and sewer systems are mandatory.

PERFORMANCE STANDARDS FOR INDUSTRIAL AND MANUFACTURING USES

9. **General.** Designs for newly proposed uses will meet the following performance standards.

10. **Points of measurement** to determine compliance with performance standards will be the property *lot line* or zoning line nearest the source that is the subject of measurement.
11. **Noise.** All sources of noise (except those not under direct control of occupant of use, such as vehicles), will not create sound or impact noise levels in excess of the values specified below when measured at the points indicated. In addition, between 7:00 P.M. and 7:00 A.M., the permissible sound levels at a residential district boundary adjoining Employment Center Districts, will be reduced by five decibels in each octave band and in the overall band for impact noises.
- (A) Noise will be measured by means of a sound level meter and octave band analyzer, calibrated in decibels (re 0.0002 microbar), and will be measured at the nearest *lot line* from which the noise level radiates. Impact noises will be measured by means of an impact noise analyzer. Impact noises are those whose *peak values* fluctuate more than six decibels from the steady values indicated on the sound level meter set at fast response.
- (B) Decibel – A measurement of the intensity (volume) of a sound.
- (C) Octave band – A prescribed interval of sound frequencies which classifies sound according to its pitch.
- (D) Preferred frequency octave bands – A stigmatized series of octave bands prescribed by the American Standards Association in Sel. 6-1970 Preferred Frequencies for Acoustical Measurements.
- (E) Sound level meter – An electronic instrument which includes a microphone, an amplifier, and an output meter which measures noise and sound pressure levels in a specified manner. It may be used with the octave band analyzer that permits measuring the sound pressure level in discrete octave bands.

MAXIMUM PERMITTED SOUND LEVELS (Decibels)		
Octave band, cycles/second	At residential boundaries	At other <i>lot lines</i>
31.5	64	72
63	64	74
125	60	70
250	54	65
500	48	59
1,000	42	55
2,000	38	51
4,000	34	47
8,000	30	44
Overall	80	90

- (F) **Vibration.** The product of displacement in inches times the frequency in cycles per second of earthborn vibrations from any activity will not exceed the values

specified below when measured at the points indicated. Earthborn vibrations will be measured by means of a three-component recording system, capable of measuring vibration in three mutually perpendicular directions. The displacement will be the maximum instantaneous vector sum of the amplitude in the three directions.

MAXIMUM PERMITTED VIBRATIONS (INCHES PER SECOND)		
AREA OF MEASUREMENT		
Type of Vibrations	At Residential Boundaries	At other <i>Lot lines</i>
Continuous	0.003	0.015
Impulsive – 100/min or less	0.006	0.030
Less than 8 pulses per 24 hours	0.015	0.075

12. **Glare.** No direct or sky reflected glare, whether from *flood* lights or from high temperature processes such as combustion, welding or otherwise, is to be visible beyond the *lot line*, except for signs, parking *lot* lighting and other lighting permitted by this Ordinance or required by any other applicable regulation, ordinance, or law.
13. **Air pollution.** The rules and *regulations* of the State of Maryland will apply.
14. **Water pollution.** The rules and *regulations* of the State of Maryland will apply.
15. **Radioactivity.** There will be no radioactive emission which would be dangerous to the health and safety of *persons* on or beyond the *premises* where such radioactive material is used. Determination of existence of such danger and the handling of radioactive materials, the discharge of such materials into the atmosphere and streams or other water, and the disposal of radioactive wastes will be by reference to and in accordance with applicable current *regulations* of the governments of the United States and Maryland.
16. **Electrical interference.** There will be no electrical disturbance emanating from any *lot* that would adversely affect the operation of any equipment on any other *lot* or *premises*.
17. **Smoke and particulate matter limitations**
 - (A) General limitations. In addition to the performance standard specified hereinafter, the emission of smoke or particulate matter in such manner or quantity as to be detrimental to or endanger the public health, safety, comfort, or welfare is hereby declared to be a public nuisance and will henceforth be unlawful.
 - (B) Particulate matter emission caused by the wind from open storage areas, *yards, roads, etc.*, within *lot lines* will be kept to a minimum by appropriate landscaping, paving, wetting, or other means.
 - (C) For the purposes of determining the *density* or equivalent opacity of smoke, the Ringelmann Chart as adopted and published by the United States Bureau of Mines in Circular No. 8333 (7718) will be employed.

- (D) Permitted smoke emission. Within 1,000 feet of a residence or commercial zoning district boundary line, the emission of visible smoke from any vent, stack, chimney, or combustion process, darker than Ringelmann No.2 for a period or periods aggregating more than 4 minutes in any 60-minute period will not be permitted.
18. **Toxic matter limitations.** In any Employment Center District, toxic materials which are released will not exceed 10% of the maximum permissible airborne concentration allowed an industrial worker when measured at any point beyond the *lot line*, either at ground level or habitable elevation, whichever is more restrictive. When maximum permissible airborne concentrations of toxic materials allowed an industrial worker are not contained in the most recent list of Threshold Limit Values published by the American Conference of Governmental Industrial Hygienists, the *applicant* will satisfy the County *Health Officer* that proposed levels will be safe to the general population.
19. **Odorous matter limitations.** The release of odorous matter from any Employment Center District across residential or commercial district boundary lines will be so controlled that at ground level or at habitable elevations the concentration will not exceed the odor threshold lines. Further, the release of odorous matter across *lot lines* will not become a nuisance or source of discomfort to neighboring uses. As a guide in determining qualities of offensive odors, Table III (*Odor Thresholds*), Chapter 5, *Air Pollution Abatement Manual*, by Manufacturing Chemists Association, Inc., as amended, may be used.
20. **Certified *engineer's* report - first submittal.** The *applicant* for a *grading permit*, *sediment control permit*, or *building permit* for uses in an Employment Center District, or *applicants* for *variances* to the district will be required to submit proof that the uses proposed will not cause *violations* of Federal, State or County laws or *regulations*. For industrial uses which will produce emissions of pollutants to the waters or air of the County, this proof will include measurements of the ambient water and air quality as well as documentation in the form of figures that the additional planned and proposed industrial use will not cause the *violation* of either ambient or source standards outlined by the laws and *regulations* of the Federal, State, or County governments.
21. **Certified *engineer's* report - additional submittals required.** Each future occupant of an industrial character will submit to the County as a part of final *site development plan* approval, a certified *engineer's* report describing: the proposed operation, all machines, processes, products and by-products, stating the nature and expected levels of emission or discharge to land, air, water or liquid, solid, or gaseous effluent and electrical impulses, vibrations and noise under normal operations and the specifications or treatment methods and mechanisms to be used to control such emission or discharge.
22. **Expansion, modification, or enlargement.** Existing industrial uses will be permitted to continue and to expand, enlarge or modify provided that the industry continues to comply with the performance standards. Existing industrial uses that do not conform to the performance standards will be permitted to expand, modify, or enlarge provided the expansion, modification, or enlargement does not increase the degree of

