

**CHAPTER 80**  
**ZONING ORDINANCE**  
**MILLINGTON, MARYLAND**

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## **ARTICLE I GENERAL PROVISIONS**

### **§ 80-1. Title.**

This Zoning Chapter shall be known as the “Zoning Ordinance for Millington, Maryland.”

### **§ 80-2. Authority.**

This Zoning Ordinance is enacted under the authority granted by the General Assembly of Maryland, as provided in Article 66B, Annotated Code of Maryland, as amended.

### **§ 80-3. Applicability.**

This Zoning Ordinance shall apply to the incorporated territory of Millington, Maryland. It is the intent of this Zoning Ordinance that the extent of its applicability be automatically changed in accordance with the provisions of state law which may affect the applicability of this Zoning Ordinance.

### **§ 80-4. Purpose.**

- A. This Zoning Ordinance is intended to promote the orderly development of the Town of Millington, Maryland in accordance with the *Millington Comprehensive Plan* or any of the component parts thereof and in compliance with Article 66B of the Annotated Code of

Maryland, as amended.

- B. The purpose of this Zoning Ordinance is to promote the health, safety, order, convenience and general welfare of the citizens of the Town in accordance with present and future needs. It also is the purpose of the Zoning Ordinance to provide for efficiency and economy in the process of development; for the appropriate and best use of land; for convenience of traffic and circulation of people and goods; for the appropriate use and occupancy of buildings; for healthful and convenient distribution of population; for good civic design and arrangement, including the preservation and enhancement of the attractiveness of the community; and for adequate public utilities, public services and facilities by regulating and limiting or determining the height and bulk of buildings and structures, the area of yards and other open spaces and the density of use.
- C. It also is the objective of this Zoning Ordinance is to implement the "Visions" contained in the Maryland Growth Management, Resource Protection and Economic Development Act, namely:
  - 1. A high quality of life is achieved through universal stewardship of the land, water, and air resulting in sustainable communities and protection of the environment.
  - 2. Citizens are active partners in the planning and implementation of community initiatives and are sensitive to their responsibilities in achieving community goals.
  - 3. Growth is concentrated in existing population and business centers, growth areas are adjacent to these centers, or strategically selected new centers.
  - 4. Compact, mixed-use, walkable design consistent with existing community character and located near available or planned transit options is encouraged to ensure efficient use of land and transportation resources and preservation and enhancement of natural systems, open spaces, recreational areas, and historical, cultural, and archeological resources.
  - 5. Growth Areas have the water resources and infrastructure to accommodate population and business expansion in an orderly, efficient, and environmentally sustainable manner.
  - 6. A well-maintained, multi-modal transportation system facilitates the safe, convenient, affordable, and efficient movement of people, goods, and services within and between population and business centers.
  - 7. A range of housing densities, types, and sizes provides residential options for citizens of all ages and incomes.
  - 8. Economic development and natural resource-based businesses that promote employment opportunities for all income levels within the capacity of the State's natural resources, public services, and public facilities are encouraged.
  - 9. Land and water resources, including the Chesapeake and Coastal Bays, are carefully managed to restore and maintain healthy air and water, natural systems, and living resources.
  - 10. Waterways, forests, agricultural areas, open space, natural systems, and scenic areas are conserved.
  - 11. Government, business entities, and residents are responsible for the creation of sustainable communities by collaborating to balance efficient growth with resource protection.
  - 12. Strategies, policies, programs, and funding for growth and development, resource conservation, infrastructure, and transportation

are integrated across the local, regional, state, and interstate levels to achieve these visions.

D. The regulations and provisions contained in this Zoning Ordinance were adopted and became effective on August 13, 2012.

**§ 80-5. Jurisdiction.**

- A. Except as provided for in Subsection B below, this Zoning Ordinance shall apply to all land, structures and buildings within the corporate limits of the Millington, including all submerged lands and water areas.
- B. This Zoning Ordinance shall not apply to land, structures and buildings owned by or leased solely to the Federal Government, State of Maryland, Kent County Commissioners, Queen Anne's County Commissioners or the Town of Millington, provided that such land, structure or building is used for the sole purpose of providing a public service or carrying out a legitimate government function.

**§ 80-6. Severability.**

It is hereby declared to be the intention of the Mayor and Council that the sections, paragraphs, sentences, clauses, and phrases of this Zoning Ordinance are severable, and if any such section, paragraph, sentence, clause, or phrase is declared unconstitutional or otherwise invalid by any court of competent jurisdiction in a valid judgment or decree, such unconstitutionality or invalidity shall not affect any of the remaining sections, paragraphs, sentences, clauses, or phrases of this Zoning Ordinance since the same would have been enacted without the incorporation into this Zoning Ordinance of such unconstitutional or invalid section, paragraph, sentence, clause, or phrase.

**§ 80-7. Reserved**

## ARTICLE II BASIC DEFINITIONS AND INTERPRETATIONS

### § 80-8. Definitions and word usage.

A. General rules of construction. The following general rules of construction shall apply to the regulations of this Zoning Ordinance:

1. The singular number includes the plural, and the singular, unless the context clearly indicates the contrary.
2. Words used in present tense include the past and future tenses, and the future the present.
3. The word “shall” is always mandatory. The word “may” is permissive.
4. The word “building” or “structure” includes any part thereof, and the word “building” includes the word “structure.”
5. Words and terms not defined herein shall be interpreted in accordance with their normal dictionary meanings and customary usage.

B. Definitions. For the purpose of this Zoning Ordinance, certain terms and words are hereby defined:

ABATEMENT - The act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.

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

ACCESSORY STRUCTURE – a structure that is:

- a. Detached from the principal structure;
- b. Located on the same lot as the principal structure; and
- c. Customarily incidental and subordinate to a principal structure.

ACCESSORY USE - One which is clearly incidental to or customary found in connection with and, except as otherwise provided in this Zoning Ordinance is located on the same lot as the principal use of the premise when the term “accessory” is used in the Zoning Ordinance, it shall have the same meaning as “accessory use.”

ADDITION – newly constructed area that increases the size of a structure

**ADMINISTRATOR** - Authorized representative designated by the Mayor and Council to carry out duties as specified in this Ordinance. In the absence of an appointed Zoning Administrator, these duties are assumed to be the responsibility of either the Town Administrator or his/her designee.

**ADULT BOOK OR VIDEO STORE** - An Adult Oriented Business, whether or not containing viewing booths, theatres, or other performance viewing space, that involves the sale, rental, transfer, loan, dissemination, distribution, provision or promotion of Adult Entertainment or Material in the form of books, magazines, newspapers, photographs, movies, videos, DVDs, CDs or other audio/video recordings, or other electronic recordings, or, in the form of merchandise, objects, items or devices.

**ADULT ENTERTAINMENT OR MATERIAL** - Any performance, depiction, or text that is intended to cause or provide, or reasonably may be expected to cause or provide, sexual stimulation, sexual excitement, or sexual gratification and:

- A. In which an individual or individuals appear in a state of Nudity or Partial Nudity; or
- B. That consists, in whole or in part, of action, activity, poses, portrayal, depiction, or description of:
  - 1. Human genitals in a discernible state of sexual stimulation or arousal; or
  - 2. Any act, whether real or simulated, of masturbation, sexual intercourse, anal intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female breasts, pubic area, or genital area, Sadomasochistic Abuse, physical contact or attempted contact with clothed or unclothed genitals, pubic areas, buttocks, anus, or female breasts; or
- C. That consists of sexual contact with animals or inanimate objects; or
- D. That consists of any merchandise, object, item, or device that is designed and/or marketed with the intention of causing, or that reasonably may be expected to cause, sexual stimulation, sexual excitement or sexual gratification.

**ADULT ORIENTED BUSINESS** - Any business, operation, or activity a Significant Amount of which consists of:

- A. The conduct, promotion, delivery, provision, or performance of adult entertainment or material; including, but not limited to, that occurring in, at, or in connection with a cabaret, lounge, night club, night club, modeling studio, bar, restaurant, club, lodge, or similar establishment; or
- B. The sale, rental, transfer, loan, dissemination, distribution, provision or promotion of Adult Entertainment or Material, in any format, form, or medium, including, but not limited to, books, magazines, newspapers, photographs, movies, videos, DVDs, CDs or other audio/video recordings, other electronic recordings, and/or coin operated or pay-view-viewing devices, including, but not limited to, the operation of an Adult Book or Video Store or Viewing Booth.

**ADULT NIGHTCLUB, BAR, RESTAURANT, OR SIMILAR ESTABLISHMENT** - An entertainment establishment which features go-go dancers, topless service personnel, exotic dancers, strippers, male or female impersonators, or similar entertainers.

**ADULT ORIENTED COMMERCIAL ENTERPRISES** - Business activities such as adult bookstores, adult entertainment, escort services, massage parlors, tattoo studios, body piercing or branding studios, pawnbrokers, pawnshops, palm readers, fortune teller or soothsayer.

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

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

**ASSISTED LIVING** - A residential facility-based program licensed by the State of Maryland that provides housing and supportive services, supervision, personalized assistance, health-related services or a combination of these services to meet the needs of the residents who are unable to perform, or who need assistance in performing, the activities of daily living or instrumental activities of daily living, in a way that promotes optimum dignity and independence for the residents.

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

**AGRICULTURAL EASEMENT** – A non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.

**AGRICULTURAL BEST MANAGEMENT PRACTICE** – an agronomic, conservation, or pollution control practice, installation, or structure that manages soil loss, nutrients, animal wastes, or agricultural chemicals so as to minimize their movement into State waters; includes strip cropping, terracing, cover crops, grass waterways, animal waste management, conservation tillage, riparian buffers, nutrient management, and stream protection practices such as fencing, stream crossings, and remote watering devices; does not include a shoreline erosion control measure authorized by the Department of the Environment under COMAR 26.24.04

**ALLEY** - A narrow public thoroughfare, not exceeding sixteen (16) feet in width, which provides only a secondary means of access to abutting properties and is not intended for general traffic circulation.

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

**ANADROMOUS FISH PROPAGATION WATERS** - Those streams that are tributary to the Chesapeake Bay and Atlantic Coastal bays in which the spawning of anadromous species of fish (e.g., rockfish, striped bass, yellow perch, white perch, shad, and river herring) occurs or has occurred. The streams are identified by the Department of Natural Resources.

**AQUACULTURE** - (a) Farming or culturing of finfish, shellfish, other aquatic plants or animals or both, in lakes, streams, inlets, estuaries, and



other natural or artificial water bodies or impoundments; (b) Activities include hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas; and (c) Cultivation methods include, but are not limited to, seed or larvae development and grow out facilities, fish ponds, shellfish rafts, rack and long lines, seaweed floats and the culture of clams and oysters on tidelands and sub tidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aqua cultural practices.

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

APARTMENT HOUSE - Same as “dwelling, multiple family.”

ARTERIAL STREET - A street so designated on the Transportation Plan of the Town of Millington.

ARTESIAN INDUSTRIAL – On-site production of goods by hand manufacturing, involving the use of hand tools and small-scale, light mechanical equipment in a completely enclosed building with no outdoor operations or storage. Typical uses include woodworking and cabinet shops, ceramic studios, jewelry manufacturing, and similar types of arts and crafts, or very small-scale manufacturing uses that have no negative external impacts on surrounding properties.

BASEMENT - That portion of a building between the floor and the ceiling, which is wholly or partly below grade.

BED AND BREAKFAST ESTABLISHMENT - An owner-occupied or manager-occupied structure where for compensation and only by prearrangement (transients only) for definite periods, lodging and breakfast are provided.

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

BOARD - The Board of Appeals of the Town of Millington.

BOARDING HOUSE - Same as “rooming house.”

BUFFER - Area that is immediately landward from mean high water of tidal waterways, the edge of each bank of a tributary stream, or the landward edge of a tidal wetland; and the area is characterized by, or established in, natural vegetation for the purpose of protecting aquatic, wetlands, shoreline, and terrestrial environments from man-made disturbance. The Buffer includes an area of at least 100-feet even if that area was previously disturbed by human activity or is currently developed and also include any expansion for contiguous sensitive areas, such as a steep

slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in the COMAR 26.23.01.01.

**BUFFER MANAGEMENT PLAN** – a narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will:

- a. Affect a portion of the Buffer
- b. Alter Buffer vegetation; or
- c. Require the establishment of a portion of the Buffer in vegetation.

Buffer Management Plan includes a major Buffer Management Plan, a minor Buffer Management Plan, or a Simplified Buffer Management Plan as described in this ordinance.

**BUFFERYARD** – an area that is at least 25 feet wide, located between a development activity and tidal waters, tidal wetlands, or a tributary stream, that is planted with vegetation consisting of native canopy trees, understory trees, shrubs, and perennial herbaceous plants that is used in Modified Buffer Areas to provide water quality and habitat benefits. This area is to be managed and maintained in a manner that optimizes these benefits.

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

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

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

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

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

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

**BUSINESS SERVICE** - Services rendered to a business establishment or individual on a fee or contract basis including actuarial, advertising, credit reporting, janitorial, office or business equipment rental or leasing, photofinishing, telecommunications, blueprinting, and photocopying, and other such services.

CALIPER - The diameter of a tree measured at two inches above the root collar.

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

CANOPY TREE - means a tree that when mature commonly reaches a height of at least 35 feet.

CHILD CARE CENTER - A place for the care of children under twelve (12) years of age away from their own homes who stay less than twenty-four (24) hours in a day regardless of compensation.

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

CLIMATE RESILIENCY – the capacity of a natural system to maintain function in the face of stresses imposed by climate change; Climate Resiliency includes adapting a natural system to be better prepared for future climate impacts including sea level rise, saltwater intrusion, wetland migration, storm sure, precipitation – induced flooding, and other extreme weather events

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

CLUB, PRIVATE - Buildings and facilities owned or operated by a corporation, association, person or persons for a social, educational, or recreational purpose, but not primarily for profit.

CLUSTER DEVELOPMENT – A residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.

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

COMAR - The Code of Maryland Regulations, as from time to time amended, including any successor provisions.

COMMERCIAL AMUSEMENT AND RECREATIONAL - An establishment which provides entertainment, recreation, or amusement for profit including commercial establishments which house more than three (3) or a combination of three (3) of the following: video games, pinball machines, pool tables or similar amusements as the principal purpose of the use.

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

COMMISSION – When use in conjunction with the Chesapeake Bay Critical Area, this term refers to the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.

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

COMPREHENSIVE PLAN - A compilation of policy statements, goals, standards, maps and pertinent data relative to the past, present and future trends of the local jurisdiction including, but not limited to, its population, housing, economics, social patterns, land uses, water resources and their use, transportation facilities and public facilities prepared by or for the planning commission, agency or office.

CONFORMING – a parcel or lot that meets all Critical Area requirements. Conforming does not include a parcel or lot for which a Critical Area variance is sought or has been issued; or that is located in the Resource Conservation Area and is less than twenty acres.

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

CONSISTENT – a standard or factor will further, and not be contrary to, the following items in the comprehensive plan:

- a. Policies;
- b. Timing of the implementation of the plan, of development, and rezoning;
- c. Development patterns;
- d. Land uses; and
- e. Densities or intensities.

CONSOLIDATION - A combination of any legal parcel of land or recorded legally buildable lot into fewer lots or parcels than originally existed. Consolidation includes a lot line abandonment, a boundary line adjustment, a replating request, and a lot line adjustment.

CONSTRUCTION SERVICES - The performance of work by, or furnishing of supplies to, members of building trades including building contractors, carpentry, wood flooring services, electrical services, energy systems services and products, general contracting, masonry, stonework, tile setting, and plastering, plumbing, heating and air conditioning services, roofing and sheet metal services, and other such services.

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

resides on the premises.

**CONVENIENCE STORE** - An establishment which sells packaged and/or prepared foods and beverages and other convenience items for consumption off the premises by travelers and highway users. Sales of items are dependent upon convenience of location, speed of service, and highway accessibility and are not dependent upon comparison shopping or pedestrian traffic within the site or on adjoining sites. It is designed to attract a large volume of stop and go traffic.

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

**CRAFT DISTILLERY AND MICROBREWERY ESTABLISHMENTS** – Establishments for fermenting, distilling, blending, aging, storing of alcoholic spirits including administrative activities, warehousing, bottling, and shipping facilities. Such establishment offers the public on a regular and continuing basis, various activities ancillary to its distilling and/or brewing process, including but not limited to: tours of the premises, educational classes, demonstrations, tasting rooms, and retail sales areas limited to the sale of beer, mead, cider, or spirits brewed or distilled on the premises for the consumption of off-premises and other retail items related to the establishment.

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

- a. All waters of and lands under the Chesapeake Bay and Atlantic Coastal Bays and their tributaries to the head of tide;
- b. All State and private wetlands designated under Title 16 of the Natural Resources Article, Annotated Code of Maryland;
- c. All land and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 16 of the Natural Resources Article, Annotated Code of Maryland; and
- d. Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in §8-1807 of the Natural Resources Article, Annotated Code of Maryland.

**DATA CENTER** – Data centers are secure facilities that house computer and network equipment that store, process, and distribute large amounts of data.

**DEDUCTION** – the total number of growth allocation acres that are necessary for approval of a growth allocation project and, after approval by the Critical Area Commission, are subtracted from the growth allocation reserves of the local jurisdiction in which the project is located.

**DENSITY** - The number of dwelling units per acre within a defined and measurable area.

**DEVELOPED WOODLANDS** – An area of trees or of trees and natural vegetation that is interspersed with residential, commercial, industrial, or recreational development.

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

DEVELOPMENT - Any activity that materially affects the condition or use of dry land, land under water, or any structure.

DEVELOPMENT ACTIVITIES – Human activity that results in disturbance to land, natural vegetation, or a structure, and includes the construction or substantial alteration of residential, commercial, industrial, institutional or transportation facilities or structures.

DEVELOPMENT ENVELOPE – Includes an individually owned lot, the lot coverage on that individually owned lot, a road, a utility, a stormwater management measure, an onsite sewage disposal measure, any area subject to human use such as an active recreation area, any required buffers, and any additional acreage necessary to meet the requirements of the Program.

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

DISTURBANCE - An alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include gardening or maintaining an existing grass lawn.

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

DOG KENNEL, COMMERCIAL - The keeping of any dog or dogs, regardless of number, for sale, breeding, boarding or treatment purposes, except in an animal hospital, dog beauty parlor or pet shop, as permitted by these regulations, or the keeping of five (5) or more dogs, six (6) months or older, for any purpose.

DRIVE-IN FACILITY - A facility designed or operated to conduct services directly to the occupants of motor vehicles.

DRIVE-IN RESTAURANT - Any place or establishment merchandising or dispensing food or drink at which the customer is served:

- a. While sitting in an automobile or other motor vehicle, or
- b. Through an interior or exterior sales window, counter or serving area, and in which a substantial part of the food or drink merchandised and dispensed has been prepared and packaged so as to facilitate its consumption outside the structure in which the food or drink is dispensed.

DWELLING - A building or portion thereof designed or used exclusively for residential occupancy but not including trailers, mobile homes, hotels, motels, motor lodges, boarding and lodging houses, tourist courts, or tourist homes.

DWELLING UNIT – A single unit providing complete, independent living facilities for at least one person, including permanent provisions for sanitation, cooking, eating, sleeping, and other activities routinely associated with daily life. Dwelling unit includes a living quarters for a domestic or other employee or tenant, an in-law or accessory apartment, a guest house, or a caretaker residence.

DWELLING, ONE FAMILY (SINGLE FAMILY) - A dwelling containing not more than one (1) dwelling unit. An accessory apartment may also be a part of a one- family dwelling. A one-family dwelling with either of these subordinate uses is not a two- family dwelling, as defined in this section.

DWELLING, TWO- FAMILY - A dwelling containing not more than two (2) dwelling units arranged one above the other or side by side.

DWELLING, MULTIPLE- FAMILY - A dwelling containing three (3) or more multiple-family dwelling units, which may or may not share a common entrance.

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

ENDANGERED SPECIES – a species of flora or fauna whose continued viability is determined to be in jeopardy, n accordance with the provision of:

- a. The federal Endangered Species Act of 1973, 16 U.S.C. §§1531-1544;
- b. Natural Resources Article, Title 4, Subtitle 2A or Title 10, Subtitle 2A, Annotated Code of Maryland; or
- c. Comar 08.03.08.

ESTABLISHMENT (BUFFER) – The planting or regeneration of native vegetation throughout the Buffer.

EXCESS STORMWATER RUN-OFF - All increases in storm water resulting from:

- a. An increase in the imperviousness or lot coverage of the site, including all additions to buildings, roads, and parking lots;
- b. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
- c. Alteration of drainage ways, or regrading of slopes;
- d. Destruction of forest; or

- e. Installation of collection systems to intercept street flows or to replace swales or other drainage ways.

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

**FARM BREWERY** – A part of a producing farm operation that brews beer from ingredients grown and produced on the farm. Incidental operations include fermenting, distilling, blending, aging, storing, administrative activities, warehousing, bottling, and shipping facilities.

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

**FINANCIAL ASSURANCE** - A performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the Town.

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

**FLOOR AREA** –

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

**FOOD SERVICE ESTABLISHMENT** - Any commercial or nonprofit business engaged in the preparation and sale of food or beverages, whether or not it is the principal business of the establishment. The following types of uses are food service establishments: bakery, bake shop, candy



store, catering establishment, convenience store, cooking school, ice cream store, restaurant, and supermarket.

**FOREST** - A biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater. Forest includes areas that have at least 100 trees per acre with at least 50% of those trees having two-inch or greater diameter at 4.5 feet above the ground and forest areas that have been cut, but not cleared. Forest does not include orchards.

**FOREST INTERIOR DWELLING BIRDS** - Species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

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

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

**FRONTAGE, LOT** - The distance for which the front boundary line of the lot and the street line are coincident.

**FULLY ESTABLISHED** – The Buffer contains as much diverse, native vegetation as necessary to support a firm and stable riparian habitat capable of self-sustaining growth and regeneration.

**GARAGE, PRIVATE** - A garage used for storage purposes only and having a capacity of not more than four (4) automobiles or not more than two (2) automobiles per family housed in the building to which the garage is accessory, whichever is the greater. Space therein may be used for not more one (1) commercial vehicle, and that one (1) of not more than one-ton capacity, and space may be rented for not more than two (2) vehicles to persons other than occupants of the buildings to which such garage is accessory.

**GENERAL MERCHANDISE** - Any retail trade use characterized by the sale of bulky items, outside display or storage of merchandise or equipment, such as farm and garden supplies, lumber and building materials, marine equipment sales, and service, and stone monument sales with incidental processing to order, but not including the shaping of headstones.

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

**GRANDFATHERED PARCEL” OR “GRANDFATHERED LOT”** - A parcel of land located in the Critical Area that was created or a lot located in the Critical Area created through the subdivision process and recorded as a legally buildable lot prior to December 1, 1985.