nonconformance and that the *applicant* submits a statement that identifies measures to bring the industry into compliance. When the *Planning Commission* finds that an existing industry is not making a good faith effort to comply with the performance standards, the *Planning Commission* may deny an application for expansion, modification, or enlargement and may initiate an enforcement action.

SECTION 4 SPECIAL EXCEPTIONS

4.1 STATEMENT OF INTENT

Special Exception uses are allowed and presumed to be compatible with other permitted uses in a zoning district; however, a review process is required to evaluate whether the particular use proposed at a particular location would have any adverse effects above and beyond those inherently associated with such a use irrespective of its location within the zoning district and to ensure that *development* complies with the *Comprehensive Plan*, the Land Use Ordinance and various agency requirements, thereby promoting the health, safety, and general welfare of Kent County's residents.

4.2 CRITICAL AREA COMMISSION REVIEW AND COMMENT REQUIRED

1. As required by the State of Maryland, Kent County will send copies of applications for all *developments*, subdivisions, and *site plans*, wholly or partially within the Critical Area, as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment. This includes all applicable projects located in the RCD, CAR, CCA, M, ECCA, and MXDCA zoning districts.
2. Until Kent County has received notice of receipt from the Critical Area Commission or the appropriate waiting period per the State of Maryland has expired, the County may not approve an application that has been sent to the Critical Area Commission for notification.
3. Per the State of Maryland, any action by Kent County in violation of these State-required procedures shall be void.

4.3 TYPES OF SPECIAL EXCEPTIONS.

1. Administrative Special Exceptions.

The Planning Director or the Planning Director's designee will have the right, but not the obligation, to hear and decide the following special exceptions when indicated as special exceptions in individual zoning districts:

- (A) Accessory residential structures with a footprint of more than 2,000 sf
- (B) Accessory sheds on properties less than 20 acres in size
- (C) Accessory structures in the front yard requirement of waterfront parcels
- (D) Accessory structures in a front yard of through or corner lots
- (E) Adaptive reuse of existing structures in AZD, located on parcels under 20 acres
- (F) Assisted living facilities with five to eight beds
- (G) Cottage industries, tradesmen, and artisan shops
- (H) Day care group

- (I) Single family dwellings
- 2. Special Exceptions evaluated by the Boards of Appeal after *Planning Commission* review.
 - (A) Adaptive reuse of historic structures for uses not otherwise listed
 - (B) Agritourism on farms, as defined in Article VII
 - (C) *Aquaculture*
 - (D) *Airport*, landing field, heliport, or helistop, public or private
 - (E) Animal husbandry – all categories requiring special exception approval
 - (F) Assisted living facility with nine to sixteen beds
 - (G) Attached retail businesses
 - (H) *Automobile repair*
 - (I) *Automobile service stations*
 - (J) Boat *building*, repairs, and sales
 - (K) Car wash
 - (L) Cemetery, including crematorium and mausoleum
 - (M) *Conference center*
 - (N) Convalescent, nursing, or *group homes* for the aged with five or more beds
 - (O) *Country inn*
 - (P) *Country stores*
 - (Q) Dredge spoil *site*
 - (R) *Excavation, landscaping, and other contractor's yard*
 - (S) Farm Employee Housing
 - (T) Golf courses, public or private
 - (U) *Hospitals*, rehabilitation facilities, or other similar institutions for human care
 - (V) Houses of worship
 - (W) 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.
 - (X) Livestock auction houses, located on farms
 - (Y) Migrant labor camps
 - (Z) *Mobile home parks*
 - (AA) Multi-level boat storage

(BB)	Outdoor entertainment
(CC)	Outdoor recreation, miniature golf, but not golf courses
(DD)	Outdoor Retreats
(EE)	<i>Personal wireless facility tower</i>
(FF)	Poultry houses on parcels where the owner cannot handle the waste generated
(GG)	Printing and publishing
(HH)	Private schools
(II)	Production of biofuels
(JJ)	<i>Public uses, buildings, utilities and structures</i>
(KK)	Pubs, taverns, and bars
(LL)	Radio and television tower, commercial
(MM)	Recreational facilities
(NN)	<i>Resorts</i>
(OO)	<i>Restaurants</i> with drive through facilities in the Route 301 Corridor
(PP)	Retail businesses
(QQ)	<i>Retreats</i>
(RR)	<i>Rural Inns</i>
(SS)	Sand and gravel pits
(TT)	<i>Sanitary landfill</i> or rubble fill
(UU)	School bus parking <i>lot</i>
(VV)	Seafood processing
(WW)	Septic tank maintenance and excavation
(XX)	<i>Shopping centers</i>
(YY)	<i>Solar energy systems, utility</i>
(ZZ)	<i>Solar energy systems, utility scale on farms</i>
(AAA)	Structures for the buying, processing, and sale of animal products
(BBB)	Tie-out pilings of private <i>piers</i> , <i>community piers</i> , and private shared <i>piers</i> , installed at a distance not to exceed 25% of the width of the <i>waterway</i> , the edge of the <i>channel</i> , 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.
(CCC)	Truck parking <i>lot</i>

- (DDD) *Truck stops*
 - (EEE) *Truck terminals*
 - (FFF) Weddings on farms as commercial enterprises
 - (GGG) Wind energy systems, small
 - (HHH) Wind energy systems, small, with a height that exceeds 80 feet or on a *lot* less than 20 acres
3. Special Exceptions evaluated by the Board of Appeals only.
- (A) *Dog kennels, commercial*
 - (B) Dormitories for employees
 - (C) Exposition center or fairgrounds
 - (D) *Farm* employee housing
 - (E) *Private clubs*
 - (F) *Public landings*
 - (G) Rifle and pistol ranges
 - (H) *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

4.4 CRITERIA FOR GRANTING SPECIAL EXCEPTIONS

A special exception may not be authorized, unless the Board of Appeals, or where applicable the Planning Director, finds that the establishment, maintenance, or operation of the special exception meets the standards set forth in this Section. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all questions of fact which are determined by the Board or where applicable the Planning Director.

Unless otherwise specified in this Section or as a condition of approval, the height, *yard*, *lot area*, design, environmental, parking, and *sign* requirements will be the same as other uses in the district in which the special exception is located.

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 and Land Use Ordinance;
15. Consistency with the Critical Area Program; and
16. Compatibility with existing and planned land use as described in the Comprehensive Plan and the Land Use Ordinance.

4.5 CONDITIONS AND GUARANTEES FOR SPECIAL EXCEPTIONS

1. 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.
2. Special Exception uses will be evaluated using the specific conditions in Article III Uses.
3. General conditions or restrictions may also include but are not limited to the following:
 - (A) Hours of operation
 - (B) Permitted expansion
 - (C) On-premises sales
 - (D) Exterior display, lighting, storage, signs, and other indicators or appearance of a business that may detract from the general character of the area
 - (E) Location of parking
 - (F) Increased *setbacks* and *screening*
 - (G) Landscaping
 - (H) The size and type of equipment

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- (I) The number of clients allowed on *premises* at one time or class size
 - (J) Accessory vehicles
 - (K) *Accessory uses*
 - (L) Letters of credit, bonds, or other surety, except relating to *Cottage industries, tradesmen, and artisan shops*, which may be set aside by the Planning Director
- 4. The Board of Appeals may hire expertise as may be needed to provide advice and assist in its decision-making. In its recommendation, the *Planning Commission* may recommend that additional expertise is warranted.
 - 5. 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 will be implemented. Failure to comply with such conditions or restrictions imposed will constitute a *violation* of this Land Use Ordinance and the Department may revoke permits issued under the special exception.
 - 6. Amendments to special exceptions are addressed in Article IV, Section 1.14. §5.

SECTION 5 VARIANCES

5.1 STATEMENT OF INTENT

The granting of *variances* will comply, as nearly as possible, in every respect to the spirit, intent, and purpose of this Land Use Ordinance; variances are granted to (a) relieve *unwarranted hardships* or other injustices arising out of the strict application of the provisions of this Land Use Ordinance and (b) for reasons of demonstrable practical difficulties, as distinguished from variations sought for purposes or reasons of convenience, profit, or caprice.

5.2 REASONABLE ACCOMODATIONS FOR PERSONS ENCOUNTERING DISABILITY

Any request for reasonable accommodations as a result of a disability shall meet the standards for disability as defined in the Americans with Disabilities Act (ADA), 42 U.S.C. §§ 12101 et seq. The County may require removal of a structure that was installed or built to accommodate a physical disability and require restoration when the accommodation permitted by this paragraph is no longer necessary

5.3 CRITICAL AREA COMMISSION REVIEW AND COMMENT REQUIRED

1. As required by the State of Maryland, Kent County will send copies of applications for all *developments*, subdivisions, and *site plans*, wholly or partially within the Critical Area, as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment. This includes all applicable projects located in the RCD, CAR, CCA, M, ECCA, and MXDCA zoning districts.
2. Until Kent County has received notice of receipt from the Critical Area Commission or the appropriate waiting period per the State of Maryland has expired, the County may not approve an application that has been sent to the Critical Area Commission for notification.
3. Per the State of Maryland, any action by Kent County in violation of these State-required procedures shall be void.

5.4 TYPES OF VARIANCES

1. Administrative Zoning *Variances*

The Planning Director, or Planning Director's designee, may authorize, upon application, *variances* from the *yard* (*front, side, or rear*), but not *buffer* in an amount that does not exceed 50% of the required *yard* for the applicable zoning district. Height, parking, sign, and loading requirements may be varied up to 50% of limits. At the Director's discretion, any *variance* of this nature may be submitted to the Board of Appeals for approval.

2. Administrative *Critical Area Variances*

The Planning Director, or Planning Director's designee, may authorize, upon application, *variances* from (1) 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 when there is tree clearing, and (2) developed woodland clearing limits on lots greater than one-half acre up to one acre. At the Director's discretion, any *variance* of this nature may be submitted to the Board of Appeals for approval.

3. *Zoning and Critical Area Variances*

The Kent County Board of Appeals may authorize, upon application, *variances* from the *yard (front, side, or rear)*, height, *bulk*, parking, sign, loading, *shoreline cliff*, 15% *slope*, *pier length*, *impervious surface*, *stream protection corridor*, *forest conservation retention* provisions, *buffer* requirements, and any non-use-related provision of this Ordinance.

4. *Floodplain Variances*

The Kent County Board of Appeals may authorize, upon application, *variances* from the *floodplain* provisions of this Land Use Ordinance. Such granting of a *variance* will comply, as nearly as possible, in every respect to the spirit, intent, and purpose of the *floodplain regulations* and sound *floodplain* management.

5. *Stormwater Management Variances*

The Kent County Board of Appeals may grant a written *variance* from the *stormwater* requirements found in this Land Use Ordinance. A written request for *variance* will be provided to the County and will state the specific *variances* sought and reasons for their granting. The County will evaluate the cumulative effects of other *developments* that are relinquished from the requirements of *stormwater management*.