GROUP HOME - A place, home, or institution which is licensed to provide board, shelter, and personal services to not more than eight (8) persons, regardless of age, who have a need for supervision or assisted community living based on emotional, mental, physical, familial, or social differences. (Examples of such persons include but shall not be limited to the mentally retarded, physically handicapped, alcoholics, elderly, drug-dependent, and juveniles under the jurisdiction of the courts, the Department of Social Services, or the Department of Juvenile Justice.) Group homes shall not include public or private schools organized and operated under Maryland laws, persons related by blood or marriage within the third degree to the custodial person, or to the churches or other religious or other private institutional caring for such persons within the building while parents or other custodial persons are attending services, activities, or meetings.

GROWTH ALLOCATION - The number of acres of land in the Critical Area that the Town may use to create new Intensely Developed Areas and new Limited Development Areas. The Growth Allocation is five percent of the total Resource Conservation Area acreage in the Town at the time the Critical Area Commission approved the Town's original Critical Area Program, not including tidal wetlands or land owned by the federal government. The Town may also receive Growth Allocation from the County.

GROWTH ALLOCATION ENVELOPE – all of the proposed components of a growth allocation that are necessary to serve the proposed development, including an individually owned lot, lot coverage, a road, a utility, a stormwater management measure, an on-site sewage disposal measure, an active recreation area, and additional acreage needed to meet the development requirements of the Critical Area criteria

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

HABITAT PROTECTION AREA – an area that is designated for protection:

- a. Under Natural Resources Article, §§8-1806, Annotated Code of Maryland, regulations adopted under that authority, or a local program; or
- b. By the Secretary of Natural Resources

Habitat Protection Area includes:

- a. The Buffer as described in COMAR 27.01.01.01B(8);
- b. A nontidal wetland as defined in COMAR 26.24.01.02B;
- c. A habitat of a threatened species as defined in COMAR 27.01.09.03A;
- d. A habitat of a species in need of conservation as defined in COMAR 27.01.09.03A;
- e. A plant habitat as defined in COMAR 27.01.09.04A;
- f. A wildlife habitat as defined in COMAR 27.01.09.04A; and
- g. Anadromous fish propagation waters as defined in COMAR 27.01.09.05A.

**HABITAT PROTECTION PLAN** - A plan that provides for the protection and conservation of the species and habitats identified as Habitat Protection Areas in the Critical Area. The plan shall be specific to the site or area where the species or its habitat is located and shall address all aspects of a proposed development activity that may affect the continued presence of the species. These include, but are not limited to, cutting, clearing, alterations of natural hydrology, and increases in lot coverage. In developing the Plan, an applicant shall coordinate with the Department of Natural Resources to ensure that the Plan is adequate to provide for long-term conservation and can be effectively implemented on the specific site.

**HAZARDOUS TREE** – A tree with a structural defect, such as a crack, canker, weak branch union, decay, dead wood, root damage, or root disease, that decreases the structural integrity of the tree and which, because of its location, is likely to fall and cause personal injury or property damage, including acceleration of soil erosion. Or based on its location in the landscape, a healthy tree that, with continued normal growth, will damage an existing permanent structure or significantly increase the likelihood of soil erosion. Hazardous tree does not include a tree for which the likelihood of personal injury, property damage, or soil erosion can reasonably be eliminated or significantly diminished with routine and proper arboricultural practices, such as regular watering, application of fertilizer or mulch, and pruning, or by relocation of property that is likely to be damaged.

**HEALTH SERVICES** - The provision of medical, dental, or surgical, or other health services to individuals, including medical out-patient clinics, medical laboratories, dental clinics, dental laboratories, hospital supplies, and opticians.

**HIGHLY ERODIBLE SOILS** - Those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

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

**HOME IMPROVEMENT** – the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure adjacent to that building; or an improvement to land adjacent to the building. Home improvement includes construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool, a shore erosion control project, as defined under §8-1001 of the Natural Resources Article for a residential property, connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an ice maker to existing exposed household plumbing lines; installation in the building or structure, of an awning, fire alarm, or storm window; and work done on individual condominium units.

**HOME OCCUPATION** - Any occupation or activity which is clearly incidental and secondary to use of the premises for dwelling purposes and which is carried on by a member of a family residing on the premises and in connection with which there is no display or storage of materials or

generation of substantial volumes of vehicular or pedestrian traffic or parking demand or other exterior indication of the home occupation or variation from the residential character of the building and in connection with which no person outside the resident family is employed and no equipment used which creates offensive noise, vibration, smoke, dust, odor, heat or glare. Within the above requirements, a “home occupation” includes but is not limited to the following: art studio; dressmaking; professional office of a physician, dentist, lawyer, engineer, architect, accountant, salesman, real estate agent or other similar occupation; and teaching, with musical instruction limited to one (1) or two (2) pupils at a time. However, a “home occupation” shall not be interpreted to include barbershops, tourist homes, animal hospitals, child-care centers, tearooms or restaurants.

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

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

**HOUSING FOR THE ELDERLY** - A building or buildings containing dwelling units and related service facilities for elderly persons and which is subject to management or other legal restrictions that require the units in the project to be occupied by households of persons aged sixty two (62) or over. Occupancy is restricted as provided in the Conditional Use Article. The use may also include facilities for such occasional services to residents as meal preparation and service, day care, personal care, nursing, or therapy, or any service to the elderly population of the community that is an ancillary part of one of the above operations.

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

**HYDROPHYTIC VEGETATION** - Those plants cited in "Vascular Plant Species Occurring in Maryland Wetlands" (Dawson, F. et al., 1985) which are described as growing in water or on a substrate that is at least periodically deficient in oxygen as a result of excessive water content (plants typically found in water habitats).

**IMMEDIATE FAMILY** - A father, mother, son, daughter, grandfather, grandmother, grandson, or granddaughter.

**INFILL** - The development of vacant, abandoned, passed over or underutilized land within built-up areas of Town.

**IN-KIND REPLACEMENT** – The removal of a structure and the construction of another structure that is smaller than or identical to the original structure in use, footprint, area, width, and length.

**INSTITUTIONAL USE** -A use that provides a public service and is operated by a Federal, State or local government, public or private utility, public or private school or college, tax-exempt organization, and/or a place of religious assembly. Examples include: public agency, public safety and emergency services, essential and utility services, cultural, service and religious facilities, public/private health facilities or other similar uses.

**INTENSELY DEVELOPED AREA** - An area of at least 20 acres or the entire upland portion of the critical area within a municipal corporation, whichever is less, where: residential, commercial, institutional, or industrial developed land uses predominate; and a relatively small amount of natural habitat occurs. These areas include: an area with a housing density of at least four dwelling units per acre; an area with public water and sewer systems with a housing density of more than three dwelling units per acre.

**INVASIVE SPECIES** – A species that is non-native or alien to the ecosystem under consideration whose introduction causes or is likely to cause economic or environmental harm or harm to human health.

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

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

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

**LANDFORMS** - Feature of the earth's surface created by natural causes.

**LANDWARD EDGE** – The limit of a site feature that is furthest away from a tidal water, tidal wetland, or a tributary stream.

**LARGE SHRUB** - A shrub that, when mature, reaches a height of at least six feet.

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

**LEGALLY DEVELOPED** - All physical improvements to a property that existed before Critical Area Commission approval of a local Program, or were properly permitted in accordance with the provisions of the local Program in effect at the time of construction.

LIMITED DEVELOPMENT AREA – an area:

- a. That is developed in low or moderate intensity uses and contains areas of natural plant and animal habitat; and
  - b. Where the quantity of runoff has not been substantially altered or impaired;
- Limited development area includes an area:
- a. With a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre
  - b. With public water or sewer system;
  - c. That is not dominated by agricultural land, wetland, forest, barren land, surface water, or open space; or
  - d. That is less than 20 acres and otherwise qualifies as an intensely developed area under the definition in this Chapter.

LIMIT OF DISTURBANCE - The area of a development or redevelopment activity that includes temporary disturbance and permanent disturbance.

LIVING SHORELINE - A suite of stabilization and erosion control measures that preserve the natural shoreline and are designed to minimize shoreline erosion, maintain coastal process, and provide aquatic habitat. Measures must include marsh plantings and may include the use of sills, sand containment structures, breakwaters, or other natural components.

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

LOCAL SIGNIFICANCE - Development of a minor scale which causes environmental or economic consequences that are largely confined to the immediate area of the parcel of land on which it is located; does not substantially affect the Critical Area Program of the Town; and is not considered to be major development as defined in this chapter.

LOCALLY SIGNIFICANT HABITAT – a plant or wildlife habitat that may not be of Statewide significance but, in a local jurisdiction’s Critical Area program, is considered to be significant in a local or regional context because the habitat contains a species:

- a. Uncommonly found or of limited occurrence in that area; or
- b. With an unusually high concentration in that area.

LODGING HOUSING - Same as “rooming house.”

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

**LOT COVERAGE** - The percentage of a total lot or parcel that is: occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or covered with a paver, walkway gravel, stone, shell, impermeable decking, a paver, permeable pavement, or other any manmade material. Lot coverage includes the ground area covered or occupied by a stairway or impermeable deck, but does not include: a fence or wall that is less than one foot in width that has not been constructed with a footer; a walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier; a wood mulch pathway; or a deck with gaps to allow water to pass freely.

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

**LOT, CORNER** - A lot abutting upon two (2) or more streets at their intersection.

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

**LOT, INTERIOR** - A lot other than a corner lot.

**LOT LINE** - The boundary line of a lot.

**LOT, THROUGH (DOUBLE FRONTAGE)** - A lot having a frontage on two (2) approximately parallel streets or places.

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

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

**MARINA** – Any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities. A place for docking pleasure boats or providing services to pleasure boats and the occupants thereof, including minor servicing and repair to boats while in the water, sale of fuel and supplies and provision of lodging, food, beverages and entertainment as accessory uses. A yacht club shall be considered as a “marina,” but a hotel, motel or similar use where docking of boats and provision of services thereto is incidental to other activities shall not be considered a “marina,” nor shall boat docks accessory to a multiple dwelling where no boating-related services are rendered.

**MAJOR BUFFER MANAGEMENT PLAN** – a type of Buffer Management Plan and all supporting documentation required under this Ordinance.

**MAJOR DEVELOPMENT** - Development of a scale that may cause State-wide, regional, or inter-jurisdictional, environmental or economic effects in the Critical Area, or which may cause substantial impacts on the Critical Area Program of a local jurisdiction. This development includes, but is not limited to, airports, power plants, major solar energy generating systems, wastewater treatment plants, highways, regional utility transmission facilities, prisons, hospitals, public housing projects, public beaches, and intensely developed park and recreation facilities, and

any development or project authorized by the Public Service Commission under a Certificate of Public Convenience and Necessity.

**MANUFACTURED DWELLING** - - as defined in Maryland's Housing Expansion and Affordability Act (HB 538) effective January 1, 2025 as a transportable structure that is more than 320 feet designed to be used as a dwelling, and includes the plumbing, heating, air-conditioning, and electrical system; any manufactured home that has a HUD certification number and complies with federal safety standards meets the criteria; the manufactured dwelling has to be converted to real property. To be converted to real property all of the following have occurred: the manufactured home is attached to a permanent foundation; the ownership interest of the manufactured home and the parcel of land it is affixed to are identical; and an affidavit of affixation has been recorded with the Clerk of the Court of the County or jurisdiction in which the parcel of real property is located.

**MASSAGE PARLOR** - An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the State of Maryland. This definition does not include an athletic club, health club, school, gymnasium, reducing salon, spa, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

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

**MEDICAL CANNABIS** – Any product containing usable cannabis or medical cannabis finished product.

**MEDICAL CANNABIS FINISHED PRODUCT** – Any product containing a medical cannabis concentrate or a medical cannabis-infused product package and labeled for release to a qualifying patient. Medical cannabis-infused produce is oil, ointment, salve, tincture, capsule, suppository, dermal patch, cartridge, or other product containing medical cannabis concentrate or usable cannabis that has been processed so that the dried leaves and flowers are integrated into other material. Medical cannabis-infused product does not include a food as that term is defined in Health – General Article §21-101, Annotated Code of Maryland.

**MEDICAL CANNABIS LICENSED DISPENSARY** – Medical Cannabis Licensed Dispensary is an entity licensed by the State of Maryland Medical Cannabis Commission that acquires, possesses, repackages, processes, transfers, transports, sells, distributes, or dispenses, products containing medical cannabis, related supplies, related products including tinctures, aerosols, oils, or ointments, or educational materials for use by a qualifying patient or caregiver.

**MINOR BUFFER MANAGEMENT PLAN** – a type of Buffer Management Plan and all supporting documentation required under this Ordinance



**MITIGATION** - An action taken to compensate for adverse impacts to the environment resulting from development, development activity, or a change in land use or intensity.

**MOBILE HOME OR TRAILER** - Any vehicle, covered or uncovered, used for living, sleeping, business or storage purposes, having no foundation other than wheels, blocks, skids, jacks, horses or skirtings, and which is, has been or reasonably may be equipped with wheels or other devices for transporting the vehicle from place to place, whether by motive power or other means. The term “trailer” shall include camp car and house car and any vehicle or similar portable structure with any or all of the following characteristics:

- a. Manufactured as a re-locatable dwelling unit intended for year-round occupancy with no need for a permanent foundation, which can be moved upon the removal of tie-downs and surrounding decks and the reattachment of tow bar, axles, and wheels.
- b. Designed to be transported after manufacturing on its own permanent chassis, with a fixed or removable tow bar, and can be moved without the use of regular house-moving equipment.
- c. Designed to be installed as a single-wide or double-wide unit with only incidental unpacking and assembling operations.

**MODIFIED BUFFER AREA** – an area of land:

- a. Where a pattern of residential, industrial, commercial, or recreational development existed in the 100-foot Buffer on December 1, 1985 in the Chesapeake Bay Critical Area or on June 1, 2002 in the Atlantic Coastal Bays Critical Area; and
- b. That, as part of a local program approved by the Commission, is shown on a map maintained on file by the local jurisdiction and is subject to modified development provisions

Modified Buffer area includes an area referred to by a local jurisdiction as a buffer exemption area, buffer exempted area, buffer modification area, buffer management area, buffer management overlay, buffer modified area, special buffer management area, special buffer area, or any other similar term that has the same substantive meaning as modified buffer area.

**MODULAR DWELLING** - as defined in Maryland’s Housing Expansion and Affordability Act (HB 538) effective January 1, 2025 as a building assembly or system of building subassemblies designed for habitation as a dwelling for one or more individuals that includes the necessary electrical, plumbing, heating, ventilating, and other service system; is made or assembled by a manufacturer on or off the building site for installation, or assembly and installation, on the building site and; is installed and set up according to the manufacturer’s instructions on a foundation and support system that meets local building codes.

**MOTEL or MOTOR LODGE** - A building or buildings in which lodging or boarding and lodging are provided and offered to the public for compensation; same as a hotel, except that the buildings are usually designed to serve tourists traveling by automobile, ingress and egress to rooms

need not be through a lobby or office, and parking usually is adjacent to the rooms.

NATIVE PLANT - A species that is indigenous to the physiographic area in Maryland where the planting is proposed.

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

NATURAL FOREST VEGETATION - Vegetation consisting of canopy trees, under story trees, shrubs, and herbaceous plants that are typically found in riparian areas in the State of Maryland. Areas of natural forest vegetation planted to meet the mitigation requirements in this ordinance shall resemble the structure and species composition of natural forests.

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

NATURAL REGENERATION - The natural establishment of trees and other vegetation with at least 400 free-to-grow seedlings per acre, which are capable of reaching a height of at least 20 feet at maturity.

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

NATURE-DOMINATED - A condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.

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

NEW DEVELOPMENT - That for purposes of implementing Critical Area provisions of this ordinance, new developments (as opposed to redevelopment) means a development activity that takes place on a property with pre-development imperviousness (in IDA) or lot coverage (LDA and RCA) of less than 15 percent as of December 1, 1985.

NON-COMFORMITIES –

- a. Nonconforming lots - A validly recorded lot which at the time it was recorded fully complied with all applicable laws and ordinances, but which does not fully comply with the lot requirements of this Zoning Ordinance concerning minimum density, area, and dimension.
- b. Nonconforming Structures - A structure or building, not including signs, which lawfully existed on the effective date of this Zoning Ordinance, but which do not comply with one or more of the development standards for the district in which it is located.

- c. Nonconforming Use - A use or activity that was lawful prior to the effective date of this Zoning Ordinance but fails to comply with the present requirements of the Zoning Ordinance.

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

NON-RENEWABLE RESOURCES - Resources that are not naturally regenerated or renewed.

NON-TIDAL WETLANDS - Those areas regulated under Subtitle 9 of the Environment Article that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation. The determination of whether an area is a nontidal wetland shall be made in accordance with the publication known as the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands," published in 1989 and as may be amended. Nontidal wetlands do not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.

NONWATER-DEPENDENT PROJECT – a temporary or permanent structure that, by reason of its intrinsic nature, use, or operation, does not require location in, on or over State or private wetlands; includes a dwelling unit on a pier; a restaurant, a shop, an office, or any other commercial building, or use on a pier; a temporary or permanent roof or covering on a pier; a pier used to support a nonwatery-dependent use; and a small-scale renewable energy system on a pier, including a solar energy system and its photovoltaic cells, solar panels, or other necessary equipment; a geothermal energy system and its geothermal heat exchanger or other necessary equipment; and a wind energy system and its wind turbine, tower, base, or other necessary equipment. Non-water dependent projects do not include a fuel pump or other fuel-dispensing equipment on a pier; a sanitary sewage pump or other wastewater removal equipment on a pier; or an office on a pier for managing marina operations, including monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations.

NURSING HOME - Same as "convalescent home."

OFFSETS - Structures or actions that compensate for undesirable impacts.

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

OVERBURDENED COMMUNITY – stated in §1-701 of the Environment Article.

PALUSTRINE - All non-tidal wetlands dominated by trees, shrubs, persistent emergent plants, or emergent mosses or lichens and all such wetlands that occur in tidal areas where the salinity due to ocean-derived salts is below one-half part per 1,000 parts of water.

PARKING LOT ISLAND - An interior landscaping feature surrounded on all sides by driving and/or parking surfaces.

PARKING LOT PENINSULA - An interior landscaping feature attached on only one side to perimeter landscaping, buildings, etc., and surrounded on all other sides by areas designated for parking and related movement of vehicles.

PARKING SPACE OFF-STREET - An all-weather surfaced area not in a street or alley and having an area of not less than one hundred sixty-two (162) square feet, exclusive of driveways, permanently reserved for the temporary storage of one (1) vehicle and connected with a street or alley by a paved driveway that affords ingress and egress for an automobile without requiring another automobile to be moved.

PERMANENT DISTURBANCE – A material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity. “Permanent disturbance” includes construction or installation of any material that will result in lot coverage, construction of a deck, except under §B (18-2) (b) (iii) of this regulation, grading, except under §B (18-2) (b) (ii) of this regulation, clearing of a tree, forest, or developed woodland; and a septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required. Permanent disturbance does not include a septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required.

PERSON - An individual, partnership, corporation, contractor, property owner, or any other person or entity.

PERSONAL SERVICES - Clothing alteration, interior decorating, watch/jewelry repair, catering, photo studios, shoe repair, travel agent, formal wear/rental barbershops and beauty salons and the like.

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

PIER - Any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure. Pier does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.

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

PLANT HABITAT - A community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.

PORT – A facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.

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

PRINCIPAL STRUCTURE - The primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.

PRIVATE HARVESTING - The cutting and removal of trees for personal use.

PROFESSIONAL SERVICES - The service by members of any profession including but not limited to accountants, architects, chiropractors, doctors, lawyers, dentist, engineers, optometrists, osteopaths, or social workers.

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

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

- a. A change to an adopted Program that results from State law;
- b. A change to an adopted Program that affects local processes and procedures;
- c. A change to a local ordinance or code that clarifies an existing provision; and
- d. A minor change to an element of an adopted Program that is clearly consistent with the provisions of State Critical Area law and all the Criteria of the Commission.

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

PROPERTY OWNER - A person holding title to a property or two or more persons holding title to a property under any form of joint ownership.

PUBLIC WATER-ORIENTED RECREATION - Shore-dependent recreation facilities or activities provided by public agencies that are available

to the general public.

**PUBLIC RECREATION** – Recreation facilities or activities provided by public or private agencies that are available to the general public.

**RECLAMATION** - The reasonable rehabilitation of disturbed land for useful purposes, and the protection of the natural resources of adjacent areas, including water bodies.

**RECONFIGURATION** - A change of the configuration of an existing lot or parcel line of any legal parcel of land or recorded legally buildable lot. Reconfiguration includes a lot line adjustment, a boundary line adjustment, and a replating request.

**REDEVELOPMENT** - The process of developing land which is or has been developed. For purposes of implementing the Critical Area provisions of this ordinance, redevelopment (as opposed to new development) means a development activity that takes place on property with pre-development imperviousness (in IDA) or lot coverage (in LDA and RCA) of 15 percent or greater.

**REFORESTATION** – The act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions of a site or area.

**REGISTERED CHILD CARE HOME** - A home-based facility for the care of six or fewer children operating under the requirements of appropriate State and local agencies for child care.

**REGULATIONS** - The whole body of regulations, text, charts, tables, diagrams, maps, notations, references, and symbols contained or referred to in this Zoning Ordinance.

**RENTAL UNIT** - A dwelling unit intended for rental to transients on a day-to-day or week-to-week basis but not intended for use as a permanent dwelling and not including culinary facilities.

**RENEWABLE RESOURCE** - A resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.

**RESOURCE CONSERVATION AREA** - An area that is characterized by nature dominated environments, such as wetlands, surface water, forests, and open space; and resource-based activities, such as agriculture, forestry, fisheries, or aquaculture. Resource conservation areas include areas with a housing density of less than one dwelling per five acres.

**RESOURCE UTILIZATION ACTIVITIES** - Any and all activities associated with the utilization of natural resources such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.

**RESTAURANT** - An establishment whose principal business is the sale of foods or beverages to the customer in a ready-to-consume state, and

whose method of operation includes one or both of the following characteristics:

- a. Customers, normally provided with an individual menu, are served their foods or beverages by a restaurant employee at the same table or counter to which the items are consumed.
- b. A cafeteria-type operation where foods or beverages are consumed within the restaurant building.

This definition does not include food service establishments which include facilities designed for the serving of food directly to the occupants of motor vehicles.

**RETAIL STORES** - Business establishments dealing in commodities which tend to be purchased on a comparison basis, including apparel and accessories, automobile supplies, business equipment, sales and service, china and glassware, commercial art, communications equipment sales and service, draperies, fabrics, and re-upholstery, floor covers, furniture, hardware, home appliances and furnishings, luggage and leather goods, musical instruments and supplies, paint and wall covers, party supplies, photographic equipment sales and service, radios, records and tapes, second-hand merchandise, sporting goods, television and stereo sales and service, and toys and games. Specialty shops which carry only one type of interrelated goods, including book stores, candle shops, cosmetic shops, florist shops, gift shops, hobby and craft supply shops, import shops, jewelry shops, souvenir shops, stationery shops, tack shops, and tobacco shops shall also be regulated as retail stores.

**RESTORATION** - The act of returning a site or area to an original state or any action that reestablishes all or a portion of the ecological structure and functions of a site or area.

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

**ROAD** – A public thoroughfare under the jurisdiction of the State, a county, a municipal corporation, or any other public body. Road does not include a drive aisle or a driveway.

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

**SAFETY SERVICES** – Facilities provided by the Town, State, or Federal Government, or private entity, that provide fire, police, life protection, or detention services together with incidental storage and maintenance of necessary vehicles.

**SEASONALLY FLOODED WATER REGIME** - A condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.

**SELECTION** - The removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

**SIGN** - For definitions pertaining to signs, see Article XIII.

**SHORE EROSION PROTECTION WORKS** - Those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area.

**SIGNIFICANTLY ERODING AREAS** - Areas that erode two feet or more per year.

**SMALL SHRUB** - A shrub that, when mature, reaches a height no greater than six feet.

**SOIL CONSERVATION AND WATER QUALITY PLANS** - Land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:

- a. How the landowner plans to treat a farm unit;
- b. Which best management practices the landowners plan to install to treat undesirable conditions; and
- c. The schedule for applying for those Best Management Practices.

**SPECIES IN NEED OF CONSERVATION** - Those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated by regulation by the Secretary of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article §§ 10-2A-06 and 4-2A-03, Annotated Code of Maryland or COMAR 08.03.08.

**SPECIALITY SHOPS** - A retail store which carries only one type of interrelated goods, including book stores, candle shops, cosmetic shops, florist shops, gift shops, hobby and craft supply shops, import shops, jewelry shops, souvenir shops, stationery shops, tack shops, tobacco shops, and wine and cheese shops.

**SPOIL PILE** - The overburden and reject materials as piled or deposited during surface mining.

**STABLE, PRIVATE** - An accessory building, not related to the ordinary operation of a farm, for the housing of not more than four (4) horses or mules owned by a person or persons living on the premises and which horses or mules are not for hire or sale.

**STABLE, PUBLIC** - Any stable for the housing of horses or mules, operated for remuneration, hire, sale or stabling, or any stable, not related to the ordinary operation of a farm, with a capacity for more than four (4) horses or mules, whether or not such stable is operated for remuneration, hire, sale, or stabling.

**STEEP SLOPES** - Slopes of 15 percent or greater incline.



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

**STORY HALF** - A space under a sloping roof which has the line of intersection of roof decking and wall face not more than three (3) feet above the top floor level and in which space not more than two-thirds (2/3) of the floor area is finished for use. A half story containing independent apartments for living quarters shall be counted as a full story.

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

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

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

**STRUCTURE** – Building or construction materials or a combination of those materials that are purposely assembled or joined together on or over land or water. Structure includes a temporary or permanent fixed or floating pier, piling, deck, walkway, dwelling, building, boathouse, platform, gazebo, and shelter for the purpose of marine access, navigation, working, eating, sleeping, or recreating.

**SUBSTANTIAL ALTERATION** - Any repair, reconstruction, or improvement of a principal structure, where the proposed footprint equals or exceeds 50 percent of the existing principal structure.

**SUPPLEMENTAL PLANTING PLAN** – A description and landscape schedule that shows the proposed species type, quantity, and size of plants to be located within a buffer if natural regeneration does not meet the required stem density.

**SURFACE MINING** - The breaking of the surface soil in order to extract or remove minerals. Surface mining includes any activity or process constituting all or part of a process for the extraction or removal of minerals from their original location and the extraction of sand, gravel, rock, stone, earth or fill from borrow pits for highway construction purposes or for other facilities. For the purpose of this ordinance, surface mining is also defined as operations engaged in processing minerals at the site of extraction; removal of overburden and mining of limited amounts of any mineral when done for the purpose of prospecting and to the extent necessary to determine the location, quantity or quality of any natural deposit; and mining operations, if the affected land exceeds one acre or more in area.

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

**TEMPORARY DISTURBANCE** – A short-term change in the landscape that occurs as part of a development or redevelopment activity. Temporary disturbance includes storage of materials that are necessary for the completion of the development or redevelopment activity, construction of a road or other pathway that is necessary for access to the site of the development or redevelopment activity, if the road, or pathway is removed immediately after completion of the development or redevelopment activity and the area is restored to its previous vegetative condition; and grading of a development site, if the area is restored to its previous vegetative condition immediately after completion of the development or redevelopment activity; and locating a septic system on a lot created before local program approval if the septic system is located in existing grass or clearing is not required. Temporary disturbance does not include a septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required; and a violation.

**THINNING** - A forest practice used to accelerate tree growth of quality trees in the shortest interval of time.

**THREATENED SPECIES** - Any species of fish, wildlife, or plants designated as such by regulation by the Secretary of the Department of Natural Resources that appear likely, within the foreseeable future, to become endangered, including any species of wildlife or plant determined to be a “threatened” species pursuant to the federal Endangered Species Act, 16 U.S.C. § 1431 et seq., as amended.

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

**TOURIST HOME** - A building in which lodging or boarding and lodging are provided for not more than fifteen (15) persons, primarily transient, or with not more than ten (10) guest rooms or rental units offered to the public for compensation. As such, it is open to the public, in contradistinction to a rooming, boarding, or lodging house or a multiple dwelling, which are herein separately defined.

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

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

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

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

**TRIBUTARY STREAM** - A perennial stream or intermittent stream that has been identified by site inspection or in accordance with local procedures approved by the Critical Area Commission.

**UNDERSERVED COMMUNITY** – stated in §1-701 of the Environment Article; any census tract according to the most recent U. S. Census Bureau Survey:

- a. At least 25% of the residents qualify as low-income;
- b. At least 50% of the residents identify as nonwhite; or
- c. At least 15% of the residents have limited English proficiency.

**UNDERSTORY** - The layer of forest vegetation typically located underneath the forest canopy.

**UNDERSTORY TREE** - A tree that, when mature, reaches a height between 12 and 35 feet.

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

**UPLAND BOUNDARY** - The landward edge of a tidal wetland or nontidal wetland.

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

**VESSEL** – every description of watercraft, including an ice boat but not including a seaplane, that is used or capable of being used as a means of transportation on water or ice. Vessels include the motor, spars, sails, and accessories of a vessel.

**WASH PLANT** - A facility where sand and gravel is washed during processing.

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

**WATERWAY LINE** - A line marking the normal division between land and a waterway as established by the Administrator or by town ordinances.

**WATER-BASED AQUACULTURE** - The raising of fish and shellfish in any natural, open, free-flowing water body.

**WATER-DEPENDENT FACILITIES** - Those structures or works associated with industrial, maritime, recreational, educational, or fisheries

activities that require location at or near the shoreline within the Buffer. An activity is water-dependent if it cannot exist outside the Buffer and is dependent on the water by reason of the intrinsic nature of its operation. Such activities include, but are not limited to, ports, the intake and outfall structures of power plants, water-use industries, marinas and other boat docking structures, public beaches and other public water-oriented recreation areas, and fisheries activities.

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

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

**WATERFOWL STAGING AND CONCENTRATION AREA** – an area of open water and adjacent marshes where, as documented by the Department of Natural Resources, waterfowl gather during migration and throughout the winter season

**WILDLIFE CORRIDOR** - A strip of land having vegetation that provides habitat and safe passage for wildlife.

**WILDLIFE HABITAT** - Those plant communities and physiographic features that provide food, water, cover, and nesting areas, as well as foraging and feeding conditions necessary to maintain populations of animals in the Critical Area as described in COMAR 27.01.09.04.

**WINERY** – A facility to grow fruit for wine or pomace brandy production. A facilities for and use that include crushing, fermenting, blending, aging, storage administration office functions for the winery, warehousing, and shipping facilities. Retail sales and tasting facilities of wine and related promotional items are permitted as part of the winery operations. As regulated by Article 2B, section 2-205 of the Annotated Code of Maryland and this ordinance a winery may include the following:

- a. ferment and bottle wine;
- b. distill and bottle pomace brandy;
- c. store wine and pomace brandy;
- d. sell wine and pomace brandy produced by the occupant for consumption on or off premises;
- e. provide sales of wine and pomace brandy;
- f. serve and sell food; and or
- g. hold promotional or organized events.

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

YARD, FRONT - A yard extending across the front of a lot between the side lot lines and being the minimum horizontal distance between the street line and the main building or any projections thereof other than the projections of uncovered steps, uncovered balconies, terraces or uncovered porches. On corner lots, the "front yard" shall be considered as parallel to the street upon which the lot has its least dimension.

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

YARD, SIDE - A yard between the main building and the side line of the lot and extending from the front yard to the rear yard, and being the minimum horizontal distance between the side lot line and side of the main buildings or any projections thereof.

### **ARTICLE III ADMINISTRATIVE MECHANISMS**

#### **§ 80-9. Creation**

- A. Pursuant to the authority and provisions of Article 66B of the Annotated Code of Maryland (1952 Edition), there is hereby created a Municipal Planning Commission for the Town of Millington. Such Commission shall be known as the “Millington Planning Commission” and is hereafter referred to as the “Planning Commission”

#### **§ 80-10. Composition; appointment; terms; vacancies; compensation.**

- A. The Planning Commission shall consist of five (5) members.
- B. The members shall be appointed by the Mayor and Council from among the residents of Millington or Millington Postal Code 21651. The terms of such members shall be five (5) years or until their successors take office; provided, however, that the terms of the five (5) members first appointed by the Mayor and Council of Millington shall be one (1), two (2), three (3), four (4) and five (5) years respectively, from the effective date of creation of the Planning Commission, and shall be specified by the Mayor and Council of Millington at the time of appointment.
- C. A vacancy occurring prior to the expiration of the term for which a member of the Planning Commission is appointed shall be filled in in the manner of original appointment.
- D. Members may, after a public hearing, be removed for cause by the Mayor and Council.
- E. Members of the Planning Commission shall serve without compensation.
- F. The Planning Commission shall elect a Chairman from among its members. The term of the Chairman shall be one (1) year with eligibility for reelection.

#### **§ 80-11. Rules for transaction of business.**

The Planning Commission shall adopt rules for the transaction of its business.

#### **§ 80-12. Powers and duties.**

The Planning Commission shall have the powers and duties as now or hereafter provided for in Article 66B of the Annotated Code of Maryland (1957 Edition, as amended).

**§ 80-13. Public hearings; method of adoption.**

- A. Public hearings.
  - 1. The Planning Commission shall hold public hearings on all plans, regulations and other proposals for which such hearings are required under Article 66B of the Annotated Code of Maryland (1957 Edition, as amended). The Planning Commission shall give at least fifteen (15) days' notice of such hearings by an advertisement published in a newspaper of general circulation in the town and in an area around the town within one (1) mile from the corporate limits. Such notice shall include the time and place of the hearing, a description of the proposals to be considered at the hearing, and a place where a copy of such proposals can be obtained. At any such hearings interested persons shall be afforded an opportunity to submit data, views or regulations with respect to the proposals under consideration.
  - 2. A written record shall be prepared for any public hearing held by the Planning Commission.
- B. Any regulations or other proposals in connection with planning and zoning that are recommended or approved by the Planning Commission shall be confirmed by a ye or nay vote in open session.

**§ 80-14. Duties of Town Clerk and Attorney filing of materials.**

- A. The Town Clerk shall be the chief executive officer of the Planning Commission, and the Appointed Attorney shall serve as attorney for the Planning Commission.
- B. All applications, plats, maps and other matters required to be filed with the Planning Commission by Article 66B of the Annotated Code of Maryland (1957 Edition, as amended) or regulations adopted pursuant thereof shall be deemed filed when filed with the Town Clerk, and the Town Clerk shall be responsible for presenting all such applications, plate, maps and other matters to the Planning Commission for its consideration for action.

**§ 80-15. Duties of Commission.**

- A. The Planning Commission shall make and approve a plan to be recommended to the Mayor and Council of Millington for adoption and which shall serve as a guide to decisions to ensure the development of public and private property both inside of the Town of Millington and any areas outside of its boundaries which, in the judgment of the Planning Commission, bear relation to the planning responsibilities of the Commission. The plan shall contain as a minimum the elements set forth in § 3.05 of Article 66B of the Annotated Code of Maryland.

- B. Also, as provided in said § 3.05, it shall be the duty of the Planning Commission to recommend the boundaries of the various zoning districts and appropriate regulations to be enforced therein, in order that the Mayor and Council may avail themselves of the zoning powers conferred by the Maryland Code. The Planning Commission shall make a preliminary report and hold at least one (1) public hearing thereon before submitting its final report, and the Mayor and Council shall not hold public hearings or take action until the final report of the Planning Commission has been received.



## ARTICLE IV DISTRICTS AND DISTRICT MAP

### Part I Zoning Districts

#### § 80-16. Districts Established

- A. The incorporated area of the Town of Millington shall be divided into base zoning districts as follows:
- “AR” – Agriculture District;
  - “R-1” - Rural Conservation Residential District;
  - “R-2” - Single Family Residential District;
  - “R-3” – Old Town Residential District;
  - “TC” – Town Center District; and
  - “LI” - Light Industrial.
- B. In addition to the base zoning districts described above, the Zoning Ordinance provides for the following special districts:
- “PN” - Planned Neighborhood District Floating Zone;
  - “GA” - Critical Area Growth Allocation Floating Zone;
  - “CA” - Critical Area Overlay District; and
  - “CD” – Community Design Overlay District.
- C. These districts are established to regulate the location of residences, trades, industries, and buildings erected or altered for specific uses; to regulate and limit the height and bulk of buildings hereafter erected or structurally altered; to regulate and limit population density and the intensity of the use of lot areas; to regulate and determine the areas of yards, courts, and other open spaces with and surrounding such buildings; to protect water quality and sensitive environmental areas; to maintain the traditional visual characteristics of the Town that define its uniqueness and are important to the economic stability of the Town; and to implement the recommendations of the 2009 *Millington Comprehensive Plan*

#### § 80-17. Purpose of Districts

- A. AR: Agriculture District

The purpose of the AR Agricultural District is to permit the continuation of existing agriculture land uses within the Town while limiting new agriculture uses to those with the least potential for adverse impacts on adjacent non-agriculture land uses. This classification is intended as an interim zoning designation that will apply until that date being five (5) years from the date of annexation, and that the properties will be rezoned R-1, R-2, and L1-1.

B. R-1: Rural Conservation District

The purpose of the R-1 District regulations is to provide appropriate protection for the sensitive environmental features located in this district. Development standards emphasize the protection of sensitive environmental areas and wildlife habitats of concern to the State. District standards are set to maintain low residential density consistent with the land use designation under the Town's Critical Area Overlay District and afford a high level of protection for water quality and existing plant and wildlife habitat.

C. R-2: Single Family Residential

The purpose of the R-2 Single Family Residential District regulations is to protect the single family residential character in established neighborhoods and encourage appropriate infill and redevelopment consistent with the existing character of the surrounding neighborhoods. Development standards are established to protect the area from incompatible land use uses, while permitting appropriate infill and redevelopment on vacant and underutilized properties. Because of the historic importance of portions of these neighborhoods, strict appearance and development standards apply to infill and redevelopment projects.

D. R-3: Old Town Residential District

The R-3 Old Town Residential District abuts the Town Center on four sides and encompasses the preeminent historic structures in the Town. Nearly 70 percent of the structures are two-story residences built prior to 1925. The purpose of the R-3 District regulations is to maintain the existing architectural character of this residential neighborhood, allow appropriate infill and redevelopment that reflects the site development and architectural characteristics of the district and encourage preservation of landmark structures.

District regulations limit permitted uses to detached single family residential and customary accessory uses. Conversion of multi-family use of residential buildings, not specifically designed and intended as multi-family structures, is not be allowed. Because of the historic importance of these neighborhoods, strict appearance and development standards apply to infill and redevelopment projects.

E. TC: Town Center District

The TC Town Center District encompasses a mix of private and public uses including retail, service, and civic uses as well as detached single family dwellings and apartment buildings. It is Millington's objective to maintain this area as the primary location of commercial activity in the Town. Standards for the TC District are designed to allow for a broad range of uses including business, retail sales, services and office in existing buildings and to encourage appropriate infill and redevelopment for new commercial, business retail, and service uses as well as redevelopment of existing single family dwellings. Conversion of buildings into apartment is not permitted where it preempts first floor non-residential use but residential apartments are permitted above the first floor of existing businesses. Accommodations such as country inns or bed and breakfasts may be permitted as an adaptive reuse of existing buildings. Infill and

redevelopment

standards, including height, lot area and yard requirements are flexible to encourage infill and redevelopment that reflects the existing land development pattern and the architectural character of the district including buildings that face on and come up to meet the street, parking situated at the rear or side of buildings and connection to the existing sidewalk system. Because of the historic importance of this area, strict appearance and development standards apply to infill and redevelopment projects.

F. LI: Light Industrial

The purpose of this LI District is to provide for a wide variety of light manufacturing, fabricating, processing, wholesale distributing and warehousing uses appropriately located for access by major thoroughfares or railroads. Light industrial uses generally involve small to medium scale industrial activities including, but not limited to research and development, warehousing and storage activities, light manufacturing and assembly of products, and other similar uses. Light industrial uses usually generate less heavy truck traffic and have fewer adverse environmental effects on surrounding areas, as compared to heavy industrial uses. Commercial uses and open storage of materials are permitted, but new residential development is excluded.

**§ 80-18. Special Districts**

A. Floating Zone District

1. Purpose. Floating zones provided for uses that may be appropriate for the Town but are not given specific mapped locations at the time of adoption of the most recent comprehensive revision to the Millington Zoning Ordinance. The purpose of the designated floating zones is to permit the mapping of appropriate areas for land uses that may be required over the next 20 years. The designated floating zone provides a mechanism for the establishment of the district in appropriate areas, limiting the areas to be zoned and setting conditions that must be met by any development proposal seeking such a designation.
2. Designation of floating zones. The following are designated as floating zones:
  - a. “PN” Planned Neighborhood Development Floating Zone; and
  - b. “GA” Growth Allocation Floating Zone

The Mayor and Council and Planning Commission find that they are not able to locate the Floating Zones with precision in advance and that it is desirable to leave specific locations and conditions for future determination as the Town grows and specific needs develop.

B. Overlay Districts

1. Overlay zones build on the underlying zoning by establishing additional or stricter standards and criteria. The standards of the overlay zone apply in addition to those of the underlying zoning district.
2. The following overlay districts shall apply in the corporate limits of Millington:
  - a. “CA” Critical Area Overlay District
  - b. “CD” Community Design Overlay District

#### **§ 80-19. Official Zoning Maps**

- A. The incorporated areas of the Town are hereby divided into zoning districts as shown on the Official Zoning Map which, together with all explanatory matter thereon, is hereby adopted by reference and declared to be a part of this Zoning Ordinance.
- B. The Official Zoning Map shall be identified by the signatures of the Mayor and Council, attested by the Town Administrator, and including the following words: "This is to certify that this is the Official Zoning Map referred to in §80-19 of the Zoning Ordinance for Millington, Maryland," together with the date of the adoption of this Zoning Ordinance.
- C. Regardless of the existence of purported copies of the Official Zoning Map, which may from time to time be made or published, the Official Zoning Map shall be located in the Town Office and shall be the final authority as to the current zoning status of land and water areas, buildings, and other structures in the Town.
- D. Official Critical Area Overlay District Map
  1. The Official Critical Area Overlay District Map has been prepared for the Town of Millington and shall be maintained in force as part of the Official Zoning Maps referred to in this Zoning Ordinance. The Official Critical Area Map shall be identified by the signatures of the Mayor and Council, attested by the Town Administrator, and including the following words: "This is to certify that this is the Official Critical Area Map referred to in §80-19 of the Zoning Ordinance for Millington, Maryland," together with the date of the adoption of this Zoning Ordinance.
  2. The Official Critical Area Map shall delineate the extent of the CA Overlay District. The Critical Area Overlay District shall include all lands and waters defined in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland. They include:
    - a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article,

- Annotated Code of Maryland.
    - b. All lands and water areas within 1,000 feet beyond the landward boundaries of State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and
    - c. Modification to these areas through inclusion or exclusion proposed by the Town and approved by the Critical Area Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.
- 2. Within the designated CA District all land shall be assigned one of the following land use management designations:
  - a. Intensely Developed Area (IDA)
  - b. Limited Development Area (LDA)
  - c. Resource Conservation Area (RCA)

The Critical Area Overlay District Maps may be amended by the Mayor and Council in compliance with amendment provisions in this Zoning Ordinance, the Maryland Critical Area Law and Critical Area Criteria.

#### **§ 80-20. Replacement of Official Zoning Maps**

- A. In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Mayor and Council may by resolution adopt new Official Zoning Map which shall supersede the prior Official Zoning Map.
- B. The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Maps but no such corrections shall have the effect of amending the original zoning map, the Zoning Ordinance or any subsequent amendment thereof. The Planning Commission shall certify as to the accuracy of the new Official Zoning Map and the maps shall be identified by the signature of the Mayor and Council attested by the Town Administrator, and bearing the seal of the Town under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (*date of adoption of maps being replaced*) as part of the Zoning Ordinance of Millington, Maryland."

#### **§ 80-21. Annual map revision; fee.**

- A. Any person desiring a copy of said Official Zoning Map shall pay the current cost for each copy thereof to the appropriate Town official. Such fees shall be applied to defray the cost of revising and printing the Official Zoning Map.

**§ 80-22. Periodic review of regulations and map.**

- A. At least once every five (5) years, the Planning Commission shall review the zoning regulations and the Official Zoning Map to determine whether it is advisable to amend the regulations or the maps, or both, to bring them into accord with the objectives of the *Millington Comprehensive Plan*, to take advantage of new techniques or to encourage improved building practices which may have been developed and which may have application in Millington, to correct deficiencies or difficulties which may have developed in administration or for such other reasons as the Planning Commission may determine.
- B. The Planning Commission shall submit a report on their findings to the Mayor and Council.

**§ 80-23. Interpretation of district boundaries.**

- A. A zoning district name or letter-number combination shown on the Official Zoning Map indicates that the regulations pertaining to the district designated by that name or letter-number combination extend throughout the whole area in the Town bounded by the district boundary lines, except as otherwise provided by this section.
- B. Where uncertainty exists with respect to the boundaries of the various districts as shown on the Official Zoning Map accompanying and made a part of these regulations, the following rules shall apply:
  - 1. In cases where a boundary line is given a position within a street or alley, easement, canal or navigable or non-navigable stream, it shall be deemed to be in the center of right-of-way of the street, alley, easement, canal or stream, and if the actual location of such street, alley, easement, canal or stream varies slightly from the location as shown on the Zoning District Map, then the actual location shall control.
  - 2. In cases where a boundary line is shown as being located a specific distance from a street line or other physical feature, this distance shall control.
  - 3. In cases where the district boundaries as shown on the Official Zoning Map approximately coincide with lot lines, the lot lines shall be construed to be the district boundary lines, unless otherwise indicated.
  - 4. In cases where district boundaries as shown on the Official Zoning Map do not coincide or approximately coincide with street lines, alley lines or lot lines and no dimensions are shown, the location of such district boundary lines shall be determined by the use of the scale appearing on the map.