5.5 CRITERIA FOR ZONING VARIANCES

1. In order to grant a *variance*, the following shall be found:

- (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 Land Use Ordinance.
- (D) That the practical difficulty or other injustice was caused by the following:
 - i. Some unusual characteristics 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 will not apply in the *Critical Area*.
- (E) That the practical difficulty or other injustice was not caused by the *applicants'* own actions.
- (F) In considering an application for a *variance*, the reasonable use of the entire parcel or *lot* for which the *variance* is requested will be considered.

- (G) The cause of a *variance* request may be considered, and if a *variance* request is the result of actions by the *applicant*, including whether commencement of *development* activity occurred before an application for a *variance* was filed.

5.6 CRITERIA FOR *CRITICAL AREA VARIANCES*

1. In order to grant a *variance*, the following shall be found:

- (A) 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;
- (B) That the granting of a *variance* will not adversely affect water quality or adversely impact fish, wildlife, or *plant habitat*;
- (C) That the application for a *variance* will be made in writing with a copy provided to the *Critical Area* Commission;
- (D) That the strict application of the Land Use Ordinance would produce an *unwarranted hardship*;
- (E) Such hardship is not shared generally by other properties in the same zoning district and the same vicinity;
- (F) 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*;
- (G) That a literal interpretation of this Land Use Ordinance deprives the *applicant* of rights commonly enjoyed by other properties in similar areas within the *Critical Area* of Kent County;
- (H) 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*;
- (I) 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 Land Use Ordinance would result in *unwarranted hardship* to the *applicant*;
- (J) The Board of Appeals finds that the *applicant* has satisfied each one of the *variance* provisions;
- (K) 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.
- (L) In considering an application for a *Critical Area variance*, it is presumed 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.

- (M) The cause of a *variance* request may be considered, and if a *variance* request is the result of actions by the *applicant*, including whether commencement of *development* activity occurred before an application for a *variance* was filed.
- (N) The variance request does not arise from any conforming or non-conforming condition on any neighboring property.
- (O) In accordance with Natural Resource Article §8-1808, Critical Area variances must be tied to written decisions.
- (P) AFTER-THE-FACT REQUESTS
 - i. Kent County may not accept an application of a variance to legalize a violation, including an unpermitted or otherwise authorized structure or other development activity until the local jurisdiction:
 - 1. Issues a notice of violation; and
 - 2. Assesses an administrative or civil penalty for the violation.
 - ii. Kent County may not issue a permit, approval, variance, or special exception to legalize a violation of this subtitle unless an applicant has:
 - 1. Fully paid all administrative, civil and criminal penalties imposed under Natural Resources Article, §8-1808(c)(l), Annotated Code of Maryland;
 - 2. Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and
 - 3. Performed the abatement measures in the approved plan in accordance with the local Critical Area program.
 - iii. If the Board denies the requested after-the-fact variance, then Kent County shall:
 - 1. Order removal or relocation of any structure; and
 - 2. Order restoration of the affected resources.

5.7 CONDITIONS FOR ZONING AND CRITICAL AREA VARIANCES

- 1. In granting a *variance*, the Board may choose or not choose to 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) Roof 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.

5.8 CRITERIA FOR FLOODPLAIN VARIANCES

1. In order to grant a *variance*, the Board shall 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 dependent 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.

5.9 CONDITIONS FOR FLOODPLAIN VARIANCES

1. In granting a *variance*, the Board may choose or not choose to limit the approval by such conditions as the case may require, including but not limited to, the imposition of the following specifications:
 - (A) That a record of the *variance* and any conditions are recorded with the Kent County Clerk of Court.
 - (B) That a letter will 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.
 - (C) The Board will maintain a record of all *variance* procedures which will be available for review by FEMA
 - (D) The Planning Director, or the Planning Director's designee, will 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.

5.10 CRITERIA FOR STORMWATER VARIANCES

1. In order to grant a variance, the County shall 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 Land Use Ordinance.
 - (B) Implementation of *environmental site design (ESD)* to the *maximum extent practicable (MEP)* has been investigated thoroughly.

SECTION 6 WAIVERS

6.1 STATEMENT OF INTENT

1. Waivers are intended to provide an in-review approval process for specific provisions that are considered to be alternative compliance as opposed to variation requiring a variance. Waivers are not advertised as public hearings but can be included as part of a noticed public meeting, if applicable, and noted on the public agenda for review. Waivers may be granted by the *Planning Commission* during subdivision or site plan reviews, or where applicable by the County staff for stormwater management during the building permit review process. The building permit review process is neither advertised nor noticed.

Note: This process has been re-structured. Some waivers had previously been structured like variances that could be granted by the *Planning Commission*. The Board of Appeals is the appropriate body to grant variances. Since waivers relate to standards for the design of projects, waivers are re-structured as a design-based, alternative compliance process.

Note: Forest conservation retention alterations now require a variance to be granted by Board of Appeals. Forest conservation retention provisions are not a design-related issue.

6.2 TYPES OF WAIVERS AND CRITERIA– *PLANNING COMMISSION* WAIVERS

1. DATA PROCESSING CENTERS - ALTERNATE DESIGN

Upon the affirmative recommendation of the Planning Director, *applicants* may present for approval to the *Planning Commission* an alternate design solution to the general design standards in Section 3 above. *Applicants* will include a separate written narrative that explains how the proposed alternative design solution differs from requirements and the reasons for the changes proposed. The *Planning Commission* may require additional standards and requirements for the protection of the environment and the health and safety of the residents of the County.

2. CURB CUTS IN THE EMPLOYMENT CENTER DISTRICT

The *Planning Commission* may authorize *waivers* in EC and ECCA-IDA for multiple access points or curb cuts within 3,000 feet of each other on a State or County Road, within the boundaries of a single project and also among different highway strip *developments*.