**§ 80-24. Regulation of areas under water.**

- A. All areas within the limits of the incorporated Town of Millington which are under water are considered to be within a zoning district and controlled by applicable district regulations. District boundaries over water areas are located by noted or scaled dimensions, by relation to physical features, by coincidence with the Town boundary or by a straight line projection of the district boundaries as indicated on the

Official Zoning Map.

- B. Straight line district boundaries over water areas shall be assumed to continue as straight lines until they intersect with each other or with the Town boundary.

## **Part II Planned Neighborhood Development (PND) Floating Zone**

### **§ 80-25. Planned Neighborhood Floating Zone District.**

- A. Purpose. The Planned Neighborhood (“PN”) District is a floating zone, which means that while provisions and regulations are made to govern any development within a PN District, no such district will be pre-mapped on the Official Zoning Map. The PN District is intended to permit master planned, mixed-use developments of large tracts of land. The PN District permits development and land use pursuant to an approved Master Development Plan that meets the requirements of the Zoning Ordinance and that is approved by the Mayor and Council at the time the PN zoning is applied to specific land(s). The purpose of the PN is to provide for the development of well-planned, mixed-use neighborhoods that exhibit the following characteristics:
1. Integrated mix of uses, including residential, commercial, employment/office, civic, and open space;
  2. A range of housing types and densities to accommodate a diverse population of age groups and income levels;
  3. Compact design;
  4. Interconnected streets designed to balance the needs of all users, with sidewalks and on-street parking and implement the recommendations of the transportation element of the Comprehensive Plan;
  5. Open spaces are integral to the community; and,
  6. Location adjacent to and extending the fabric of existing development.
- B. It also is the intent of the PN District to promote the following:
1. Implement the recommendations of the *Millington Comprehensive Plan*;
  2. Develop neighborhoods that accommodate and promote pedestrian travel equally as much as motor vehicle trips;
  3. Promote design that results in residentially scaled buildings fronting on, and generally aligned with, streets;
  4. Encourage the inclusion of a diversity of household types, age groups, and income levels;
  5. Promote traditional town building and site development patterns with an interconnected and broadly rectilinear pattern of streets, alleys, and blocks, providing for a balanced mix of pedestrians and automobiles;
  6. Encourage creation of functionally diverse, but visually unified, neighborhoods focused on central squares;
  7. Promote use of neighborhood greens, landscaped streets, boulevards, and “single-loaded” parkways woven into street and block patterns to provide space for social activity, parks, and visual enjoyment;

8. Provide buildings for civic or religious assembly or for other common or institutional purposes that act as visual landmarks and symbols of identity;
9. Promote the location of dwellings, shops, and workplaces in close proximity to each other, the scale of which accommodates and promotes pedestrian travel for trips within the community;
10. Preserve open space, scenic vistas, agricultural lands, and natural areas;
11. Permit design flexibility in order to achieve an appropriate mix of residential and non-residential building uses; and,
12. Require efficient utilization of designated growth areas.

C. Applicability. The PN District is intended to apply to large tracts of land of at least twenty-five (25) acres. Smaller tracts may be considered when the development of such land is found to be compatible with an adjacent, existing, or proposed PN type development and/or adjacent Town land uses.

D. Density Determination.

1. General. The total number of dwelling units permissible in the PN District shall be determined in accordance with the provisions of this section (as adjusted by density bonuses as set forth below) subject to the following:
  - a. Areas used for non-residential purposes shall be subtracted from the Adjusted Tract Acreage, as described in subsection 2 below before determining permissible residential density.
  - b. All dwelling units constructed above commercial uses in a Neighborhood Center shall be permissible in addition to the number of dwelling units otherwise authorized under this Section. The total number of additional dwelling units permitted above commercial uses in the Neighborhood Center area shall be approved by the Planning Commission and in no case shall exceed five percent (5%) of the permissible number of dwelling units.
2. Base Density Calculation. Base density shall be determined by the land area yielded through calculations of the Adjusted Tract Acreage determined in accordance with the density factors in 3 below. The minimum residential density for a proposed PN District shall be three and one-half (3 1/2) dwelling units per net tract acre and the maximum residential density shall be six (6) dwelling units per net tract acre. For purposes of calculating the minimum residential density for a proposed PN District, the non-residential acres, the open space acres, and the conservation acres shall be subtracted from the net tract acres.
3. Density Factors for Calculating Adjusted Tract Acreage. The Density Factor is the percentage of the constrained area that shall be used for purposes of calculating density. (e.g., for 10 acres of the constraint “slopes between 15% and 25%”, the formula is  $0.75 \times 10 \text{ acres} = 7.5 \text{ acres}$ . This is the acres that may be used for density calculation)



Name	Density Factor	Description of Constraint
DF 1	0.00	Existing street right-of-way, Floodways within the 100 year Floodplain
DF 2	0.05	Tidal and non-tidal wetlands. Utility easement for high-tension electrical transmission lines (>69KV)
DF 3	0.25	Steep Slopes; i.e., slopes greater than 25%
DF 4	0.50	100 year floodplain (excluding floodways or wetlands within the floodplain)
DF 5	0.75	Slopes between 15% and 25%
DF 6	1.00	Unconstrained land

E. General Design Requirements.

1. Design standards referenced in this section shall be considered as minimum performance standards for the PN District.
2. Planned neighborhoods are intended to provide for a range of complementary uses and may consist of up to four (4) use areas: Single-Family Residential Areas (SRA), Central Residential Areas (CRA), Neighborhood Center Areas (NCA), and Conservation Areas (CA). At a minimum, a planned neighborhood must contain both a SRA and a CA. The four (4) use areas are defined as follows:
  - a. Single-Family Residential Areas (SRA) provides locations for a broad range of housing types, including single-family detached, semi-detached, and attached.
  - b. Conservation Areas (CA) are permanently protected open spaces, including greens, commons, habitat protection areas, and private non-common acreage.
  - c. Central Residential Areas (CRA) are intended to contain a variety of housing options and related uses. These areas are typically located adjacent to primary neighborhood centers.
  - d. Neighborhood Center Area (NCA) is the identifiable focal point of each neighborhood and is intended to serve primarily to provide uses that meet the retail and service needs of a traditional community center and its vicinity within one-story and two-story buildings, and may contain other compatible uses, such as civic and institutional uses of community wide importance, specifically including second-floor residential uses.

F. Land Uses in the PN District.

The following uses apply in the PN District. The land use table is intended to permit the following uses, or uses which are substantially similar to the uses set forth herein. Notwithstanding any provision herein, all existing land uses within a PN District shall be permitted to continue until the development of the particular phase of an approved PUD plan.

CLASS	USE DESCRIPTION	PN DISTRICT			
		SRA	NCA	CRA	CA
1.00.000	AGRICULTURAL USES				
	Agriculture				P
	Forestry				P
	Wildlife Conservation & Refuge Area				P
	Greenhouse – on-premise sales permitted				SE
2.00.000	RESIDENTIAL				
	Dwelling – Single Family Detached	P		P	
	Dwelling – Two-Family	P		P	
	Dwelling – Multi-Family	P		P	
	Dwelling – Townhouse	P		P	
3.00.000	ACCESSORY DWELLING				
	- In conjunction with a principal residential use (Limited to one accessory dwelling unit per parcel)	SE		SE	
	- In conjunction with a principal commercial use		SE		
4.00.000	HOME-BASED BUISNESS				
	Home Occupation	P		P	
	Day Care Center, Group		P	SE	
	Bed and breakfast	SE		SE	
5.00.000	INSTITUTIONAL				
	Schools, Public	SE	P	SE	
	Schools, Private	SE	P	SE	
	Churches and parish halls, temples and convents and monasteries, houses of worship	SE	P	SE	
	Libraries, museums		P	P	
	Private Clubs		P		
	Medical facility or clinic for human care		P		

CLASS	USE DESCRIPTION	PN DISTRICT			
		SRA	NCA	CRA	CA
	Funeral Home		P		
6.00.000	RECREATION, AMUSEMENT, ENTERTAINMENT				
	Athletic fields	P			
	Community Center including indoor recreation	P	P	P	
	Indoor recreation		P		
	Theater – indoor		P		
	Privately owned country clubs swimming or tennis clubs approved as part of some residential development	P		P	
7.00.000	EMERGENCY SERVICES				
	Fire Stations without assembly hall	P	P	P	
	Fire Station with Assembly Hall		P	P	
	Rescue squad, ambulance service	P	P	P	
8.00.000	UTILITIES				
	Essential Service	P	P	P	
9.00.000	COMMERCIAL –SERVICE				
	Barber Shop, Beauty Salon, Nail Salon		P		
	Service establishments, including laundry or Laundromat, appliance repair, equipment or instrument repair or rental, dry cleaning pickup station, or plant, hairdresser shop, pet grooming shop, upholstery shop, tailor and other similar uses		P		
	Repair facilities for household items, domestic appliances, clothes, materials, television, radio, or other electronic equipment		P		
	Advertising agencies		P		
	Studios of a photographer, artist and writer, including teaching studios for art, crafts, drama, dance and music		P		
	Bakery		P	P	
	Financial institutions, building and loan associations, savings and loan associations, banks, credit unions, mortgage companies, or finance offices or other financial institutions		P		

CLASS	USE DESCRIPTION	PN DISTRICT			
		SRA	NCA	CRA	CA
	Business uses including insurance, real estate, and computer centers		P		
	Professional uses, including medical, legal, engineering, surveying, and architectural offices and other uses of a similar nature		P		

Key: P - Permitted use within zoning district or sub-district SE - Use subject to special exception from the Board of Appeals

G. Development Standards.

1. The following development standards shall apply to the PN District:
  - a. The setback, lot size, lot dimensions, lot coverage, minimum floor area, height, and yard requirements in the PN shall be established for each individual project by the Planning Commission in accordance with the *Planned Neighborhood Design Guidelines*. In establishing these requirements the Planning Commission shall consider such factors as the proposed development intensity, density, and the existing character of adjacent neighborhoods.
  - b. Land Coverage. The maximum amount of land that may be built over (or covered) by parking lots, roads, sidewalks, or plazas, buildings, or other structures shall be sixty percent (60%) of the gross land area of the PN property(ies).
  - c. Minimum Required Open Space:
    - (1) A minimum of twenty percent (20%) of the adjusted tract acreage shall be open space including parks and recreational areas. Not less than fifteen percent (15%) of the minimum required open space shall be in a form usable to and accessible by the residents, such as a central green, neighborhood squares or commons, recreational playing fields, woodland walking trails, other kinds of footpaths, a community park, or any combination of the above. In addition, no more than fifty percent (50%) of the minimum required open space may be comprised of active recreation facilities, such as playing fields, golf courses, tennis courts, etc.
    - (2) Open space land shall be permanently protected through conservation easements or dedications, as may be decided by the Planning Commission, and may be developed for uses consisting of the following:
      - (a) Equestrian facilities, including related stables and pastures;
      - (b) Municipal or public uses, public park or recreation area owned and operated by a public or private nonprofit agency, or governmental or public utility buildings or uses, not to include business facilities, storage of materials, trucking or repair facilities, the housing of repair crews, or private or municipal sanitary landfills; and,
      - (f) Active recreation, if it is non-commercial in nature and provided that no more than fifty percent (50%) of the minimum required open space is so used. Parking areas and any roofed structures associated with the active recreation may not be included within the fifty percent (50%) minimum.
    - (3) The required open space shall be located and designed to add to the visual amenities of neighborhoods and to the

surrounding area by maximizing the visibility of internal open space as “terminal vistas” (the building or landscape seen at the end of a street, or along the outside edges of street curves) and by maximizing the visibility of external open space as perimeter greenbelt land (the undeveloped and permanently protected acreage around a community). Such greenbelt open space shall be designated to provide buffers and to protect scenic views as seen from existing roadways and from public parks.

- (4) PN developments shall include multiple greens, commons, or passive parks measuring a total of at least 1,500 square feet for each dwelling unit, plus five hundred (500) square feet of land for active recreation per dwelling unit.
- (5) Civic greens or squares shall be distributed throughout the neighborhood. A civic green, common or open space shall be located within 1,500 feet of ninety percent (90%) of all residential units in the SRA and CRA areas.

## 2. Residential Unit Mix

- a. The minimum and maximum percentages of types of residential units for each PN District, and each phase thereof, shall be as set forth in subsection c below.
- b. Each phase of a proposed PN development shall provide housing opportunities for a diverse population mix of age groups and income levels. At a minimum each PN development shall have at least three (3) of the four (4) unit types. Each phase of a proposed PN shall have at least three (3) of the four (4) unit types. The Planning Commission may vary this phase requirement if a majority of its members are satisfied that at build-out three (3) of four (4) unit types are included in the overall PN development.
- c. Residential Unit Mix.

Unit Type	Minimum	Maximum
Detached Single Family Dwelling	50%	80%
Two (2) Family Dwelling	20%	40%
Townhouse	5%	40%
Multi-Family	5%	40%

H. Small Planned Neighborhood Projects. The Mayor and Council may modify the minimum performance standards established in subsection F, herein, for a PN District development of less than twenty-five acres (25) acres provided that:

- 1. The proposed development in the PN District can be integrated with a Master Development Plan for an adjacent and larger PN

District project by such features as street extensions, compatible location of SRAs and common areas. In addition, the Mayor and Council must find that the proposed design meets the goals and objectives of the *Millington Comprehensive Plan*, as amended, and the intent of this section; or

2. The Mayor and Council find that the proposed PN District is for an infill or transition project between existing developed areas and/or adjacent to a proposed or planned large scale PN project and that the proposed design of the PN project is consistent with the goals and objectives of the *Millington Comprehensive Plan* and the intent of this section.
3. The design of all PN projects shall be consistent with the *Planned Neighborhood Design Guidelines*.

#### **§ 80-26. Procedure for Approval of a PN Planned Neighborhood Development District**

- A. Purpose. The purpose and intent of the PN floating zone amendment process is to permit specific and detailed mapping of areas and to provide for the creation of a Master Planned Community that includes carefully planned, well-designed development projects at appropriate locations.
- B. PN District Design. Applicants for a PN District shall be guided throughout the review process by the *Planned Neighborhood Design Guidelines*. Because it is recognized that design professionals, including architects, landscape architects, and land planners, are trained to strive for creative excellence, the design standards and criteria are not intended to restrict creative solutions or to dictate all design details. The *Planned Neighborhood Design Guidelines* shall serve as a tool for the Town by providing a checklist of elements to be considered. The *Planned Neighborhood Design Guidelines* shall also inform the design professionals of items that shall be considered or included from the outset of the design process.
- C. Application. Application for a floating zone amendment for a PN approval shall be made to the Mayor and Council. Applications shall include:
  1. A written petition for location of a PN District and approval of a Master Development Plan, signed by the owners, and contract purchasers, if any, of the property that is the subject of the petition.
  2. A narrative describing the following:
    - a. Statement of present and proposed ownership of all land within the development;
    - b. Overall objectives of the proposed Master Development Plan and a statement of how the proposed development concept corresponds to and comply with the goals and objectives of this Ordinance, the proposed PN District, and the *Millington Comprehensive Plan*;
    - c. Method of providing sewer and water service (including design, permitting, construction and financing) and other utilities, such as, but not limited to, telephone, gas, and electric services;
    - d. Storm drainage areas and description of storm water management concepts to be applied;
    - e. Method of and responsibility for maintenance of open areas, private streets, recreational amenities, and parking areas;
    - f. School availability and school population impact analysis;

- g. General description of architectural and landscape elements, including graphic representations; and
- h. If the applicant desires to develop the property in phases, a preliminary phasing plan, indicating:
  - (1) The phase(s) in which the project will be developed, indicating the approximate land area, uses, densities, and public facilities to be developed during each phase.
  - (2) If different land use types are to be included within the Master Development Plan, the plan shall include the mix of uses anticipated to be built in each phase.

3. A Concept Master Development Plan, which includes:

- a. Boundary survey of the area subject to the application;
- b. Graphic and tabular presentation of proposed site development information that clearly depicts the following, as applicable:
  - (1) Total acreage of subject property and identification of all adjoining landowners;
  - (2) Description of proposed land uses, including residential, commercial, institutional, and recreational;
  - (3) Maximum number of dwelling units, approximate densities of residential areas and anticipated population;
  - (4) Land area and locations generally allocated to each proposed use;
  - (5) Location of proposed roads, public open space, any sensitive resource areas (environmental or cultural), and public facilities; and
  - (6) Maximum non-residential floor area proposed.

D. Referral of Application to Planning Commission. Upon submission to the Mayor and Council of an Application for a PN District and a Master Development Plan, the Mayor and Council shall refer said application and Master Development Plan to the Planning Commission for its review and recommendations. The referral shall authorize the Planning Commission, the staff of the Town, and any consultants or professionals on behalf of the Planning Commission or the Town to analyze the application and Master Development Plan, in accordance with all applicable review processes and procedures. The Mayor and Council will require the cost of any analysis or consultant or professional be paid for by the applicant. No development may occur until:

- 1. A PN District has been applied to the property by legislative action of the Mayor and Council;
- 2. A Master Development Plan for the PN is approved by the Mayor and Council; and
- 3. A building permit has been issued, following, if applicable, final subdivision plat and/or site plan approval by all agencies required to approve the plat or site plan.

E. Master Development Plan submittal to the Planning Commission. After the Mayor and Council refer the application and Master Development Plan, the applicant shall submit the following to the Planning Commission for review and recommendations to the Mayor and Council:

- 1. Graphic Master Development Plan Requirements:
  - a. Master Development Plan that includes the following individual sheets: Single sheets shall not exceed 36" x 48". Plans

shall be presented at a scale no smaller than 1" = 400' such that the entire site may be shown on a single sheet.

- (1) The referred Master Development Plan;
- (2) Boundary Survey, including identification of adjacent property owners;
- (3) Existing condition information, including (information may be displayed on more than one sheet for clarity):
  - (a) Topographic survey (minimum 1' contour interval);
  - (b) Soils;
  - (c) Forested areas and tree lines;
  - (d) Wetlands, hydric soils, streams, and water features;
  - (e) Steep slopes;
  - (f) Easements and deed restrictions;
  - (g) Roads, driveways, and right-of-ways;
  - (h) Existing buildings;
  - (i) Habitat Protection Areas; and
  - (j) Existing land uses.
- (4) Proposed open space, protected areas, and public and private parks;
- (5) Pedestrian and vehicular master plan showing proposed street configuration and hierarchy, and pedestrian walking and biking systems;
- (6) Detailed plan of at least one (1) phase, showing:
  - (a) Road alignments;
  - (b) Lot configuration;
  - (c) Commercial area plan, if applicable;
  - (d) Public and private open space(s);
  - (e) Perspective streetscape (typical for represented phase);
  - (f) Examples of proposed residential and commercial architecture;
  - (g) Plan view, perspective and elevations of private and/or public community facilities; and
  - (h) Plan view, perspective and elevations of entrances including gateway improvements, if applicable.
- (7) Phasing plan, including:
  - (a) The general boundaries or location of each phase. Although the Phasing Plan shall include the information required in subsection an above and subsection c below (in narrative, tabular or graphical form), it is not required to depict the location of the land uses, densities or public facilities within each phase.
  - (b) The phase(s) in which the project will be developed, indicating the approximate land area, uses, densities, and public facilities to be developed during each phase.
  - (c) If different land use types are to be included, the Master Development Plan shall include the approximate mix of uses anticipated to be built in each phase.



- b. Studies and reports by qualified professionals:
  - (1) Traffic study that evaluates traffic impacts on proposed entrances on existing public (state, county, and town) roads and major existing intersections within one (1) mile of the project that may be impacted by traffic generated by the proposed project;
  - (2) Nontidal wetlands delineation;
  - (3) Endangered species study prepared by qualified professionals; and
  - (4) Historical and archeological survey.
- c. Master Development Plan Design Standards shall generally conform to the elements of the *Planned Neighborhood Design Guidelines*. The Master Development Plan Design Standards shall provide specific detail regarding:
  - (1) Site design standards in designated neighborhood and/or commercial areas, including: permitted uses, building types, frontage, setbacks and lot sizes, building heights, parking, street widths and cross-sections, sidewalks, lighting, and road geometry.
  - (2) Building standards for designated neighborhood and/or commercial areas, including: size and orientation, building facades, regulated architectural elements (windows, trim, etc.), rooflines, architectural styles, fencing, parking, and signage.
  - (3) Landscape, buffer, and environmental standards, including: location, scope, materials, and scheduling.
- d. Project Scheduling Information, including: anticipated permitting hearings, approvals, construction start, phasing, anticipated absorption, and completion of key site elements. (Note: This information is understood to be representative of a best estimate and will be used by the Town as a tool for long-range planning activities, but shall not be binding.)
- e. The Master Development Plan shall also include a management statement regarding the anticipated ownership, construction, operation, and maintenance of:
  - (1) Sanitary and storm sewers, water mains, culverts, and other underground structures;
  - (2) Streets, road, alleys, driveways, curb cuts, entrances and exits, parking and loading areas, and outdoor lighting systems; and
  - (3) Parks, parkways, walking paths, cycle paths, playgrounds, and open spaces.
- 2. The Master Development Plan shall comply with requirements of this section and the requested floating zone and may be accompanied by such other written or graphic material that may aid the decisions of the Planning Commission and the Mayor and Council.
- 3. The Mayor and Council may establish additional and supplemental requirements for the Master Development Plan prior to its referral of the application, if the Mayor and Council determine such requirements are necessary to enable the Mayor and Council to evaluate the particular floating zone amendment request.

F. Planning Commission Review and Recommendation – PN District Amendment and Master Development Plan.

- 1. The Planning Commission shall review the PN District request and Master Development Plan for compliance with the requirements of this Zoning Ordinance and consistency with the *Millington Comprehensive Plan* and the *Planned Neighborhood*

*Design Guidelines.*

2. The Planning Commission shall evaluate the degree to which the proposed PN District request and Master Development Plan incorporate and/or address the *Planned Neighborhood Design Guidelines* and furthers the goals and objectives of the *Millington Comprehensive Plan*.
3. The Planning Commission may make reasonable recommendations to the applicant regarding changes to the Master Development Plan proposal, which, in the judgment of the Planning Commission, shall cause the proposal to better conform to the requirements of the *Millington Comprehensive Plan*, the *Planned Neighborhood Design Guidelines*, and the goals and objectives of this Zoning Ordinance. The applicant may revise and resubmit the Master Development Plan to the Planning Commission addressing the Planning Commission's comments.
4. If, after four (4) Master Development Plan re-submissions, the Master Development Plan has not received a favorable recommendation from the Planning Commission, the Planning Commission shall make a negative recommendation to the Mayor and Council setting forth its reasons as to why the Master Development Plan should not be approved.
5. After a public hearing, the Planning Commission shall consider and comment on the findings required of the Mayor and Council, as set forth in G.2, herein, and shall make a favorable or negative recommendation to the Mayor and Council.
6. The Planning Commission shall forward the Master Development Plan, with any revisions, together with written comments and recommendations, and its floating zone comments, to the Mayor and Council for action pursuant to the floating zone and Master Development Plan approval process.