3. SUBDIVISION/*PRIVATE ROADS*/ROAD FRONT *LOTS*/ DESIGNATED DESIGN STANDARDS

The *Planning Commission* may authorize *waivers* of the design aspects of *subdivisions*, *private roads*, road front *lots*, and certain designated design standard provisions of this Land Use Ordinance in order to provide for alternative compliance for design standards.

4. PARKING LOT DESIGN

The *Planning Commission* may approve alternate designs for shared parking, parking lot designs, and parking lot landscaping provisions found in Article V, Section 2.

5. CRITERIA FOR WAIVERS

The *Planning Commission* may approve a waiver requested under one of the categories above for alternative compliance, when the Planning Commission finds the following:

- (A) That the *waiver* is consistent with the *Comprehensive Plan*, and where applicable the adopted *Major Thoroughfare Map* for the County or similar instrument, and the general intent of this Ordinance.
- (B) That the *waiver* will not cause any known substantial detriment to adjacent or neighboring properties.
- (C) That the *waiver* will not create a safety hazard or increase traffic congestion.
- (D) The *waiver* is not sought for reasons of convenience, profit, or caprice.

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

6.3 TYPES OF WAIVERS AND CRITERIA - *STORMWATER MANAGEMENT* WAIVERS

- (A) 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 will 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 will be required in accordance with the provisions of this section if there are subsequent additions, extensions or modifications to a *development* receiving a *waiver*.
- (B) Except as provided in this Section, *waivers* of *stormwater* quantitative control may be granted only to those projects that can conclusively demonstrate that:
 - i. The project is within an area where a *watershed* management plan has been developed consistent with this Land Use Ordinance.
 - ii. If the project is not in an area where a *watershed* management plan has been developed consistent with this Land Use Ordinance, *waivers* may be granted to proposed *development* projects provided the *applicant* has demonstrated that *ESD* has been implemented to the *MEP*: (1) That have *direct discharges* to tidally influenced receiving waters; and (2) When the County determines that circumstances exist that prevent the reasonable implementation of quantity control practices.
- (C) Except as provided in this Section, if *watershed* management plans consistent with 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*:
 - i. Projects that have *direct discharge* to tidally influenced receiving waters:

- ii. 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: (1) Public water and sewer and *stormwater* conveyance exist; (2) The quantitative *waiver* is only applied to the project for the impervious cover that previously existed on the *site*; (3) *ESD* to the *MEP* is used to meet the full water quality treatment requirements for the entire *development*; and (4) *ESD* to the *MEP* is used to provide full quantity control for all new *impervious surfaces*; or
- (D) When the *approving agency* determines that circumstances exist that prevent the reasonable implementation of quantity control practices.
- (E) *Waivers of stormwater management* qualitative control may be granted only to those projects that can conclusively demonstrate that:
 - i. The project is an in-fill *development* where *ESD* has been implemented to the *MEP* and other *BMPs* are not feasible.
 - ii. The project is a *redevelopment* that satisfies the requirements of this Land Use Ordinance; or
 - iii. *Sites* where the County determines that circumstances exist that prevent the reasonable implementation of *ESD* to the *MEP*.
- (F) *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 will be demonstrated.
- (G) *Waivers* will only be granted when it has been demonstrated that *ESD* has been implemented to the *MEP* and will:
 - i. Be on a case-by-case basis;
 - ii. Consider the cumulative effects of the Kent County *waiver* policy.
 - iii. Reasonably assure the *development* will not adversely impact stream quality.
- (H) Kent County may develop quantitative *waiver* and *redevelopment* provisions for *stormwater management* that differ from the requirements of this Land Use Ordinance as a part of an overall *watershed* management plan. *Watershed* management plans developed for this purpose will, at a minimum:
 - i. Include detailed hydrologic and hydraulic analyses to determine hydrographic timing;

- ii. Evaluate both quantity and quality management and opportunities for *ESD* implementation;
- iii. Include cumulative impact assessment of current and proposed *watershed development*;
- iv. Identify existing *flooding* and receiving stream *channel* conditions;
- v. Be conducted at a reasonable scale determined by the County;
- vi. Specify where *on-site* or *off-site* quantitative and qualitative *stormwater management* practices are to be implemented;
- vii. Be consistent with the General Performance Standards for *Stormwater Management* in Maryland found in the *Design Manual*; and
- viii. Be approved by the Maryland Department of the Environment

SECTION 7 PERMITS, FEES, AND ENFORCEMENT

7.1 STATEMENT OF INTENT

The purpose of this section is to set forth the procedures for permits, fees, code enforcement, and interpretations of this Land Use Ordinance. The powers and duties of the Department are specified herein insofar as the administration of this Land Use Ordinance is concerned.

7.2 GENERAL

1. The Department is hereby vested with the duty and authority to grant approvals and issue building permits. All approvals and permits will conform with the provisions of this Land Use Ordinance, and no approval of a permit will be granted for any structure, use, subdivision, grading, or other development or purpose that would constitute a violation of this Land Use Ordinance. Any approval or permit granted or issued in conflict with this Land Use Ordinance will be null and void.
2. Whenever in the course of administration and enforcement of this Land Use Ordinance, it is necessary to make any administrative decision, unless other standards are provided in the Land Use Ordinance, the decision will be consistent with the spirit and intent of this Land Use Ordinance.

7.3 CRITICAL AREA COMMISSION REVIEW AND COMMENT REQUIRED

1. As required by the State of Maryland, Kent County will send copies of applications for all *developments*, subdivisions, and *site plans*, wholly or partially within the Critical Area, as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment. This includes all applicable projects located in the RCD, CAR, CCA, M, ECCA, and MXDCA zoning districts.
2. Until Kent County has received notice of receipt from the Critical Area Commission or the appropriate waiting period per the State of Maryland has expired, the County may not approve an application that has been sent to the Critical Area Commission for notification.
3. Per the State of Maryland, any action by Kent County in violation of these State-required procedures shall be void.