G. Mayor and Council Approval of PN District and Master Development Plan.

1. The Mayor and Council shall review the Master Development Plan and other documents, together with such comments and recommendations as may have been offered by the Planning Commission.
2. After a public hearing, the Mayor and Council may approve or disapprove the proposed floating zone map amendment and associated Master Development Plan and shall follow the procedures set forth §80-200 of this Ordinance. Concurrently with the location of a floating zone, the Mayor and Council may approve the Master Development Plan, which, in addition to the provisions of PN District, shall govern the subdivision and/or development of the property. The Mayor and Council may approve the floating zone designation with development subject to approval of a Master Development Plan.
3. In approving PN District floating zone map amendment, the Mayor and Council shall make findings of fact, including, but not limited to the following matters: population change, availability of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the areas, and the relationship of the proposed amendment to the Comprehensive Plan. The Mayor and Council may approve the Planned Development District map amendment if it finds that the proposed floating zone amendment is:
  - a. consistent with the *Millington Comprehensive Plan*;
  - b. consistent with the stated purposes and intent of the Planned Development District;
  - c. complies with the requirements of this Ordinance; and
  - d. is compatible with adjoining land uses.

4. After approval of a floating zone amendment by the Mayor and Council, two (2) complete copies of the approved Master Development Plan shall be filed with the Town Clerk. One (1) additional complete copy of the approved Master Development Plan shall be filed with the Planning Commission for reference during its subsequent review and approval of subdivision plats and/or site plans.
5. When a Planned Development is to be constructed in phases, final subdivision plat(s) shall not be required for a phase until such time as applications are filed for any applicable federal, state, or local permit for construction of that particular phase.
6. As part of the final Master Development Plan approval, the Mayor and Council shall approve a date for initiation of the proposed development.
7. In the event that a floating zone amendment is approved by the Mayor and Council without subdivision and approval of an associated Master Development Plan, the subject property may not be subdivided until the owner complies with the Master Development review and approval provisions of this Zoning Ordinance and may not be developed except in conformance with a site plan as required by and in conformance with this Zoning Ordinance.

H. Additional Required Procedures.

1. The administrative procedures for approval of a site plan for property located within the PN District are set forth in § 80-206 of this Zoning Ordinance. Site plans shall conform to the approved Master Development Plan, including the Master Development design standards.
2. The administrative procedures for approval of a subdivision located within the PN District shall be those of the Town's Subdivision Regulations. Final subdivision plats shall conform to the approved Master Development Plan.
3. Any development, site plan or subdivision approval for land in a PN District shall be consistent with the provisions of the PN District as applicable, and the specific Master Development plan applicable to the property, as approved or amended by the Mayor and Council.

- I. Amendment to Master Development Plan. The procedure for amendment of an approved Master Development Plan shall be the same as for a new application, except that minor amendments of a Master Development Plan may be approved by the Planning Commission at a regular meeting. The phrase "minor amendments" includes, but is not limited to, changes to: the location, number or types of uses within the PN District or any phase(s) thereof, subject to guideline 3 below; internal road locations or configurations; the number, type or location of dwelling units, subject to guideline 5 below; and the location of public amenities, services, or utilities. The Planning Commission may only approve minor amendments that increase residential density or intensify nonresidential uses if the amendments provide for enhancement of the architectural design and landscaping of the area subject to the amendment. Any amendment of a Master Development Plan that adversely impacts upon the delivery or the Town's cost of public utilities, public services, public infrastructure, or otherwise adversely affects amenities available to the public or the public health and safety shall not be considered a minor amendment. Using the

guidelines set forth below, the Planning Commission shall determine whether the proposed amendment is a “minor amendment.” In addition to the foregoing, an amendment shall be deemed a “minor amendment”, provided that such amendment:

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

J. Conflict with other Articles. Provisions of the PN Floating Zone, when found to be in conflict with other provisions of this Ordinance, shall supersede those other provisions with which they conflict except any provisions related to the Critical Area. Provisions of the PN Floating zone, when found to be in conflict with provisions of the Millington Subdivision Code, shall supersede those provisions with which they conflict.

K. A PN District shall be considered to be a “floating zone”, and, under the laws of the State of Maryland, these districts are analogous to special exceptions. The criteria for each PN District shall be as set forth in Town of Millington Zoning Ordinance and shall be the basis for approval or denial by the Mayor and Council without the necessity of showing a mistake in the original zoning or a change in the neighborhood.

### **Part III Cottage Housing Development and Affordable Housing Options**

#### **§80-27. Cottage Housing Development (CHD).**

A. The following definitions shall apply to this subsection:

1. Cluster – a group of four (4) to twelve (12) cottages arranged around a shared open space.
2. Common open space – an area improved for passive recreational use or gardening. Shared open spaces must be owned and maintained through a homeowners’ or condominium association or similar mechanism.
3. Cottage – a single-family detached dwelling unit part of a cottage housing development.
4. Cottage housing development – a cluster of four (4) to twelve (12) cottages developed under a single master land development plan or as part of another land development plan.
5. Footprint – the gross floor area of a cottage’s ground-level story.

B. Minimum land area. The minimum land area shall be one (1) acre.

C. Density.

1. The maximum allowable density is one (1) unit per 3,600 square feet.
2. The Planning Commission may permit more than one cottage housing development on a parcel of record or assembled two (2) acres or larger parcels.

D. Cottage clusters. The minimum and the maximum number of cottage units permitted shall be as follows:

1. Minimum units per cluster: 4.
2. Maximum units per cluster: 12.

E. Community Assets.

1. Common open space. Each cluster of cottages shall provide common open space at the rate of 400 square feet per cottage.  
In addition:
  - a. Each cluster of cottages shall have a common open space to provide residents with a sense of openness and community.
  - b. Each common open space area shall be in one continuous and usable piece.
  - c. To be considered part of the minimum open space requirement, an area of common open space must have a minimum dimension of twenty (20) feet on all sides.
  - d. The common open space shall be at least three thousand (3,000) square feet in area, regardless of the number of units in the cluster.
  - e. Required common open space may be divided into no more than two separate areas per cluster.
  - f. At least two sides of the common open area shall have cottages along its perimeter.
  - g. Parking areas, yard setbacks, private open spaces, and driveways do not qualify as common open spaces.
2. Community Building
  - a. Community buildings are permitted.
  - b. Community buildings shall be incidental in use and size to dwelling units.
  - c. The height of the community building shall be no more than one story.

F. Ownership.

1. Community buildings, parking areas, and shared open spaces shall be owned and maintained by the residents through a condominium association, a homeowners' association, or a similar mechanism. Of they can be dedicated to the Town with the establishment of a special tax district to cover costs of maintenance of this buildings and areas.
2. Ownership documents shall be reviewed and approved by the Town Attorney.

G. Design.

1. Cottage Size
  - a. The gross floor area of each cottage shall not exceed 1,200 square feet.
  - b. Cottage areas that do not count toward the gross floor area or footprint calculations are:
    - i. interior spaces with a ceiling height of six feet or less, such as in a second-floor area under the slope of the roof;
    - ii. basements;
    - iii. architectural projections – such as bay windows, fireplaces, or utility closets – no greater than twenty-four (24) inches in depth and six (6) feet in width;
    - iv. attached unenclosed porches; and
    - v. garages or carports.
2. Unit Height. The maximum height of cottage housing units shall be twenty-six (26) feet.
3. Orientation of Cottages.
  - a. Each dwelling unit shall be clustered around a shared open space. Each unit shall have a primary entry and covered porch oriented to the common open space.
  - b. Lots can abut either a street or an alley.
  - c. Each unit abutting a public street (not including alleys) shall have a façade, secondary entrance, porch, bay window, or other architectural enhancement oriented to the public street.
4. Cottage setbacks
  - a. The minimum setbacks for all structures (including cottages, parking structures, and community buildings) in a CHD are:
    - i. Ten (10) feet from any public right-of-way.
    - ii. Ten (10) feet from any other structure.
  - b. Cottages shall be no more than twenty-five (25) feet from the common open area, measured from the façade of the cottage to the nearest delineation of the common open area.
  - c. No part of any structure in the CHD (including but not limited to cottages, parking structures, and community buildings) shall be more than one hundred fifty (150) feet, as measured by the shortest clear path on the ground, from fire department vehicle access.
5. Porches

- a. Cottage units shall have covered front porches. The front porch shall be oriented toward the common open space.
- b. Covered porches shall have at least sixty (60) square feet.
- 6. Basements. Cottages may have basements.

H. Parking.

- 1. Minimum number of off-street parking spaces
  - a. Units up to seven hundred (700) square feet: one (1) space per dwelling unit.
  - b. Units 701 = 1,000 square feet: one and one-half (1.5) spaces per dwelling unit, rounded up to the whole number.
  - c. Units with more than one thousand (1,000) square feet: two (2) spaces per dwelling unit.
  - d. Additional guest parking shall be included. A minimum of one-half (0.5) guest parking spaces per dwelling unit, rounded up to the whole number, shall be provided for each cottage cluster. Guest parking may be clustered with resident parking; however, the spaces shall include clear signage identifying them as reserved for visitors.
  - e. The requirement for off-street parking may be waived or reduced by the Planning Commission if sufficient on-street parking is available.
- 2. Parking design
  - a. Parking shall be separated from the common area and public streets by landscaping and/or architectural screening. Solid board fencing shall not be allowed as an architectural screen.
  - b. Parking areas shall be accessed only by a private driveway or a public alley.
  - c. The design of garages and carports, including rooflines, shall be similar to and compatible with the cottage units.
  - d. Parking areas shall be limited to five (5) contiguous spaces.

I. Walkways.

- 1. There should be sidewalks along all public streets.
- 2. A system of interior walkways shall connect each cottage, parking area, and sidewalks abutting any public streets bordering the development.
- 3. Walkways and sidewalks shall be at least five (5) feet in width.

J. Flexibility

The Planning Commission may approve minimal modifications to the design standards outlined in subsections G through I where they find the modification(s) do not materially change the project design from that intended by the standard(s).

K. Project Plan Application and Approval.

1. Information: the following must be submitted as part of the application. This information must be presented on plans of professional quality.
  - a. A tabulation of the total acreage of the site and the percentages to be designated for various uses, i.e., parking, residential units, open space, or shared space, streets, etc.
  - b. The proposed circulation pattern includes private driveways, public and private streets, and pedestrian paths.
  - c. Parks, shared open spaces, playgrounds, and other public or private recreation facilities and improvements proposed within the project
  - d. Project plan; general location of all dwellings and other structures.
  - e. Typical exterior design is presented as exterior perspectives or elevations for all building types.
  - f. Conceptual landscaping plans showing all plant material's types, sizes, and locations.
  - g. The dimensional parking layout shows the location of individual parking stalls and all areas of ingress or egress.
  - h. Evidence that the applicant has sufficient control over the subject property to effectuate the proposed plan in the manner presented.
2. The Planning Commission will review the application to determine if it is completed or requires additional information. The Planning Commission will post the property and conduct a public hearing on the application following the provision of Article XVII of this Ordinance if it is complete.
3. Planning Commission Review: The Planning Commission may approve, approve with conditions, or deny the application. In granting such approval, the Planning Commission may impose specific conditions as site development, phasing, and building construction or maintenance and operation as it deems necessary to protect the health, safety, and welfare of the Town's residents.

#### L. Amendments and Modifications.

1. Any amendments to the development plan shall be accomplished in the same manner as the original application.
2. Revised text and/or plans shall be submitted to the Planning Commission and reviewed like the initial application.

#### M. Variations to Zone Permitted.

1. The Planning Commission may permit variations from the development standards of the existing zone, provided the variations are expressly approved and adopted as part of the approved development plans and other supporting documents.
2. Variations shall not include changes in the permitted uses allowed by the zone except to the extent set forth herein.



### **Part III CD Community Design Overlay District**

#### **§ 80-28. Purpose of the District**

The purpose of CD Community Design Overlay District is to apply community appearance standards that promote public health, safety, and welfare. Economic objectives include enhancement and preservation of property values. These standards are not intended to restrict imagination or variety, but rather to assist in focusing on design principles that result in creative solutions that will develop a satisfactory visual appearance within the Town.

#### **§ 80-29. Development Subject to Community Appearance Standards**

All new development and/or redevelopment within the Community Design Overlay District shall be subject to the performance standards in this section.

#### **§ 80-30. Process for Review**

The Planning Commission and/or Board of Appeals shall review development plans as required to ensure the standards specified in this section are met. These standards are in addition to other regulations in this ordinance.

#### **§ 80-31. Standards**

##### **A. Relationship of Buildings to Site**

1. The site shall be planned to accomplish a desirable transition with the streetscape and to provide for adequate planting, safe pedestrian movement, and parking areas.
2. Parking areas shall be treated with decorative elements, building wall extensions, plantings, berms, or other innovative means so as to screen parking areas from public ways.
3. Without restricting the permissible limits of the applicable zoning district, the height and scale of each building shall be compatible with its site and existing (or anticipated) adjoining buildings.
4. Newly installed utility services and service revisions necessitated by exterior alterations shall be underground where possible.

##### **B. Relationship of Buildings and Site to Adjoining Area**

1. Adjacent buildings of different architectural styles shall be made compatible by such means as screens, site breaks, and materials.
2. Attractive landscape transition to adjoining properties shall be provided.
3. Harmony in texture, lines, and masses is required. Monotony of design shall be avoided.

C. Landscape and Site Treatment

1. Where natural or existing topographic patterns contribute to beauty and utility of a development they shall be preserved and developed. Modifications to topography will be permitted where it contributes to good appearance.
2. Grades of walks, parking spaces, terraces, and other paved areas shall provide an inviting and stable appearance for the pedestrian.
3. Landscape treatment shall be provided to enhance architectural features, strengthen vistas and important axes, and provide shade.
4. Unity of landscape design shall be achieved by repetition of certain plant varieties and other materials and by coordination with adjacent development.
5. Plant material shall be selected for interest in its structure, texture and color, and for its ultimate growth. Plants that are indigenous to the area and others that will be hearty, harmonious to design, and of good appearance shall be used.
6. In locations where plants will be susceptible to injury by pedestrian or motor traffic they shall be protected by appropriate curbs, tree guards, or other devices.
7. Parking areas and traffic ways shall be enhanced with landscaped spaces containing trees or tree groupings.
8. Where building sites limit planting, the placement of trees in parkways or paved areas may be required.
9. Screening of service yards and other places that tend to be unsightly shall be accomplished by use of walls, fencing, plantings, or combinations of these. Screening shall be effective in winter and summer.
10. In areas where general planting will not prosper, other materials such as fences, walls, and paving or wood, brick, stone gravel, and cobbles shall be used. Carefully selected plants shall be combined with such materials where possible.
11. Exterior lighting, when used, shall enhance the adjoining landscape. Lighting standards and building fixtures shall be of a design and size compatible with the building and adjacent areas. Lighting shall be restrained in design and excessive brightness avoided.

D. Building Design

1. Architectural style is not restricted. Evaluation of the appearance of a project shall be based on the quality of its design and relationship to surroundings.
2. Buildings shall have good scale and be in harmonious conformance with permanent neighboring development. Building bulk and scale shall be similar to and consistent with the surrounding neighborhood as evaluated by the bulk of buildings adjacent, abutting and surrounding the proposed development. Larger buildings should be designed to adhere to the existing architectural pattern of the surrounding neighborhood.
3. Primary facades and entries face the adjacent street with a connecting walkway that does not require pedestrians to walk through parking lots or across driveways and that maintains the integrity of the existing streetscape.
4. Optimize privacy of residents and minimize infringement on the privacy of adjoining land uses by considering appropriate buffer

yards, the placement of windows and door entrances. Create opportunities for interactions among neighbors in common pedestrian circulation areas of the project.

5. Building materials shall be similar to materials of the surrounding neighborhood or use other characteristics such as scale, form, architectural detailing, etc., to establish compatibility. Materials shall have good architectural character and shall be selected for harmony of the building with adjoining buildings. Materials shall be of durable quality. Materials shall be selected for suitability to the type of buildings and the design in which they are used. Buildings shall have the same material, or those that are architecturally harmonious, used for all building walls and other exterior building components wholly or partly visible from public ways.
6. All planned uses, building types, and landscaping will be included in the preliminary plans and will demonstrate the relationships of the proposed development with existing off-site development in the context of the adjacent community.
7. In any design in which the structural frame is exposed to view, the structural material shall be compatible within themselves and harmonious with their surroundings.
8. Building components, such as windows, eaves, doors, parapets, etc., shall have good proportions and relationships with one another.
9. Colors shall be harmonious and shall use only compatible accents.
10. Mechanical equipment or other utility hardware on roof, ground, or buildings shall be screened from public view with materials harmonious with the building, or they shall be so located as not to be visible from public ways.
11. Exterior lighting shall be part of the architectural concept. Fixtures, standards, and all exposed accessories shall be harmonious with building design.
12. Monotony of design in single or multiple building projects shall be avoided. Variation of detail, form, and siting shall be used to provide visual interest. In multiple building projects, variable siting of individual projects shall be used to prevent a monotonous appearance.

#### E. Miscellaneous Structures and Street Hardware

1. Miscellaneous structures and street hardware shall be designed to be part of the architectural concept of design and landscape. Materials shall be compatible with buildings, scale shall be appropriate, colors shall be in harmony with buildings and surroundings, and proportions shall be attractive.
2. Lighting in connection with miscellaneous structures and street hardware shall adhere to standards set forth for site, landscape, buildings, and signs.

#### F. Maintenance - Planning and Design Factors

1. Continued good appearance depends upon the extent and quality of maintenance. The choice of materials and their use, together with the types of finishes and other protective measures shall be conducive to easy maintenance and upkeep.
2. Materials and finishes shall be selected for their durability and wear as well as for their beauty. Proper measures and devices shall

- be incorporated for protection against the elements, neglect, damage, and abuse.
3. Provisions for washing and cleaning of buildings and structures, and control of dirt and refuse shall be incorporated in the design. Configurations that tend to catch and accumulate debris, leaves, trash, dirt, and rubbish shall be avoided.
- G. Application information should include adequate information to address this burden of proof requirement and shall, at a minimum, include the following:
1. A description of the proposed development site, i.e., a plot plan or survey plot.
  2. A description of existing conditions in the vicinity of the site (e.g. block face on both sides of the street within 500 feet of the proposed development site). These descriptions shall include documenting photographs and an analysis of the prominent architectural features, and as applicable shall address the following:
    - (a) Site location and Topography;
    - (b) Street Connections;
    - (c) Pedestrian Pathways;
    - (d) Lot Coverage;
    - (e) Impervious Surfaces;
    - (f) Building Orientation;
    - (g) Roofs;
    - (h) Massing and Proportions;
    - (i) Entryways;
    - (j) Windows;
    - (k) Garage Doors;
    - (l) Finishes and Materials;
    - (m) Ornamentation; and
    - (n) Building and other Colors.
  3. A description of the proposed development including:
    - (a) Elevations of all proposed buildings;
    - (b) Plot plan showing the existing and proposed footprint of structures on the property; and
    - (c) A statement describing how the proposed development is compatible these appearance standards.

#### **Part IV CA Critical Area Overlay District**

##### **§ 80-32. Implementation of the Critical Area Program Purpose and Goals**

- A. The Millington Critical Area Program

1. The Millington Critical Area Program consists of the Millington Zoning Chapter including the Official Critical Area map. Related provisions may be found in the Millington Subdivision Regulations.
2. The Town adopted its Critical Area Program on August 7, 1986. The Town of Millington Critical Area Program consists of the Town of Millington Zoning Ordinance, the Official Critical Area map(s), and any other related provisions within the Town's ordinances.
3. Notwithstanding any provision in this ordinance, or the lack of a provision in this ordinance, all of the requirements of Natural Resources Article 8-1801 through 8-1817 and COMAR Title 27 shall apply to and be applied by the Town of Millington as minimum standards.
4. In the case of conflicting provision, the stronger provision applies.

B. Goals.

The goals of the Millington Critical Area Program are to accomplish the following:

1. Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
2. Conserve fish, wildlife, and plant habitat; and
3. Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impact that the number, movement, and activities of people may have on the area.
4. Reduce vulnerability to the impacts of climate change and incorporate measures to improve the climate resiliency of the Chesapeake and Atlantic Coastal Bays and its tributaries; and
5. Ensure an equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation, and adaptation to climate change with the Critical Area.

C. Regulated activities and applicability.

1. Any applicant for a permit or license to pursue activities within the Critical Area, including but not limited to, development or redevelopment, grading, sediment and erosion control, timber harvesting, shoreline erosion control, installation of a septic system and drain field, operation of a waste collection or disposal facility, operation of a commercial or private marina or other water-related commercial or industrial operation (whether public or private), mining (whether surface or sub-surface) or quarrying, farming or other agriculture-related activities shall have such permits or licenses issued by the Town after review to determine compliance with the Millington Zoning Ordinance.
2. The Town's Critical Area Program and all applicable provisions of this Ordinance shall be implemented and enforced by the Town Administrator.
  - a. The Town Administrator shall review a permit, license, or other authorization for a development or redevelopment activity in the Critical Area for compliance with this Critical Area Ordinance prior to issuance of that permit or license.
  - b. Should an infraction of the provisions contained in any law, regulation, or plan related to the Town's Critical Area

Program be brought to the attention of any Town official, said official shall contact the Town Administrator.

- D. Critical Area Overlay District Map. The Official Critical Area Overlay District Map is maintained in force as part of the Official Zoning Map for Millington as described in §80-19.
- E. Notification of project approval - the Town of Millington shall send copies of applications for all developments, subdivisions, and site plan wholly or partially within the Critical Area as specified in COMAR 27.03.01.04 to the Critical Area Commission for review and comment. The Town of Millington may not process any application, which has been sent to the Commission for notification until it has received notice of receipt by the Commission or the close of the fifth business day, whichever comes first. Any action by the town of Millington in violation of these procedures shall be void.
- F. General Requirements
  - 1. Development and redevelopment shall be subject to the water-dependent facilities requirements of this Ordinance.
  - 2. The Town shall maintain areas of public access to the shoreline, and, if possible, encourage the establishment of additional areas of shoreline access for public use, such as foot paths, scenic drives, and other public recreational facilities.
  - 3. Development shall comply with the following complementary State statutes and regulations, including:
    - a. For soil erosion and sediment control, management measures shall be consistent with the requirements of Environment Article §4-101 through 4-116, Annotated Code of Maryland, and COMAR 26.17.01;
    - b. For stormwater runoff, stormwater management measures shall be consistent with the requirements of Environment Article §4-201 through 4-215, Annotated Code of Maryland, and COMAR 26.17.02;
    - c. For shore erosion, shoreline stabilization measures shall be consistent with the requirements of Environment Article, Title 16, Annotated Code of Maryland, and COMAR 26.24.04; and
    - d. Any other applicable State statute or regulation.
  - 4. A development activity or facility may not be authorized in the Critical Area, if by its intrinsic nature the activity or facility has the potential to cause an adverse effect on water quality, wildlife, or fish habitat or plant habitat, unless:
    - a. For an activity or facility such as non-maritime heavy industry.
      - i. It is located within an intensely developed area;
      - ii. It fully complies with all requirements under Part 6 of this Ordinance of this chapter; and
      - iii. The owner or operator of the activity or facility demonstrates to all applicable State and local agencies that there will be a net improvement in water quality to the adjacent body of water; or
    - b. For an activity or facility such as a sanitary landfill or a solid or hazardous waste collection or disposal facility;
      - i. There is an environmentally acceptable alternative outside the Critical Area; and
      - ii. The activity or facility is necessary in order to correct a water quality or wastewater management problem;
  - 5. A transportation facility or a utility transmission facility or activity may not be authorized in the Critical Area; unless it is:
    - a. A facility that serves a use identified under this Critical Area program;

- b. A linear regional or interstate transportation facility that must cross tidal waters; or
  - c. A linear regional or interstate utility transmission facility that must cross tidal waters.
6. A permanent sludge hauling storage or disposal activity or facility may not be authorized in the Critical Area unless:
- a. The activity or facility is associated with a wastewater treatment facility; or
  - b. In accordance with an approved nutrient management plan under Agriculture Article, Title 8, Subtitle 8, Annotated Code of Maryland, and COMAR 15.20.04 and COMAR 15.20.06 – 08, sludge is applied on agricultural land that is not in the buffer.
7. Roads, bridges, and utilities are prohibited in a Habitat Protection Area unless no feasible alternative exists. If a road, bridge or utility is authorized the design, construction and maintenance shall:
- a. Provide maximum erosion protection;
  - b. Minimize negative impacts on wildlife, aquatic life, and their habitats; and
  - c. Maintain hydrologic processes and water quality.
8. Development activities that cross or affect a stream are prohibited unless there is no feasible alternative. All development activities that must cross or affect streams shall be designed to:
- a. Reduce increases in flood frequency and severity that are attributable to development;
  - b. Retain tree canopy so as to maintain stream water temperature within normal variations;
  - c. Provide a natural substrate for stream beds, and
  - d. Minimize adverse water quality and quantity impacts of stormwater.
9. Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in this Ordinance.
10. Reasonable accommodations for the needs of disabled citizens.
- a. An applicant seeking relief from the Critical Area standards contained in this Ordinance in order to accommodate the reasonable needs of disabled citizens shall have the burden of demonstrating the following:
    - i. The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;
    - ii. Literal enforcement of the provisions of this Ordinance would result in discrimination by virtue of such disability or deprive a disabled resident or use of the reasonable use and enjoyment of the property;
    - iii. A reasonable accommodation would reduce or eliminate the discriminatory effect of the provisions of this Ordinance or restore the disabled resident's or users reasonable use or enjoyment of the property;
    - iv. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and
    - v. The accommodation would be environmentally neutral with no greater negative impact on the environment than the literal enforcement of the statute, ordinance, regulation, or other requirement, or would allow only the minimum environmental changes necessary to address the needs resulting from the particular disability of the applicant or appellant.
  - b. The Board of Appeals shall determine the nature and scope of any accommodation under this Ordinance and may award different or other relief than requested after giving due regard to the purpose, intent, or effect of the applicable provisions of this Ordinance. The Board may also consider the size, location, and type of accommodation proposed and whether

alternatives exist which accommodate the need with less adverse effect.

- c. The Board of Appeals may require, as a condition of approval, that upon termination of the need for accommodation, that the property be restored to comply with all applicable provisions of this Ordinance. Appropriate bonds may be collected or liens placed in order to ensure the Town's ability to restore the property should the applicant fail to do so.

11. Non-water Dependent Structures on Piers

- a. Except as provided in paragraphs (b) and (d) of this subsection and notwithstanding any other provisions of the law, Town of Millington may not issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area.
- b. Town of Millington may issue a building permit or any other approval to authorize a non-water dependent project located on State or private wetlands within the Critical Area if the project:
  - i. Involves a commercial activity that is permitted as a secondary or accessory use to a permitted primary commercial use;
  - ii. Is not located on a pier that is attached to residentially, institutionally, or industrially used property;
  - iii. Is located in:
    - 1. An Intensely Developed Area (IDA); or
    - 2. An area that has been excluded from a local Critical Area program if the exclusion has been adopted or approved by the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays:
- c. Is approved by the Planning Commission and the Zoning Board after August 7, 1986;
- d. Allows or enhances public access to State wetlands;
- e. Does not expand beyond the length, width, or channel ward encroachment of the pier on which the project is constructed.
- f. Has a height of up to 18 feet unless the project is located at a marina; and
- g. Is up to 1,000 square feet in total area; or
  - i. Is located on a pier that was in existence on or before December 31, 2012;
  - ii. Satisfies all of the requirements under Section (2)(a)-(g) of this paragraph; and
  - iii. If applicable, it has a temporary or permanent roof structure or covering that is up to 1,000 square feet in total area.
- h. Town of Millington may issue a building permit or other approval to authorize a non-water dependent project for a small-scale renewable energy system on a pier located on State or private wetlands within the Critical Area if the project:
  - i. Involves the installation or placement of a small-scale renewable energy system that is permitted as a secondary or accessory use on a pier that is authorized under Title 16 of the Environment Article.
  - ii. Is approved by the Town of Millington's Planning Commission and Zoning Board after August 6, 1986;
  - iii. A building permit or other approval may include the installation or placement of:
    - a. A solar energy system attached to a pier of the device or equipment associated with that system does not extend more than:



- aa. Four (4) feet above or 18 inches below the deck of the pier; or
    - bb. One (1) foot beyond the length or width of the pier;
  - b. A solar energy system attached to a piling if there is only one solar panel per boat slip;
  - c. A solar energy system attached to a boathouse roof if the device or equipment associated with that system does not extend beyond the length, width, or height of the boathouse roof.
  - d. A closed-loop geothermal heat exchanger under a pier if the geothermal heat exchanger or any associated devices or equipment do not:
    - aa. Extend beyond the length, width, or channel ward encroachment of the pier.
    - bb. Deleteriously alter longshore drift; or
    - cc. Cause significant individual or cumulative thermal impacts to aquatic resources; or
  - e. A wind energy system attached to a pier if there is only one wind energy system per pier for which:
    - aa. The height from the deck of the pier to the blade extended at its highest point is up to 12 feet;
    - bb. The rotor diameter of the wind turbine is up to four (4) feet, and
    - cc. The setbacks of the wind energy system from the nearest property line and from the channel ward edge of the pier to which that system is attached are at least 1.5 times the total height of the system from its base to the blade extended at its highest point.

12. Shore Erosion Protection.

- a. All shore erosion control activities or projects shall meet the requirements of COMAR 26.24.02 and COMAR 26.24.04.
- b. The Town of Millington shall require any authorized shore erosion control project to submit a Buffer Management Plan.
- c. The Buffer Management Plan shall meet the requirements of this Ordinance and COMAR 27.01.09.
- d. A copy of the approved Buffer Management Plan shall be forwarded to the Critical Area Commission.

**§ 80-33. Intensely Developed Areas.**

A. Development standards.

For all development activities in the Intensely Developed Areas, the applicant shall identify any environmental or natural feature described below and meet all of the following standards:

- 1. Intensely Developed Areas (IDA) include areas where residential, commercial, institutional, and/or industrial development uses predominate and where relatively little natural habitat occurs. At the time of the initial mapping, these areas shall have had at least one of the following features;
  - a. Housing density equal to or greater than four dwelling units per acre;
  - b. Industrial, institutional, or commercial uses are concentrated in the area; or
  - c. Public sewer and water collection and distribution systems are currently serving the area and housing density is greater than three dwelling units per acre;

2. In addition, IDAs shall be located in an area of at least 20 adjacent acres unless it is the entirety of the upland area of the Town or it is a growth allocation that is consistent with Part 7;
3. Land use activities within the IDA will be managed in accordance with the land use policies of COMAR 27.01.02.03.
4. The Town of Millington shall develop a strategy to reduce the impacts on water quality generated by existing development. This shall include an assessment of water quality and impacts to biological resources prompted by community redevelopment plans and programs and may further include a public education program, the implementation of urban best management practices, and the use of such techniques as urban forestry programs street tree plantings, gardens, and open land buffer plantings.
5. Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation;
6. All development and redevelopment activities shall include storm water management technologies that reduce pollutant loadings by at least 10 percent below the level of pollution on the site prior to development or redevelopment as provided in *Critical Area 10% Rule Guidance Manual – Fall 2003* and as may be subsequently amended.

#### **§ 80-34. Limited Development Areas.**

##### **A. Development standards.**

For all development activities in the Limited Development Areas, the applicant shall identify any environmental or natural feature described below, and shall meet all of the following standards:

1. Development and redevelopment shall be subject to the water-dependent facilities requirements of this Ordinance;
2. Limited Development Areas (LDA) are those areas that are currently developed in low or moderate intensity uses. They also contain areas of natural plant and animal habitats. The quality of runoff from these areas has not been substantially altered or impaired. At the time of the initial mapping, these areas shall have had at least one of the following features:
  - a. Housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
  - b. Areas not dominated by agricultural, wetland, forest, barren land, open water, or open space;
  - c. Areas meeting the conditions of Intensely Developed Area but compromising less than 20 acres; or
  - d. Areas having public sewer or public water, or both.
3. Land use activities within the LDA will be managed in accordance with the land use policies of COMAR 27.01.02.04.
4. If there is a wildlife corridor system identified by the Department of Natural Resources, Wildlife Heritage Service on or near the site which can be enhanced by additional plantings, the applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with offsite habitats. The wildlife corridor system may include Habitat Protection Areas identified in this Ordinance. Millington shall ensure the maintenance of the wildlife corridors by requiring the establishment of conservation easements, restrictive covenants, or similar instruments approved by the Town through which the corridor is preserved by public or private groups, including homeowners associations, nature trusts and other organizations.

5. Development on slopes greater than 15 percent, as measured before development, shall be prohibited unless the project is the only effective way to maintain or improve the stability of the slope and is consistent with the policies and standards for Limited Development Areas.
6. Except as otherwise provided in this subsection, lot coverage is limited to 15% of a lot or parcel or any portions of a lot or parcel that are designated LDA.
  - a. If a parcel or lot of one-half acre or less in size existed on or before December 1, 1985, then lot coverage is limited to twenty-five (25%) of the parcel or lot.
  - b. If a parcel or lot is greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
  - c. If an individual lot one acre or less in size is part of a subdivision approved after December 1, 1985, then lot coverage may exceed fifteen percent (15%) of the individual lot; however, the total lot coverage for the entire subdivision may not exceed fifteen percent (15%).
  - d. Lot coverage limits provided in § (a) and § (b) above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:
    - i. The lot or parcel is legally nonconforming. A lot or parcel legally developed as of July 1, 2008 may be considered legally nonconforming for the purposes of lot coverage requirements.
    - ii. Lot coverage associated with new development activities on the property have been minimized;
    - iii. For a lot or parcel one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in § (a) by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
    - iv. For a lot or parcel greater than one-half acre and less than one acre in size, total lot coverage does not exceed the lot coverage limits in §(b) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
    - v. The following table summarizes the limits set forth in § (i) through § (iii) above:

Lot Coverage Limits

Lot/Parcel Size (Square Feet)	Lot Coverage Limit
0 – 8,000	25% of parcel + 500 SF
8,001 – 21, 780	31.25% of parcel
21,780 – 36,300	5,445 SF
36,301 – 43,560	15% of parcel

- e. If the Planning Commission or its designee makes the findings set forth in § (d) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
  - i. Demonstrate that water quality impacts associated with runoff from the development activities that contribute to lot coverage have been minimized through site design considerations or the use of Best Management Practices to improve water quality; and

- ii. Provide on-site mitigation in the form of plantings to offset potential adverse water quality impacts from the development activities resulting in new lot coverage. The plantings shall be equal to two times the area of the development activity.
  - iii. If the applicant cannot provide appropriate storm water treatment and plantings due to site constraints, then the applicant shall pay a fee to Millington in lieu of performing the on-site mitigation. The amount of the fee shall be \$1.50 per square foot of the required mitigation.
- f. For the purpose of calculating limitations on lot coverage, is as follows:
  - i. When a site is mapped entirely as LDA, lot coverage is based on the entire site area; and
  - ii. When a portion of a lot or parcel is mapped as LDA, lot coverage is based on the area of the LDA.
- g. The Planning Commission may allow an applicant to exceed the limits established in §(d) above 500 square feet for development that uses the following pervious materials:
  - i. Pervious pavers; and
  - ii. Pervious concrete.
- 7. The alteration of forest and developed woodlands shall be restricted and shall be mitigated as follows:
  - a. The total acreage in forest and developed woodlands within the Critical Area shall be maintained or preferably increased;
  - b. All forests and developed woodlands that are allowed to be cleared or developed shall be replaced in the Critical Area on not less than an equal area basis;
  - c. If an applicant is authorized to clear more than 20 percent of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 times the area extent of the forest or developed woodlands cleared, including the first 20 percent of the forest or developed woodlands cleared.
  - d. An applicant may not clear more than 30 percent of a forest or developed woodlands on a lot or parcel, unless the Board of Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of 3 times the area extent of the forest or developed woodlands cleared.
  - e. If an applicant is authorized to clear any percentage of forest or developed woodland the remaining percentage shall be maintained through recorded, restrictive covenants or similar instruments approved by the Town.
- 8. The following are required for forest or developed woodland clearing as required in § (7) above:
  - a. The applicant shall ensure that any plantings that die within twenty-four (24) months of installation shall be replaced. A performance bond in an amount determined by Millington shall be posted to assure satisfactory replacement as required in § (7) above and plant survival;
  - b. No clearing is allowed until the Town has issued a permit;
  - c. Clearing of forest or developed woodlands that exceed the maximum area allowed in § (7) above or prior to the issuance of a permit shall be replanted at three times the area extent of the cleared forest; and
  - d. If the area extent of the site limits the application of the reforestation standards in this section the applicant may be allowed to plant offsite or pay a fee in lieu of planting.
- 9. If no forest is established on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least 15 percent.

- a. The applicant shall designate, subject to Town approval, a new forest area on a part of the site not forested; and
- b. The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the Town.
- c. The applicant may be allowed to pay a fee in lieu of planting to meet the requirements of this subsection provided in lieu fees can be used to implement a comprehensive offset strategy developed by the Town and approved by the Critical Area Commission.
- 10. New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas (LDA) if such a use is permitted in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.

### **§ 80-35. Resource Conservation Areas.**

#### **A. Development standards.**

- 1. RCAs are those areas characterized by nature dominated environments (wetlands, forests, abandoned fields) and resource utilization activities (agriculture, forestry, fisheries activities or aquaculture). These areas shall have at least one of the following features: (1) Density is less than one dwelling unit per 5 acres; or (2) Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.
- 2. Land use activities within the RCA will be managed in accordance with the land use policies of COMAR 27.01.02.05.
- 3. Development activity within the RCA shall be consistent with the requirements and standards for Limited Development Areas as specified in COMAR 27.01.02.04 and this Ordinance.
  - a. For the purpose of calculating limitations on lot coverage, it is as follows:
    - i. When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and
    - ii. When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RCA.
- 4. Density
  - a. Land within the RCA may be developed for residential use at a density not to exceed one dwelling unit per 20 acres. A local jurisdiction may not authorize a variance to the maximum density of one dwelling unit per 20 acres. In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the RCA, Town of Millington:
    - i. Shall count each dwelling unit;
    - ii. May only permit the area of any private wetlands located on the property to be included when using transfer of development rights and the area of private wetlands is field delineated.
  - b. One additional dwelling unit (accessory dwelling unit) as part of a primary dwelling unit may be permitted in the RCA provided the additional dwelling unit does not require a variance to any critical area development standards; and
    - i. Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit and does not exceed 900 square feet in total enclosed areas; or
    - ii. Is located within the primary dwelling unit or its entire perimeter is within 100 feet of the primary dwelling unit and does not exceed 900 square feet in total enclosed areas; or

- iii. Is located within the primary dwelling unit, and by its construction does not increase the amount of lot coverage already attributed to the primary dwelling unit by greater than 900 square feet.
- c. An additional dwelling unit, meeting all of the provisions of this section may not be subdivided or conveyed separately from the primary dwelling unit; and
- d. An additional dwelling unit that exceeds 900 square feet shall count towards the density calculations.

## § 80-36. Land Uses

### A. Permitted Uses

1. Permitted uses in the Critical Area shall be limited to those uses allowed in the underlying zoning classification as modified by Table 1a and the supplemental use standards in §80-36 provided such uses meet all standards established for the Critical Area Overlay District.

#### Permitted Uses

	<b>LEGEND:</b> P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted	<b>Land Use Management Designation</b>		
<b>Item</b>	<b>Use Description</b>	<b>IDA</b>	<b>LDA</b>	<b>RCA</b>
<b>1.00</b>	<b>RESIDENTIAL</b>			
1.10	Accessory Dwelling Unit	P	P	PC
<b>2.00</b>	<b>INSTITUTIONAL</b>			
2.10	Existing institutional uses	P	P	PC
2.20	New institutional uses	P	P	NP
2.30	Cemetery	P	P	PC
2.40	Group Home	P	P	PC
2.50	Day Care	P	P	PC
<b>3.00</b>	<b>COMMERCIAL</b>			
3.10	Existing commercial uses	P	P	PC
3.20	New commercial uses	P	P	NP

	<b>LEGEND:</b> P = Permitted if allowed in the underlying zoning district PC = Permitted with conditions if allowed in the underlying zoning district NP = Not permitted	<b>Land Use Management Designation</b>		
Item	Use Description	IDA	LDA	RCA
3.30	Home occupation	P	P	PC
3.40	Bed and breakfast facility	P	P	PC
<b>4.00</b>	<b>MARITIME/WATER DEPENDENT</b>			
4.10	Expansion of existing commercial marinas	P	P	PC
4.20	New marina, commercial	P	P	NP
4.30	Community piers and noncommercial boat docking and storage	P	P	PC
4.40	Public beaches and public water-oriented recreational and educational areas	P	P	PC
4.50	Research Areas	P	P	PC
4.60	Fisheries activities	P	P	P
4.70	Structures on Piers	PC	PC	PC
4.80	Private pier	P	P	P
<b>5.00</b>	<b>RECREATION</b>			
5.10	Golf course	P	P	PC
<b>6.00</b>	<b>INDUSTRIAL</b>			
6.10	Existing industrial uses	P	P	PC
6.20	New industrial uses	P	PC	NP
6.30	Non-maritime heavy industry	P	NP	NP
<b>7.00</b>	<b>TRANSPORTATION/PARKING/COMMUNICATIONS/UTILITIES</b>			
7.10	Utility transmission facilities	PC	PC	PC
<b>8.00</b>	<b>PUBLIC/QUASI-PUBLIC</b>			
8.10	Sanitary landfill; rubble fill	PC	PC	PC
8.20	Solid or hazardous waste collection or disposal facilities	PC	PC	PC
8.30	Sludge Facilities	PC	PC	PC

B. Maximum Permitted Density

1. The maximum permitted density for properties located in the Millington Critical Area shall be as shown in the table below.

Maximum Residential  
Density (Dwelling Units Per Acre)

Land Use Management Designation		
IDA	LDA	RCA
Density permitted by Underlying Zoning	Density permitted by Underlying Zoning	1 dwelling unit per 20 acres

**§ 80-37. Supplemental Use Standards**

The following supplemental use standards apply to the permitted uses listed in Table A (1) (a) above and shall apply when the permitted use is allowed in the underlying zoning district.

A. Existing institutional uses (2.10)

1. Existing institutional facilities shall be allowed in Resource Conservation Areas.
2. Expansion of existing institutional facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in §80-38 and may require growth allocation.

B. New institutional uses (2.20)

1. New institutional facilities and uses, except those specifically listed shall not be permitted in Resource Conservation Areas (RCAs).
2. Certain institutional uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses in this Ordinance. These institutional uses are limited to:
  - a. A cemetery that is an accessory use to an existing church; provided manmade lot coverage is limited to 15 percent of the site or 20,000 square feet, whichever is less;
  - b. A day care facility in a dwelling where the operators live on the premises and there are no more than eight (8) children;
  - c. A group home or assisted living facility with no more than eight (8) residents; and
  - d. Other similar uses determined by the Town and approved by the Critical Area Commission to be similar to those listed above.



C. Existing Commercial Uses (3.10)

1. Existing commercial facilities and uses, including those that directly support agriculture, forestry, aquaculture or residential development shall be allowed in Resource Conservation Areas.
2. Expansion of existing commercial facilities and uses in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in §80-38 and may require growth allocation.

D. New commercial uses (3.20)

1. New commercial uses, except those specifically listed, shall not be permitted in Resource Conservation Areas (RCAs).
2. Certain commercial uses may be permitted if allowed in the underlying zoning district and if the use complies with all requirements for such uses in this Ordinance. These commercial uses are limited to:
  - a. A home occupation as an accessory use on a residential property and as provided for in this Ordinance;
  - b. A bed and breakfast facility located in an existing residential structure and where meals are prepared only for guests staying at the facility; and
  - c. Other uses determined by the Millington and approved by the Critical Area Commission to be similar to those listed above.

E. Golf course (4.10)

1. A golf course, excluding main buildings and/or structures such as the clubhouse, pro-shop, parking lot, etc., may be permitted in Resource Conservation Areas (RCAs) provided:
  - a. Such use is a permitted use allowed in the underlying zoning district; and
  - b. Development is in accordance with the official guidance adopted by the Critical Area Commission on August 3, 2005.

F. Existing industrial uses (5.10)

1. Existing industrial facilities and uses, including those that directly support agriculture, forestry, or aquaculture may be permitted in Resource Conservation Areas (RCAs).
2. Expansion of existing industrial facilities and use in the Resource Conservation Area shall be subject to the non-conforming use provisions of this Ordinance and the Grandfathering provisions in §80-38 and may require growth allocation..

G. New industrial uses (5.20)

1. New industrial uses shall not be permitted in Resource Conservation Areas (RCA).

2. New, expanded or redeveloped industrial facilities may only be permitted in Limited Development Areas (LDA) if permitted use in the underlying zoning district and provided such facilities meet all requirements for development in the LDA.
3. New, expanded or redeveloped industrial or port-related facilities and the replacement of these facilities may be permitted only in those portions of Intensely Developed Areas (IDAs) that have been designated as Buffer Management Areas.