7.4 PERMITS

1. No building or structure shall be erected, constructed, altered, moved, converted, extended, enlarged, or demolished until a building or demolition permit is obtained from the Department. The permit shall be valid for six months from the date issued. Six-month extensions may be granted by the Department, both before and after permit expiration. All buildings and structures will comply with the requirements of this Ordinance.
2. Change or alternation of the use of any *building*, *structure*, or land will not be permitted until a permit is obtained from the Department.

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3. All applications for *building* and use permits will include a diagram showing the actual shape and size of the parcel, the location and size of the building or structure, and such information as may be required by the Department to assure compliance with and to provide enforcement of this Land Use Ordinance.
4. No *person* will do any *grading, clearing, stripping*, excavating, filling of land; *forest* harvesting; creating any borrow pits, spoil areas, quarries, material processing facilities, or other facilities, without first obtaining a permit from the Department except as otherwise listed as an *exemption* in this Land Use Ordinance.
5. A *grading* or *building* permit may *not* be issued for any parcel or *lot* unless a *stormwater management plan* has been approved by the County, which meets the requirements of this ordinance, the *Design Manual*, and the policies adopted by Kent County for *redevelopment*. Where appropriate, a *building* permit may not be issued without:
 - (A) Recorded *easements* for the *stormwater management* facility and *easements* to provide adequate access for inspection and maintenance from a public *right of way*.
 - (B) A recorded *stormwater management maintenance agreement*.
 - (C) A performance bond, an irrevocable letter of credit or other surety.
 - (D) Permission from adjacent property owners, as may be required.
6. The Planning Director may place any condition on a permit that is deemed necessary to assure compliance with and to provide enforcement of this Land Use Ordinance.
7. After approval of the permit, no changes of any kind will be made to the plans, permit, specification, or other document without written approval from the applicable County official with authority to review and approve applications for building permits.

7.5 FEES

1. The Kent County Board of County Commissioners may establish a schedule of fees and a collection procedure related to the submittal of applications and other matters pertaining to this Ordinance. Upon application, the County Commissioners may waive County fees.
2. No permits will be issued nor final actions taken related to *subdivisions, site plans*, special exceptions, *variances*, waivers, appeals, or other matters pertaining to this Ordinance, unless the applicable fee, if any, has been paid in full. Staff may begin an internal review at its discretion, prior to fees being paid, if a determination of payment is under review.
3. Building permit fees may be set aside by the Planning Director or the Planning Director's designee upon review and with the cause noted in writing in the file for the following:
 - (A) Building permit extensions if regulations have not changed since last review.
 - (B) Building permits for governmental agencies including local, State, and federal.
 - (C) Building permits for nonprofits and charities for *bona fide* charitable activities.

- (D) Building permits for grant projects where the County is a sponsor/participant.
- (E) Circumstances related to errors and omissions not on the part of the applicant.

7.6 ENFORCEMENT

1. It will be the duty of the Planning Director to enforce the provisions of this Ordinance and to refuse to issue any permit or approve any *minor site plan*, *minor subdivision*, special exception, *variance*, erosion and *sediment* control permit, *stormwater management* plan, or *forest conservation plan* that would violate the provisions of this Ordinance. It will be the duty of all officers and employees to assist the enforcing officer by reporting to the enforcing officer any seeming *violation* of this Ordinance.
2. The Planning Director or the Planning Director's designee is authorized and directed to institute any appropriate action to correct *violations* of this Ordinance.
3. It shall be unlawful to erect, construct, reconstruct, alter, repair, convert, *demolish* or maintain any *building* or *structure*; use any property, *building*, or *sign* in *violation* of any regulation in, or any provision of this Ordinance, or any amendment or supplement lawfully adopted by the County Commissioners; to fail to comply with an approved site plan for a property; to fail to comply with any requirement or condition imposed by the Board of Appeals or *Planning Commission*; or violate the provisions of the Critical Area, *floodplain*, *subdivision*, *sediment* control, *stormwater management*, or *forest conservation* provisions of this Ordinance. Any *person*, *firm*, corporation, or other legal entity violating a provision of this Ordinance, or amendments thereto, shall be deemed guilty of a *violation* and upon conviction shall be fined according to the preset fine adopted by the County Commissioners of Kent County. Each and every day during which such *violation* occurs or continues may be deemed a separate offense.
4. The Planning Director is authorized to treat any *violation* as a civil *violation*, in which event the Planning Director, or the Planning Director's designee, will deliver a citation to the *person* believed to have committed a civil *violation*. A copy of the citation will be retained by the Department and bear *certification* attesting to the truth of the matters set forth. The citation will contain:
 - (A) The name and address of the *person* charged;
 - (B) The nature of the *violation*;
 - (C) The place where and the time when the *violation* occurred;
 - (D) The amount of the fine assessed;
 - (E) The manner, location, and time in which the fine may be paid; and
 - (F) The *person's* right to elect to stand trial for the *violation*.
5. The preset fine will not be less than \$100.00 nor more than \$500.00 for zoning *violations*. The preset fine will not exceed \$5,000.00 for *violation* of the *floodplain* and *subdivision* provisions of this Ordinance, and \$1,000.00 plus \$0.30 a square foot for *forest*

conservation. Non-compliance fees for *violation* of the *forest conservation* provisions of this Ordinance will be deposited in the *forest conservation* fund and may be used by the County for purposes related to implementing the *forest conservation* objectives of this Ordinance. Every day the *violation* continues may be considered a separate offense.