H. Non-maritime heavy industry (5.3)

1. Non-maritime heavy industry may be permitted if:
  - a. The site is located in an Intensely Developed Area (IDA); and
  - b. The activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.

I. Utility transmission facilities (6.10)

1. Utility transmission facilities, except those necessary to serve permitted use, or where regional or interstate facilities must cross tidal waters, may be permitted in the Critical Area provided:
  - a. The facilities are located in Intensely Developed Areas (IDAs); and
  - b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
2. These provisions do not include power plants.

J. Sanitary landfill; rubble fill (7.10)

1. Sanitary landfills or rubble fills may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality or wastewater management problem.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Maryland Department of the Environment.

K. Solid or hazardous waste collection or disposal facilities (7.20)

1. Solid or hazardous waste collection or disposal facilities, including transfer stations may not be permitted in the Critical Area unless no environmentally acceptable alternative exists outside the Critical Area, and these development activities or facilities are needed in order to correct an existing water quality wastewater management problem.
2. Existing, permitted facilities shall be subject to the standards and requirements of the Maryland Department of the Environment.

L. Sludge Facilities (7.40)

1. Permanent sludge handling, storage and disposal facilities, other than those associated with wastewater treatment facilities may be permitted in the Critical Area provided:
  - a. The facility or activity is located in an Intensely Developed Areas; and
  - b. Only after the activity or facility has demonstrated to all appropriate local and State permitting agencies that there will be a net improvement in water quality to the adjacent body of water.
2. Agricultural or horticultural use of sludge under appropriate approvals when applied by an approved method at approved application rates may be permitted in the Critical Area, except in the 100 foot-Buffer.

**§ 80-38. Growth Allocation.**

A. Growth allocation acreage

Growth allocation available to Millington includes:

1. An areas equal to five (5) percent of the RCA acreage located within Millington and;
2. Growth allocation available to Millington as provided by Kent and Queen Anne's Counties.

B. Purpose.

Growth Allocation is available for use in a Resource Conservation Area (RCA) or in a Limited Development Area (LDA) in the Town of Millington Critical Area Overlay District. The purpose is to authorize a change in the Critical Area classification to develop at a higher density or use than the current classification allows.

C. Process.

An applicant shall submit to Town of Millington a complete application for growth allocation that complies with the submittal and environmental report requirements of COMAR 27.01.02.06-1 through 06.2. A Growth Allocation request shall be approved by Town Administrator prior to submission to the Commission.

D. Requirements.

When locating new Intensely Developed or Limited Development Areas, the following requirements apply;

1. A new Intensely Developed Area shall be at least 20 acres unless it is adjacent to existing IDA.
2. An application for a new IDA or LDA shall be:

- a. In conformance with the requirements of COMAR Title 27 Subtitle 01; and
  - b. Designated on the approved Critical Area map that is submitted as part of its application to the Commission for growth allocation approval.
3. As part of a growth allocation approved by the Commission, the following shall be enforced;
  - a. A buffer management plan;
  - b. A habitat protection plan; and
  - c. Other applicable conditions of approved as determined by the Commission at the time of project approval.

E. Standards.

When locating new Intensely Developed or Limited Development Areas the following standards apply:

1. A new Intensely Developed Area shall only be located in an LDA or adjacent to an existing IDA.
2. A new Limited Development Area shall only be located adjacent to an existing LDA or an IDA.
3. A new LDA or IDA shall be located in a manner that minimizes impacts to Habitat Protection Area as defined herein and in COMAR 27.01.09 and in an area and manner that optimizes benefits to water quality.
4. A new IDA shall only be located where they minimize their impact to the defined land uses of the RCA;
5. A new IDA or an LDA in an RCA shall be located at least 300 feet beyond the landward edge of tidal wetlands or tidal waters unless Town of Millington proposes and the Commission approves alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources and waters;
6. IDA or LDA to be located in RCA shall conform to all criteria of this Ordinance for such areas, shall be so designated on the Millington Critical Area Maps and shall constitute an amendment to this Ordinance subject to review by the Millington Planning Commission and approval by the Mayor and Council and the Critical Area Commission as provided herein.
7. Locate new IDAs and LDAs outside of areas vulnerable to climate change as identified by the Town of Millington, unless the Town of Millington proposes and the Commission approves measures that assess climate resiliency and vulnerability and incorporate siting, design, construction, and other natural features to significantly enhance climate resiliency and reduce vulnerability.

F. Additional Factors.

In reviewing map amendments or refinements involving the use of growth allocation the Planning Commission and Mayor and Council

shall consider:

1. Consistency with Millington's Comprehensive Plan and whether the growth allocation would implement the goals and objectives of the adopted plan.
2. For a map amendment or refinement involving a new LDA, whether the development is:
  - a. To be served by a public wastewater system;
  - b. A completion of an existing subdivision;
  - c. An expansion of an existing business; or
  - d. To be clustered.
3. For a map amendment or refinement involving a new IDA, whether the development is:
  - a. To be served by a public wastewater system;
  - b. If greater than 20 acres, to be located in a designated Priority Funding Area;
  - c. To have a demonstrable economic benefit; and
  - d. Have an allowed average density of at least 3.5 units per acre as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland
4. The use of existing public infrastructure, where practical;
5. Consistency with State and regional environmental protection policies concerning the protection of threatened and endangered species and species in need of conservation that may be located on- or off-site.
6. Impacts on a priority preservation area;
7. Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams;
8. Environmental impacts associated with location in a coastal hazard area or an increased risk of severe flooding attributable to the proposed development and/or sea level rise; and
9. Environmental impacts on underserved or overburdened communities.

#### **§ 80-39. Grandfathering.**

A. Continuation of existing uses.

1. The continuation, but not necessarily the intensification or expansion, of any use in existence on January 1988 may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal Ordinances.
2. If any existing use does not conform with the provisions of this Ordinance, its intensification or expansion may be permitted only in accordance with the variance procedures in §80-39.

B. Residential density on Grandfathered Lots.

1. Except as otherwise provided, the following types of land are permitted to be developed with a single-family dwelling, if a dwelling is not already placed there, notwithstanding that such development may be inconsistent with the density provisions of this Ordinance.
  - a. A legal parcel of land, not being part of a recorded or approved subdivision, that was recorded as of December 1, 1985
  - b. Land that received a building permit subsequent to December 1, 1985, but prior to January 1988.
  - c. Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985;
  - d. Land that was subdivided into recorded, legally buildable lots, where the subdivision received the final approval after December 1, 1985 and provided that either development of any such land conforms to the IDA, LDA or RCA requirements in this Ordinance or the area of the land has been counted against the growth allocation permitted under this Ordinance.
  - e. Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members.

C. Consistency.

1. For purposes of implementing this regulation, a local jurisdiction shall have determined, based on land uses and development in existence on December 1, 1985 which land areas fall within the three types of development areas described in this chapter.
2. Nothing in this Section may be interpreted as altering any requirements of this Ordinance related to water-dependent facilities or Habitat Protection Areas.

**§ 80-40. Variances. (See Article XIV § 80-151)**

- A. Applicability. The Town has established provisions where, owing to special features of a site or other circumstances literal enforcement of the CA District provisions of this Zoning Ordinance would result in unwarranted hardship to an applicant, a variance may be obtained. In considering an application for a variance, the Board of Appeals shall presume that the specific development activity in the CA District, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of this Zoning Ordinance. Unwarranted hardship means

that without a variance, an application would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.

- B. 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,
- C. Standards. The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:

- a. Due to special features of the site or special conditions or circumstances that exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of this Ordinance would result in unwarranted hardship;
- b. A literal interpretation of the provisions of the CA District provisions will deprive the applicant of the use of land or a structure permitted to others in accordance with the provisions of this Critical Area Ordinance;
- c. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Zoning Ordinance to other lands or structures in accordance with the provisions of the Critical Area of this Ordinance.
- d. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or non-confirming on any neighboring property; and
- e. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the CA District and the granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law the regulations in COMAR Title 27, Subtitle 01, and this Critical Area Ordinance.

D. Process. Applications for a variance will be made in writing to the Town of Millington Board of Appeals with a copy provided to the Critical Area Commission. Town of Millington shall follow its established procedures for advertising and notification of affected landowners.

- a. After hearing an application for a Critical Area variance, the Board of Appeals shall make written findings reflecting analysis of each standard. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
  - i. The applicant;
  - ii. Town of Millington or any other government agency; or
  - iii. Any other person deemed appropriate by Town of Millington.
- b. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, Town of Millington shall consider that fact, and whether the application has met the requirements of Part D below.
- c. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of non-conformance established in paragraph A above.
- d. Town of Millington shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.

E. After-the-Fact Requests.

- 1. A local jurisdiction may not accept an application of a variance to legalize a violation of this subtitle including an unpermitted structure or other development activity until the local jurisdiction;
  - a. Issues a notice of violation; and
  - b. Assesses an administrative or civil penalty for the violation.



2. The Town of Millington may not issue a permit, approval, variance, or special exception to legalize a violation of this Ordinance unless an applicant has;
  - a. Fully paid all administrative, civil and criminal penalties imposed under Natural Resources Article §8-1808©(1), Annotated Code of Maryland;
  - b. 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
  - c. Performed the abatement measures in the approved plan in accordance with the local Critical Area Ordinance.
3. If the Board denies the requested after-the-fact variance, then the Town of Millington shall:
  - a. Order removal or relocation of any structure; and
  - b. Order restoration of the affected resources

F. Appeals.

Appeals from decision concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the Town for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency aggrieved or adversely affected by any decision made under this Zoning Ordinance.

- G. Conditions and mitigation. The Board of Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of the CA District is maintained including, but not limited to the following:

- a. Adverse impacts resulting from the granting of the variance shall be mitigated by planting on the site per square foot of the variance granted at no less than a three to one basis or as recommended by Zoning Administrator or Planning Commission.
- b. New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

- H. Commission notification. Within ten (10) working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the Critical Area Commission. The Town may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed.

**§ 80-41. Lot Consolidation and Reconfiguration**

A. Applicability

The provisions of this section apply to a consolidation or a reconfiguration of any nonconforming legal grandfathered parcel or lot. These

provisions do not apply to the reconfiguration or consolidation of parcels or lots which are conforming or meet all Critical Area requirements. Nonconforming parcels or lots include:

1. Those for which a Critical Area variance is sought or has been issued; and
2. Those located in the Resource Conservation Area and are less than 20 acres in size.

B. Procedure

An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the information required in COMAR 27.01.02.08.E.

1. Millington will not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with COMAR 27.01.02.08.F.
2. The Planning Commission shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.
  - a. After a final written decision or order is issued, the Planning Commission shall send a copy of the decision or order and a copy of any approved development plan within ten (10) business days by U.S. mail to the Critical Area Commission's business address.
3. The Town of Millington may not issue a permit or approval of any type on a property affected by the final written decision or order until after the expiration of the time within which the Commission may file an appeal or petition for judicial review.

**§ 80-42. Local Development Projects**

A. Applicability.

For all developments in the Critical Area resulting from any action by the Town of Millington on local or privately owned lands, the Town of Millington shall adhere to COMAR 27.02.02, COMAR 27.02.04 and COMAR 27.02.06.

B. Procedures.

1. If the project meets the provision of this Ordinance and is minor development, the Planning Commission shall prepare a consistency report and submit a copy of the report with relevant plans and information about the project to the Critical Area Commission per the requirements of COMAR 27.02.02.
2. If the project does not meet the provision of this Ordinance, the Planning Commission shall seek a conditional approval by the Critical Area Commission per the requirements of COMAR 27.02.06.
3. The Town of Millington shall submit information as required in the Critical Area Commission's Project Subcommittee

Application and Checklist.

- C. Notice and posting requirements for projects reviewed and approved by the Critical Area Commission. Public notice is required for all development projects that qualify under COMAR 27.03.01.03. Public notice shall be the responsibility of the Town of Millington and evidence that those requirements have been met shall be included as part of the submittal to the Critical Area Commission.

**§80-43. Amendments.**

- A. Amendments (See Article XVI §80-189).

A. Program changes. The Mayor and Council may from time to time amend the provisions of this Zoning Ordinance that apply to the CA Critical Area Overlay District amendments include, but are not limited to, amendments, revisions, and modifications to zoning regulations, Critical Area Maps, implementation procedures, and local policies that affect the CA District. All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in §8-1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment shall be implemented without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law §8-1809(d), respectively.

- B. Comprehensive reviews. The Town will review its entirety of CA District provisions and propose any necessary amendments at least every ten (10) years. The anniversary of the date that the adoption of this Zoning Ordinance shall be used to determine when the review shall be completed. The Town of Millington shall notify the Commission in writing if it requires a one (1) year extension to the ten-year deadline of \_\_\_\_\_, 2035. Within 60 days after the completion of the review, the Town will send the following information in writing to the Commission:

1. A statement certifying that the required review has been accomplished.
2. A list of requests for amendments, refinements, or other matters that the Town wishes the commission to consider.
3. An updated resource inventory; and
4. A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation

remaining.

C. Zoning map amendments.

1. The Town of Millington may grant a zoning map amendment in the Critical Area if the map amendment:
  - a. is wholly consistent with the Critical Area land classification; or
  - b. if not consistent with the Critical Area land classification:
    - i. proposes the use of a part of the remaining growth allocation; or
    - ii. proposes to change the Critical Area land classification from either an IDA to an LDA or an RDA; or from an LDA to an RCA.
2. The Town of Millington may grant a change to the Critical Area land classification on proof of mistake if the proposed Critical Area classification:
  - a. conforms to the State Critical Area mapping criteria based on land uses in existence either:
    - i. as of December 1, 1985 if part of the originally mapped Critical Area; or
    - ii. as of the date the land was included in the Critical Area due to a Critical Area boundary remapping effort.
  - b. Follows the Town of Millington's documented mapping methodology for Critical Area classification at the time of mapping; and
  - c. Is consistent with the purposes, policies, and goals of the Critical Area law and regulations.

D. Process.

1. When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the Mayor and Council.
2. Mayor and Council shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town.
3. After the Mayor and Council approve an amendment, they shall forward their decision and applicable resolutions along with the amendment request to the Critical Area Commission for final approval.

E. Critical Area Commission review.

When the Town submits a request for review and approval of changes to any element of the Zoning Ordinance provisions applicable to the CA District including, but not limited to Zoning Ordinance text or maps, the request will include all relevant information necessary for the Chair of the Commission, and as appropriate, the Commission, to evaluate the changes. The Chairman, and as appropriate, the Commission, shall determine if the requests for amendment(s) are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Commission.

- F. Critical Area Commission decision. In accordance with the determination of consistency outline above, the Chairman, or as appropriate, the Commission will:
- a. Approve the proposed refinement or amendment and notify the local jurisdiction;
  - b. Deny the proposed refinement or amendment;
  - c. Approve the proposed refinement or amendment subject to one or more conditions; or
  - d. Return the proposed refinement or amendment to the town with a list of changes to be made.

- G. Adoption of a Program Amendment or Refinement.

If approved by the Critical Area Commission, Town of Millington shall incorporate a program amendment or refinement into its adopted Critical Area Program, including any conditions of approval, within 120 days of receiving notice from the Chairman of the Commission.

#### **§ 80-44. Enforcement**

- A. Consistency.

The Critical Area provisions of this Ordinance, in accordance with the Critical Area Act and Criteria supersede any inconsistent law, Ordinance or plan of Millington. In the case of conflicting provisions, the stricter provisions shall apply.

- B. Violations.

1. No person shall violate any provision of this Ordinance. Each violation that occurs and each calendar day that a violation continues shall be a separate offense, subject to separate fines, orders, sanctions, or other penalties.
2. Each person who violates a provision of this Ordinance shall be subject to separate administrative civil penalties, abatement and restoration orders, and mitigation for each offense.
3. Noncompliance with any permit or order issued by the Town related to the Critical Area shall be a violation of this Ordinance and shall be enforced as provided herein.

- C. Responsible persons.

The following persons may each be held jointly or severally responsible for a violation: (1) persons who apply for or obtain any permit or approval, (2) contractors, (3) subcontractors, (4) property owners, (5) managing agents, or (6) any person who has committed, assisted, or participated in the violation.

D. Required enforcement action.

In the case of violations of this Ordinance, the Town shall take enforcement action including:

1. Assess administrative civil penalties as necessary to cover the costs associated with performing inspections, supervising or rendering assistance with identifying and citing the violation, issuing abatement and restoration orders, and reviewing mitigation plans and ensuring compliance with these plans;
2. Issue abatement, restoration, and mitigation orders as necessary to:
  - a. Stop unauthorized activity;
  - b. Restore and stabilize the site, as appropriate, to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits; and
  - c. Require the implementation of mitigation measures, in addition to restoration activities, to offset the environmental damage and degradation or loss of environmental benefit resulting from the violation.

E. Restoration and Mitigation.

1. A restoration or mitigation order shall specify the amount of appropriate restoration and mitigation as necessary to offset the adverse impacts to the Critical Area, resulting from the violation, consistent with all other requirements of this Ordinance.
2. For restoration or mitigation that exceeds 1,000 square feet or involves expenses exceeding \$1,000, the Town of Millington shall collect a bond or other financial security.
3. if restoration or mitigation involves planting, a bond shall be held for at least 2 years after the date the plantings were installed to ensure plant survival.
4. A property owner may request the Town of Millington to schedule inspections as necessary to ensure compliance and the return of the bond or other financial security.

F. Right to enter property.

Except as otherwise authorized and in accordance with the procedures specified herein, the Mayor and Council or their designee may obtain access to and enter a property in order to identify or verify a suspected violation, restrain a development activity, or issue a citation if the Town has probable cause to believe that a violation of this Ordinance has occurred, is occurring, or will occur. Town officials shall make a reasonable effort to contact a property owner before obtaining access to or enter the property. If entry is denied, the Town may seek an injunction to enter the property to pursue an enforcement action.

G. Administrative civil penalties.

In addition to any other penalty applicable under State or Town law, every violation of a provision of Natural Resources Article, Title 8 Subtitle 18 or Critical Area provisions of this Ordinance shall be punishable by a civil penalty of up to \$10,000 per calendar day.

1. Before imposing any civil penalty, the person(s) believed to have violated this Ordinance shall receive: written notice of the alleged violation(s) including which, if any, are continuing violations, and an opportunity to be heard. The amount of the civil penalty for each violation, including each continuing violation, shall be determined separately. For each continuing violation, the amount of the civil penalty shall be determined per day. In determining the amount of the civil penalty, the Town shall consider:
  - a. The gravity of the violation;
  - b. The presence or absence of good faith of the violator;
  - c. Any willfulness or negligence involved in the violation including a history of prior violations;
  - d. The environmental impact of the violation; and
  - e. The cost of restoration of the resource affected by the violation and mitigation for damage to that resource, including the cost to Millington for performing, supervising, or rendering assistance to the restoration and mitigation.
2. Administrative civil penalties for continuing violations shall accrue for each violation, every day each violation continues, with no requirements for additional assessments, notice, or hearings for each separate offense. The total amount payable for continuing violations shall be the amount assessed per day for each violation multiplied by the number of days that each violation has continued.
3. The person responsible for any continuing violation shall promptly provide the Town with written notice of the date(s) the violation has been or will be brought into compliance and the date(s) for Town inspection to verify compliance. Administrative civil penalties for continuing violations continue to accrue as set forth herein until the Town receives such written notice and verifies compliance by inspection or otherwise.
4. Assessment and payment of administrative civil penalties shall be in addition to and not in substitution for recovery by the Town of all damages, costs, and other expenses caused by the violation.
5. Payment of all administrative civil penalties assessed shall be a condition precedent to the issuance of any permit or other approval required by this Ordinance.

H. Cumulative remedies.

The remedies available to the Town under this Ordinance are cumulative and not alternative or exclusive, and the decision to pursue one remedy does not preclude pursuit of others.

I. Variances pursuant to a violation.

For any violation that requires a variance to this Ordinance, Town of Millington shall follow the after-the-fact variance provisions found in this Ordinance.

J. Permits pursuant to a violation.

The Town will not issue any permit, approval, variance, or special exception, that is subject to the violation, unless the person seeking the permit has:

1. Fully paid all administrative, civil, or criminal penalties as set forth in §F. above;
2. Prepared a restoration or mitigation plan, approved by the Town, to abate impacts to water quality or natural resources as a result of the violation;
3. Performed the abatement measures in the approved plan in accordance with all Town regulations; and
4. Unless an extension of time is approved by the Town 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.

K. Appeals.

An appeal to the Board of Appeals may be filed by any person aggrieved by any order, requirement, decision or determination by the Town in connection with the administration and enforcement of this Ordinance.

1. An appeal is taken by filing a written notice of appeal with the Board of Appeals in accordance with the provisions of the Ordinance and accompanied by the appropriate filing fee.
2. An appeal must be filed within thirty (30) days after the date of the decision or order being appealed; and
3. An appeal stays all actions by the Town seeking enforcement or compliance with the order or decisions being appealed, unless the Town certifies to the Board of Appeals that (because of facts stated in the certificate) such stay will cause imminent peril to life or property. In such a case, action by the Town shall not be stayed except by order of a court on application of the party seeking the stay.
4. Application for a variance pursuant to a violation constitutes a waiver of the right to appeal any order, requirement, decision or determination related to the violation and its final adjudication including the payment of any penalties and costs assessed.

L. Additional Enforcement Authorities.

1. The Town of Millington is authorized to pursue violations in Circuit Court or District Court in accordance with the Natural Resources Article §8-1815(a)(2).
2. Town of Millington is authorized to institute injunctive or other appropriate actions or proceedings to bring about the discontinuance of any violation of this Ordinance, an administrative order, a permit, a decision, or other imposed condition. The pendency of an appeal to the Board of Appeals or subsequent judicial review shall not prevent Town of Millington from seeking injunctive relief to enforce an administrative order, permit, decisions, or other imposed condition, or to restrain a violation pending the outcome of the appeal or judicial review.