6. Within the *Critical Area*, in addition to any other penalty applicable under state law, a person who violates a provision pertaining to the *Critical Area* is subject to a fine not to exceed \$10,000.00. In determining the amount of the penalty to be assessed, the following may be considered:
 - (A) The gravity of the *violation*;
 - (B) Any willfulness of negligence involved in the *violation*;
 - (C) The environmental impact of the *violation*.
7. Fines will not exceed \$5,000 for each *stormwater management violation* and nor exceed \$50,000 for numerous *onsite violations*. Each day that a *violation* continues will be considered a separate offense.
8. Penalties for *violations of erosion and sediment control*.
 - (A) Any *person* who violates any provision of the *erosion and sediment control* provisions of this Ordinance is guilty of a misdemeanor, and upon conviction in a Court of competent *jurisdiction* is subject to a fine not to exceed \$10,000 for each *violation* with costs imposed in the discretion of the Court. Each day upon which the *violation* occurs constitutes a separate offense.
 - (B) Any agency whose approval is required under this Ordinance, or any interested *person* may seek an injunction against any *person* who violates or threatens to violate any provision of this Ordinance.
 - (C) In addition to any other sanction under this Ordinance, a *person* who fails to install or to maintain *erosion and sediment controls* in accordance with an approved plan will be liable to Kent County or the State in a civil action, for damages in an amount equal to double the cost of installing or maintaining the controls.
 - (D) Any governing authority that recovers damages in accordance with this subsection will deposit them in a special fund, to be used solely for (1) correcting to the extent possible the failure to implement or maintain *erosion and sediment controls*, and (2) administration of the *sediment control* program.
9. The *person* who receives a citation may elect to stand trial for the offense by filing with the Department a notice of intent to stand trial. The notice to stand trial will be given at least 5 days before the date of payment as set forth in the citation. Upon receipt of the notice of intent to stand trial, the County Attorney will forward to the District Court of Kent County a copy of the citation and notice of intent to stand trial. On receipt of the same, the District Court will schedule the case for trial and notify the defendants of the

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trial date. All fines, penalties, or forfeitures collected by the District Court for *violations* of this Ordinance will be remitted to Kent County.

10. If a *person* who receives a citation for *violations* fails to pay the fine by the date of the payment set forth on the citation and fails to file notice of intention to stand trial, formal notice of the *violation* will be sent to the owner's last known address. If the citation is not satisfied within 15 days from the date of notice, the *person* is liable for an additional fine not to exceed twice the original fine. If after 35 days the citation is not satisfied, the Department may request adjudication of the case through the District Court. The District Court will schedule the case for trial and summon the defendant to appear.
11. Adjudication of a *violation* under paragraphs 4 through 7 of this section is not a criminal conviction nor does it impose any civil disabilities ordinarily imposed by a criminal conviction.
12. In any proceeding before the District Court, the *violation* will be prosecuted in the same manner and to the same extent as set forth for municipal infractions under Md. Code Ann. Local Government §§6-108 through §§6-115. The County Commissioners may authorize either the County Attorney, the Attorney for the *Planning Commission*, or any other designated attorney to prosecute any *violation*.
13. If a *person* is found by the District Court to have committed a civil zoning *violation*, the *person* will be liable for the cost of the proceedings in the District Court. All zoning certificates and *building* permits will be revocable subject to the continued compliance with all requirements and conditions of this and other applicable laws and *regulations*.
14. The imposition of a fine or penalty for any *violation* of this Ordinance will not excuse the *violation* or permit it to continue, and all such *violations* will be corrected within a reasonable time.
15. The Planning Director, or the Planning Director's designee, may issue a stop work order against a *person* who violates a provision of this Ordinance, or any approval granted under this Ordinance.
16. The Planning Director, or the Planning Director's designee, may revoke an approved *Forest Conservation Plan* if the Planning Director finds that:
 - (A) A provision of the plan has been violated;
 - (B) Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or
 - (C) A change in the *development* or in the condition of the *site* necessitates preparation of a new or amended plan.
17. Enforcement procedures for *violations* in the *Critical Area*:
 - (A) For any *violation* that requires a variance to this Ordinance, Kent County shall follow the after-the-fact variance provisions in this Ordinance or within COMAR 27.01.12 §.06.

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- (B) The County shall not issue any permit, approval, variance, or special exception, to authorize the activity that is the subject of the *violation*, unless the person seeking the permit has:
 - i. Fully paid all penalties as set forth in this Article.
 - ii. Prepared a restoration or mitigation plan, approved by the County, to mitigate impacts to water quality or natural resources due to the violation;
 - iii. Performed the mitigation measures in the approved plan in accordance with the County's regulations; and
 - iv. Unless an extension of time is approved by the County because of adverse planting conditions, within 90 days of the issuance of a permit, approval, variance, or special exception for the affected property, any additional mitigation required as a condition of approval for the permit, approval, variance, or special exception shall be completed.
18. Enforcement procedures for *violations* of the *sediment* control provisions of this Ordinance will be as follows:
- (A) When the *inspection agency* or an inspector determines that a *violation* of the approved *erosion and sediment control plan* has occurred, the inspector will notify the *on-site personnel* or the *permittee* in writing of the *violation*, describe the required corrective action and the time period in which to have the *violation* corrected.
 - (B) If the *violation* persists after the date specified for corrective action in the notice of *violation*, the *inspection agency* will stop work on the *site*. The *inspection agency* will determine the extent to which work is stopped, which may include all work on the *site*, except that work necessary to correct the *violations*.
 - (C) If reasonable efforts to correct the *violation* are not undertaken by the *permittee*, the *inspection agency* will refer the *violation* for legal action.
 - (D) The Department may deny the issuance of any permits to an *applicant* when it determines that the *applicant* is not in compliance with the provisions of a *building* or *grading* permit or approved *erosion and sediment control plan*.
 - (E) Any step in the enforcement process may be taken at any time, depending upon the severity of the *violation*.
 - (F) If a *person* is working without a permit, the *inspection agency* will stop work on the *site* except activity necessary to provide *erosion and sediment control*.
 - (G) The Department may suspend or revoke any *grading* or *building* permits after providing written notification to the *permittee* based on any of the following reasons:

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- i. Any *violation(s)* of the terms or conditions of the approved *erosion and sediment control plan* or permit.
 - ii. Non-compliance with *violation* notices or stop work orders issued.
 - iii. Changes in *site* characteristics upon which plan approval and permit issuance was based.
 - iv. Any *violation(s)* of this Ordinance or any rules and *regulations* adopted under it.
 - (H) The Department will receive complaints and initiate enforcement procedures when *violations* are confirmed. Any complaint received will be acted upon, routinely within three (3) working days or as soon as is reasonably possible and the complainant will be notified of any action or proposed action routinely within seven (7) working days of receipt of the complaint.
19. Enforcement procedures for *violations* of the *stormwater management* provisions of this Ordinance consists of any one or a combination of the following actions:
- (A) When the *inspection agency* or an inspector determines that a *violation* of the approved *stormwater management plan* has occurred, the inspector will notify the *on-site personnel* or the *permittee* in writing of the *violation*, describe the required corrective action and the time period in which to have the *violation* corrected.
 - (B) A stop work order will be issued for the *site* by the County if the *violation* persists.
 - (C) Bonds or securities will be withheld, or the case may be referred for legal action.
 - (D) A civil action may be brought against any *person* in *violation* of the *stormwater* provisions of this Ordinance or the *Design Manual*.
 - (E) Any step in the enforcement process may be taken at any time according to the severity of the *violation*.
 - (F) Any *person* convicted of violating the provisions of this Ordinance will be guilty of a misdemeanor, and upon conviction thereof, will be subject to a fine of not more than \$5000 for each *violation* with costs imposed not to exceed \$50,000. Each day the *violation* continues will be a separate offense.
 - (G) Kent County may institute injunctive, mandamus, or other appropriate action or proceedings of law to correct *violations*.
 - i. The Department may deny the issuance of any permits to an *applicant* when it determines that the *applicant* is not in compliance with the provisions of a *building* or *grading* permit or approved *erosion and sediment control plan*.

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- ii. Any step in the enforcement process may be taken at any time, depending upon the severity of the *violation*.
 - iii. If a *person* is working without a permit, the *inspection agency* will stop work on the *site* except activity necessary to provide *erosion and sediment control*.
 - iv. The County may suspend or revoke any *grading* or *building* permits after providing written notification to the *permittee* based on any of the following reasons: (1) Any *violation(s)* of the terms or conditions of the approved *erosion and sediment control plan* or permit; (2) Non-compliance with *violation* notices or stop work orders issued; (3) Changes in *site* characteristics upon which plan approval and permit issuance was based; or, (4) Any *violation(s)* of this Ordinance or any rules and *regulations* adopted under it.
 - v. The County will receive complaints and initiate enforcement procedures when *violations* are *confirmed*. Any complaint received will be acted upon routinely within three (3) working days or as soon as is reasonably possible and the complainant will be notified of any action or proposed action routinely within seven (7) working days of receipt of the complaint.
20. In addition to the aforementioned provisions, the County may also seek an injunction to bring about the discontinuance of illegal uses, and/or the removal of illegal *buildings, structures, additions, alterations*, or structural changes, and/or the discontinuance of any illegal work or activity being done or may take any other action authorized by this Ordinance.
21. The Planning Director or the Planning Director's designee is hereby authorized to enter upon any open land in Kent County for the purpose of enforcing and implementing this Ordinance.

SECTION 8 HISTORIC PRESERVATION DOCUMENTATION

1. A *demolition* permit may not be issued for any parcel or *lot* unless a *historic structure* review has been completed in accordance with the following process:

(A) TIER 1.

The Planning Director, or Planning Director's designee, will determine if the *structure* meets the definition of a *historic structure*, based on the public information readily available in the public record and any applicant statements.

(B) TIER 2.

- i. If the *structure* is found to be more than seventy-five (75) years old or otherwise thought to be of historic significance, then the permit will require the following documentation:

1. The *applicant* will provide a basic floor plan that includes interior and exterior dimensions of the *structure(s)*; and
2. The Department will conduct a *site* inspection for the purpose of photographing the *historic structure(s)*, which may include the exterior and interior of the *structure(s)*.

The Chair of the Historic Preservation Commission, or the Chair's designee, may accompany staff on the *site* inspection.

- ii. Subject to the review of documentation, the Planning Director, or the Planning Director's designee, in consultation with the Chair of the Historic Preservation Commission, or the Chair's designee, will determine if Tier 3 review and documentation is required. The decision will be made by the Planning Director, or the Planning Director's designee, with the advice of the Chair, or the Chair's designee, within 30 days of the receipt of the required floor plan by the Department.

Note: This is intended to provide clarity for any appeal that may be filed. The appeal would be from a decision of the Planning Director instead of an appeal from a joint decision by a member of staff and a County board. Alternately, if preferred, a decision could be rendered by the HPC Board.

(C) TIER 3.

- i. Pursuant to a determination of historic significance, Tier 3 review and documentation will be completed by staff within 45 days of the Tier 2 determination, which may result in completion of a Maryland Inventory of Historic Places form developed by the Maryland Historical Trust.
- ii. Tier 3 review and documentation will consist of the following:
 1. Photographs of exterior details, including but not limited to features such as chimneys, wall coverings, windows, and doors;

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2. Photographs of any outbuildings;
3. Access to the interior will be granted in order to obtain detailed photographs of the interior spaces to capture any unique elements in the rooms that may help date the *structure*, including but not limited to woodwork, window surrounds, fireplaces, stairways, mantels, doors, and newel posts, and
4. Overall measurements of the *structure*.

Applicants will make any hazards known, and staff and/or Historic Preservation Commission board members will enter *structures* only with the subject property owner's written or verbal permission.

iii. The Historic Preservation Commission will review the documentation.

- (D) Failure to complete Tier 3 documentation within 45 days of the Tier 2 determination will not delay the issuing of a permit unless another agency with review authority has failed to approve the permit or an extension is granted by the property owner. Failure of the *applicant* to grant interior access within the review time will not result in the issuing of a permit.
- (E) **Emergency provisions.** These requirements may be set aside or modified by the Planning Director, or the Planning Director's designee, when a *structure* is deemed to be an imminent threat to health, safety, and welfare of the adjoining properties and *persons*.