## **§ 80-44. The Buffer.**

### **A. Applicability and Delineation**

An applicant for a development activity or a change in land use shall apply all of the required standards for a minimum 100-foot Buffer as described in this section. The minimum 100-foot Buffer shall be delineated in the field and shall be shown on all applications as follows:

1. The minimum 100-foot Buffer is delineated and expanded as described in A2 below, based on existing field conditions landward from:
  - a. The mean high-water line of tidal water;
  - b. The edge of each bank of a tributary stream; and
  - c. The upland boundary of a tidal wetland.
2. The Buffer shall be expanded beyond the minimum 100-foot Buffer as described in §A1 above and the minimum 200-foot Buffer as described in §A3 below, to include the following contiguous land features:
  - a. A steep slope at a rate of four feet for every one percent of slope or the entire steep slope to the top of the slope, whichever is greater;
  - b. A nontidal wetland to the upland boundary of the nontidal wetland;
  - c. The 100-foot buffer that is associated with a Nontidal Wetland of Special State Concern as stated in COMAR §26.23.06.01;
  - d. For an area of hydric soils or highly erodible soils, the lesser of:
    - (i) The landward edge of the hydric or highly erodible soils; or
    - (ii) Three hundred feet where the 300-foot expansion area includes the minimum 100-foot Buffer.
3. Applications for a subdivision or for a development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include a minimum Buffer of at least 200 feet from a tidal waterway or tidal wetlands, and 100 feet from a tributary stream:
  - a. The 200-foot Buffer may be reduced if strict application of the 200-foot Buffer would preclude either subdivision at a density of one dwelling unit per 20 acres, or an intrafamily transfer subdivision.
  - b. The reduced Buffer should be the minimum necessary to accommodate a dwelling and a sewage reserve area, as determined by the Planning Commission, but no less than 100 feet.
4. The provisions of §A (3) above do not apply if:
  - a. The application for subdivision or site plan approval was submitted before July 1, 2008, and were legally recorded (subdivisions) or received final site plan approval (site plans), by July 1, 2010;
  - b. The application involves the use of growth allocation.

### **B. Permitted activities.**

If approved by the Town, disturbance to the Buffer is permitted for the following activities only

1. A new development or redevelopment activity associated with a water-dependent facility or located in an approved Modified Buffer Area; or
2. A shore erosion control activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, and this Ordinance;
3. A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance;
4. A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
  - a. The Buffer is expanded for highly erodible soil on a slope less than 15 percent or is expanded for a hydric soil and the expanded Buffer occupies at least 75% of the lot or parcel;
  - b. The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
  - c. Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
5. A septic system on a lot created before August 7, 1986, where mitigation is provided at a 1:1 ratio for area of canopy cleared of any forest or developed woodland.
6. Associated with the placement of dredged material under COMAR 27.01.03.03D.

C. Buffer establishment in vegetation.

1. The requirements of this regulation are applicable to:
  - a. a development or redevelopment activity that occurs on a lot or parcel that includes a buffer to tidal waters, a tidal wetland, or a tributary stream if that development or redevelopment activity is located outside the buffer; and
  - b. The approval of a subdivision that includes a buffer to tidal waters, a tidal wetland, or a tributary stream.
2. If an applicant for a subdivision of a lot uses or leases the lot for an agricultural purpose, the applicant:
  - a. If accordance with local land recordation requirements, shall record an approved buffer management plan under Section F of this Part; and
  - b. If authorized by the local jurisdiction, may delay implementation of the buffer management plan until the use of the lot is converted to a non-agricultural purpose.
3. The requirements of this regulation are not applicable to an in-kind replacement of a structure.
4. A local jurisdiction shall require an applicant to establish the buffer in vegetation in accordance with Part E of this chapter and to provide a buffer management plan under Part F of this chapter when an applicant applies for:
  - a. Approval of a subdivision;
  - b. Conversion from one land use to another land use on a lot or a parcel; or
  - c. Development on a lot or a parcel created before January 1, 2010.
5. If a Buffer is not fully forested or fully established in woody or wetland vegetation, the Buffer shall be established through planting in accordance with COMAR 27.01.09.01-1.

D. Mitigation for impacts to the Buffer.

An application for a development activity that includes disturbance to the Buffer shall mitigate impacts to the Buffer and shall provide a Buffer Management Plan in accordance with the standards set forth in this section.

1. Authorized development activities may include a variance, subdivision, site plan, shore erosion control permit, building permit, grading permit, septic system approved by the Health Department on a lot created before January 31, 1988, and special exception.
2. All authorized development activities shall be mitigated for the area of disturbance in the Buffer based on the following type:
  - a. 1:1 for shore erosion control projects;
  - b. 2:1 for riparian water access;
  - c. 2:1 for development or redevelopment of water-dependent utilities;
  - d. 2:1 for public roads, bridges & utilities; and
  - e. 3:1 for any development activity authorized by variance;
  - f. 1:1 for a septic system in a forest or developed woodland on a lot created before January 31, 1988 if clearing is required;
  - g. 0 for a septic system on a lot created before January 31, 1988 if located in existing grass or if clearing is not required.
3. All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.
4. Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, the Town may permit planting in the following order of priority:
  - a. Onsite and adjacent to the Buffer; and
  - b. Onsite elsewhere in the Critical Area.
5. For the removal of a dead tree, the affected area shall be stabilized with native groundcover or other native vegetation as necessary.
6. The removal of a diseased, dying, invasive, or hazardous tree shall be mitigated with one tree of a least ¾-inch caliper for each tree removed or the affected area shall be stabilized in native woody vegetation if a tree cannot be replanted due to space constraints.
7. The installation or cultivation of a new lawn or turf in the Buffer is prohibited.
8. As applicable to a site, Town of Millington shall require that an area in the buffer that is temporarily disturbed by a development activity be restored in pre-disturbance conditions.

E. Buffer Planting Standards.

1. An applicant that is required to plant the Buffer for Buffer establishment or Buffer mitigation shall apply the planting standards set forth in COMAR 27.01.09.01-2.
2. A variance to the planting and mitigation standards of this Ordinance is not permitted.

F. Required Submittal of Buffer Management Plans.

An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by the Town.

An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall submit a Buffer Management Plan as provided in COMAR 27.01.09.01-3 with the application for the specific activity. The provisions of this section do not apply to maintaining an existing grass lawn or an existing garden in the Buffer.

1. A Buffer Management Plan that includes planting for establishment shall be submitted with all other application materials clearly specifies the area to be planted and state if the applicant is:
  - a. Fully establishing the Buffer;
  - b. Partially establishing an area of the Buffer equal to the net increase in lot coverage, or
  - c. Partially establishing an area of the Buffer equal to the total lot coverage.
2. Any permit for development activity that requires Buffer establishment or Buffer mitigation will not be issued until the Town approves a Buffer Management Plan.
3. An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by the Town.
4. The Town will not approve a Buffer Management Plan unless:
  - a. The plan clearly indicates that all planting standards under §E will be met; and
  - b. Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.
5. For a Buffer Management Plan that is the result of an authorized disturbance to the Buffer, a permit authorizing final use and occupancy will not be issued until the applicant:
  - a. Completes implementation of a Buffer Management Plan; or
  - b. Provides financial assurance to cover the costs for:
    - (i) Materials and installation; and
    - (ii) If the mitigation or establishment requirement is at least 5,000 square feet, long-term survivability requirements as set forth in COMAR 27.01.09.01-2.
6. Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
7. If an applicant fails to implement a Buffer Management Plan, that failure shall constitute a violation of this Ordinance. A permit for development activity will not be issued for a property that has the violation.
8. An applicant shall post a subdivision with durable signs prior to final recordation in accordance with COMAR 27.01.09.01-2.
9. Buffer management plans that include natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.
10. An applicant may submit a “Shoreline Stabilization Measure Buffer Management Plan” as provided on the Commission’s website for any shore erosion activity authorized by Maryland Department of Environment in accordance with COMAR 26.24.04.

I. Fees-In-Lieu of Buffer Mitigation.

A fee in-lieu of mitigation will be collected if the planting requirements of the Buffer Management Plan cannot be fully met onsite in accordance with the following standards:

1. Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to Millington's general fund;
2. Fee-in-lieu shall be assessed at \$1.50 per square foot of required Buffer mitigation;
3. A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed 20% of the fees collected; and
4. Fee-in-lieu monies shall be used for the following projects:
  - a. To establish the Buffer on sites where planting is not a condition of development or redevelopment;
  - b. For water quality and habitat enhancement projects as approved by the Critical Area Commission or by agreement between the Town and the Critical Area Commission.

J. Shore Erosion Control Projects.

Shore erosion control measures are permitted activities within the Buffer in accordance with the following requirements:

1. An applicant for a shore erosion control project that affects the Buffer in any way, including, but not limited to access, vegetation removal and pruning, or backfilling shall submit a Buffer Management Plan in accordance with the requirements of this section; and
2. Comply fully with all of the policies and criteria for a shore erosion control project stated in COMAR 27.01.04 and COMAR 26.24.06.01.

**§80-46. Modified Buffer Area (MBA).**

A. Applicability.

The following provisions apply to areas designated and mapped by Town of Millington as Modified Buffer Areas (MBA) and shown on maps available to the public held by Town of Millington. All MBA maps and provisions must be approved by the Critical Area Commission.

B. Development and Redevelopment Standards.

New development or redevelopment activities, including structures, roads, parking areas, and other impervious surfaces or septic systems will not be permitted in the Buffer in a designated MBA unless the applicant can demonstrate that there is no feasible alternative and the Planning Commission finds that efforts have been made to minimize Buffer impacts and the development complies with the following standards:

1. Development and redevelopment activities have been located as far as possible from mean high tide, the landward edge of tidal wetlands, or the edge of tributary streams.
2. Variances to other local setback requirements have been considered before additional intrusion into the Buffer.
3. Commercial, industrial, institutional, recreational, and multi-family residential development and redevelopment shall meet the following standards:
  - a. New development, including accessory structures, shall minimize the extent of intrusion into the Buffer. New development shall not be located closer to the water (or edge of tidal wetlands) than the minimum required setback for the zoning district or 50 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line.
  - b. Redevelopment, including accessory structures, shall minimize the extent of intrusion into the Buffer. Redevelopment shall not be located closer to the water (or edge of tidal wetlands) than the minimum setback for the zoning district or 25 feet, whichever is greater. Structures on adjacent properties shall not be used to determine the setback line. A new structure may be constructed on the foot print of an existing structure.
4. Single family residential development and redevelopment shall meet the following standards:
  - a. New development or redevelopment shall minimize the shoreward extent of intrusion into the Buffer. New development and redevelopment shall not be located closer to the water (or the edge of tidal wetlands) than principal structures on adjacent properties or the minimum setback for the zoning district, whichever is greater. In no case shall new development or redevelopment be located less than 50 feet from the water (or the edge of tidal wetlands).
  - b. Existing principal or accessory structures may be replaced in the same footprint.
  - c. New accessory structures may be located closer to the water than the setback if the Planning Commission has determined there are no other locations for the structures. The area of new accessory structures shall not exceed 500 square feet with 50 feet of the water and 1,000 square feet total in the Buffer.
5. Variances to other local setback requirements shall be considered before additional intrusion into the Buffer is permitted.
6. Development and redevelopment may not impact any Habitat Protection Area (HPA) other than the Buffer, including nontidal wetlands, other State or federal permits notwithstanding.
7. Modified Buffer Area (MBA) designation shall not be used to facilitate the filling of tidal wetlands that are contiguous to the Buffer or to create additional buildable land for new development or redevelopment.
8. No natural vegetation may be removed in the Buffer except that required by the proposed construction.
9. Mitigation for development or redevelopment in the MBA approved under the provision of this subsection shall be implemented as follows:
  - a. Natural forest vegetation of an area twice the extent of the footprint of the development activity within the 100-

- foot Buffer shall be planted on site in the Buffer or at another location approved by the Planning Commission.
- b. Applicants who cannot fully comply with the planting requirement in §(a) above, may use offset by removing an equivalent area of existing lot coverage in the Buffer.
- c. Applicants who cannot comply with either the planting or offset requirements in §(a) or §(b) above shall pay into a fee-in-lieu program as follows:
  - i. Applicants shall submit to the Planning Commission two cost estimates from qualified landscape businesses for planting the equivalent of twice the extent of the development within the 100-foot Buffer. The estimate shall include the cost of stock, planting, staking, mulching, and a one-year survival guarantee.
  - ii. The Planning commission shall determine the amount of the fee-in-lieu based on the average of the two estimates.
- d. Any fees-in-lieu collected under these provisions shall be placed in an account that will assure their use only for projects within the Critical area to enhance wildlife habitat, improve water quality, or otherwise promote the goals of the Millington's Critical Area Program. The funds cannot be used to accomplish a project or measure that would have been required under existing local, State, or federal laws, regulations, statutes, or permits. The status of these funds must be reported in the jurisdiction's quarterly reports.
- e. Any required mitigation or offset areas shall be protected from future development through easement, development agreement, plat notes, or other instrument approved by the Town and recorded among the land records of the County.

#### **§80-47. Other Habitat Protection Areas.**

##### **A. Identification.**

An applicant for a development activity, redevelopment activity, or change in land use shall identify all applicable Habitat Protection Areas and follow the standards contained in this section. Habitat Protection Areas includes:

1. Threatened or endangered species or species in need of conservation;
2. Colonial waterbird nesting sites;
3. Historic waterfowl staging and concentration areas in tidal waters, tributary streams, or tidal and non-tidal wetlands;
4. Existing riparian forests;
5. Forest areas utilized as breeding areas by future interior dwelling birds and other wildlife species;
6. Other plant and wildlife habitats determined to be of local significance;
7. Natural Heritage Areas; and
8. Anadromous fish propagation waters.

B. Standards.

1. An applicant for a development activity proposed for a site within the Critical Area that is in or near a Habitat Protection Area listed above shall request review by the Department of Natural Resources Wildlife and Heritage Service (DNR WHS) and as necessary United States Fish and Wildlife (USFWS), for comment and technical advice. Based on the Department's recommendations, additional research and site analysis may be required to identify the specific location of a threatened and endangered species and species in need of conservation in a Habitat Protection area on or near a site.
2. If the presence of a Habitat Protection Area is confirmed by the Department of Natural Resources, the applicant shall follow the requirements of COMAR 27.01.09.02 through 27.01.09.05, all recommendations from DNR, WHS and as necessary all recommendations from USFWS.
  - a. If potential FIDS habitat is identified, the proposed development shall conform to the Critical Area Commission's FIDS Guidance Manual, dated June 2000 and as updated.
  - b. If potential anadromous fish propagation waters are identified, the proposed development shall conform to the policies and criteria listed in COMAR 27.01.09.05.
3. The applicant shall obtain approval of the Habitat Protection Plan from the Planning Commission or the appropriate designated approving authority. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.

**§80-48. Environmental Impact Assessment (EIA).**

A. Applicability

The Planning Commission, Board of Appeals, or Mayor and Council may require an Environment Impact Assessment (ETA) for the following:

1. Development or redevelopment activities in the Critical Area requiring site plan approval;
2. Development or redevelopment activities in the Critical Area requiring subdivision approval;
3. Development or redevelopment activities within a Habitat Protection Area other than a detached single-family dwelling;
4. An application of Growth Allocation; or
5. An application of a variance other than for detached single family dwelling.

**§80-49. Water Dependent Facilities.**

A. Applicability



The provisions of this chapter apply to those structures or works associated with industrial, maritime, recreational, educational, or fisheries activities that require location at or near the shoreline within the Buffer. The provisions of this chapter are not applicable to:

1. A private pier that,
  - a. Is installed or maintained by a riparian landowner, and
  - b. Is not part of a residential project that provides a community pier or other community boat-docking or storage facility under F, of this chapter, or
2. A non-water dependent project covered under COMAR 27.01.13.  
The requirements of COMAR 27.01.02 apply to this chapter.

B. General Criteria.

The following standards shall apply to new or expanded development activities associated with water-dependent facilities:

1. In accordance with Natural Resources Article §8-1808.3, Annotated Code of Maryland, permitted development in the Buffer is limited to the minimum lot coverage necessary to accommodate each water dependent facility or activity.
2. New or expanded development activities may be permitted in the Buffer in the Intensely Developed Areas and Limited Development Areas provided that it can be shown:
  - a. That the facility or activity are water-dependent;
  - b. That the facility or activity meets a recognized private right or public need;
  - c. That adverse effects on water quality, fish, plant, and wildlife habitat are first avoided, or if unavoidable, minimized;
  - d. That, insofar as possible, a non-water dependent project associated with the water dependent facility or activity is located outside the Buffer;
  - e. Impacts to fish, wildlife, or plant habitat are avoided, or if unavoidable, minimized; and
  - f. Mitigation is provided at a minimum ratio of 1:1 based on the square footage of canopy coverage removed.
3. Except as otherwise authorized in this section, a water dependent facility or activity is prohibited in the Buffer of the Resource Conservation Area.
4. The placement of dredged material in the Buffer or a portion of the Critical Area that has been designated as a habitat protection area is prohibited, except as necessary for:
  - a. A beneficial use approved by the Board of Public Works or the Department of the Environment, such as:
    - i. Backfill for a shoreline stabilization measure;
    - ii. Use in a nonstructural shoreline stabilization measure, including a living shoreline:

- iii. Beach nourishment;
    - iv. Restoration of an island;
    - v. The creation, restoration, or enhancement of a wetland, or a wish, wildlife, or plant habitat;
    - vi. Any other approved beneficial use; or
  - b. Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988; and
- 5. Shall ensure:
  - a. The avoidance or, if unavoidable, the minimization of impacts to fish, wildlife, or plant habitat; and
  - b. Mitigation at a ratio of 1:1 based on the square footage of the area of the canopy coverage removed.

C. General Requirements for the Location of Water Dependent Facilities or Activities.

- 1. The Town of Millington shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities. The Town of Millington shall work with appropriate State and federal agencies to develop a plan for the approval of an area suitable for the location of a new or expanded water dependent facility or activity.
- 2. The following siting factors shall be considered when evaluating proposals for new or expanded water dependent facilities:
  - a. The impact on the water body upon which the water dependent facility or activity is proposed that would likely result from the approval of that location, including:
    - i. Alteration of an existing water circulation pattern or salinity regime;
    - ii. Adequacy of area flushing characteristics;
    - iii. Necessity of, and proximity to, a dredging operation; and
    - iv. Interference with the natural transport of sand;
  - b. Disturbance to:
    - i. An oyster harvest area, as defined in COMAR 08.02.04.11;
    - ii. An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
    - iii. A harvest reserve area, as designated under Natural Resources Article §4-1009.1, Annotated Code of Maryland;
    - iv. An oyster sanctuary, as established in COMAR 08.02.04.15A; and
    - v. Any other shellfish located in a shellfish area regulated by the Department of Natural Resources;
  - c. Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
  - d. The avoidance or, if unavoidable, the minimization of:
    - i. Disturbance to:

- a. A wetland;
- b. Submerged aquatic vegetation;
- c. A habitat of threatened or endangered species or species in need of conservation;
- d. In accordance with COMAR 26.08.02.04-1, a water body identified by the Department of the Environment as a Tier II, high quality water body and its watershed; and
- e. A nontidal wetland of special State concern, as set forth in COMAR 26.23.01.01 and 04 and COMAR 26.23.06.01; and
- ii. Adverse impact on water quality that would likely result from the facility or activity, such as nonpoint source runoff, sewage discharge, or other pollution related to vessel maintenance.

D Industrial and port-related facilities.

New, expanded, or redeveloped industrial or port-related facilities or activities and the replacement of these facilities or activities may be permitted only in those portions of Intensely Developed Areas that have been designated as Modified Buffer Areas as described in this ordinance and are subject to the provisions set forth in that Chapter.

E. Commercial Marinas and Other Water Dependent Commercial Maritime Facilities and Activities.

- 1. In addition to meeting the requirements of §80-48B and §80-48C.
  - a. A new or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an IDA or LDA.
  - b. A redeveloped or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an RCA; or
  - c. A new commercial marina or related commercial maritime facility or activity may be permitted in the Buffer of an RCA, only if it is publicly owned and meets all the requirements of Section G of this Part.
- 2. Town of Millington shall require that the operation of each commercial marina and each related commercial maritime facility or activity complies with:
  - a. The requirements of COMAR 26.08.04.09 and, as applicable, COMAR 26.24.04.03; and
  - b. The stormwater, wastewater, noncontact cooling water discharge, and any other applicable requirements of the Department of the Environment.

F. Community Piers and Other Community Boat-Docking and Storage Facilities.

- 1. in addition to meeting the requirements of §80-48B and §80-48C, new or expanded community piers or other community boat-docking and storage facility may be permitted in the Buffer if:
  - a. The owner or operator of the pier or facility:

- i. Does not offer food, fuel, or other goods and services for sale in the buffer or on the community pier; and
    - ii. As applicable, complies with the requirements of COMAR 26.24.04.03;
  - b. The pier or facility is community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision.
  - c. The pier or facility is associated with a residential project approved by the Town for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;
  - d. Disturbance to the Buffer is the minimum necessary to provide a single point of access to the pier or facility; and
  - e. If community piers are provided as part of a new residential project, private piers in the development are not allowed.
- 2. The number of slips authorized at a pier or facility shall be the less of (a) or (b) below:
  - a. One slip for each 50 feet of shoreline in a residential project in the Intensely Developed and Limited Development Areas; and one slip for each 300 feet of shoreline in a residential project in the Resource Conservation Area; or
  - b. A density of slips to platted lots or dwellings within a residential project in the Critical Area according to the following schedule:

Table 6.F.2 Number of Slips Permitted

Platted Lots or Dwellings in the Critical Area	Slips
Up to 15	1 for each lot
16 – 40	15 or 75% whichever is greater
41 - 100	30 or 50% whichever is greater
101 - 300	50 or 25% whichever is greater
Over 300	75 or 15% whichever is greater

G. Public Beaches and Other Public Water Oriented Recreation or Education Areas or Activities.

- 1. In addition to meeting the requirements of §80-48B and §80-48C, public beaches or other public water-oriented recreation or education areas or activities may be permitted in the Buffer of:
  - a. An Intensely Developed Area; or
  - b. A Limited Development Area or a Resource Conservation Area provided that:
    - i. Adequate sanitary facilities exist;
    - ii. Sanitary and service facilities are, to the extent possible, located outside the Buffer;
    - iii. Permeable surfaces are used to the extent practicable, if no degradation of groundwater would likely result; and
    - iv. Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.

2. Areas for public passive outdoor recreation, such as nature study, hiking, hunting, trapping, and for education, may be permitted in the Buffer within a Limited Development Area or a Resource Conservation Area if sanitary and service facilities for these uses are located outside of the Buffer.

H. Research Associated and Education Associated Water Dependent Facilities or Activities.

In addition to meeting the requirements of §80-48B and §80-48C, a research associated water dependent facility or activity or of an education associated water dependent facility or activity may be permitted in the Buffer of an IDA, LDA, or RCA, if any associated nonwatery dependent project or activity is located outside the Buffer.

I. Aquaculture and Fishery Facilities and Activities; Water Quality Restoration.

The following types of aquaculture and fishery facilities and activities may be permitted in the Buffer of an IDA, LDA, or RCA:

1. A shore-based facility or activity necessary for a commercial aquaculture operation.
2. A commercial water dependent fishery facility or activity, including a structure for crab shedding, a fish off-loading dock, and a shellfish culture operation: and
3. A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

**§80-50. Reserved.**

**§80-51. Reserved.**

## **ARTICLE V GENERAL REGULATIONS**

**§ 80-52. Compliance required.**

No building or land shall hereafter be used and no building or part thereof shall be erected, reconstructed, converted, enlarged, moved, or structurally altered unless in conformity with the regulations as set forth in this Zoning Ordinance.

**§ 80-53. Encroachment; reduction of lot area.**

The minimum yards, height limits, parking space and open spaces, including lot area per family, required by this Zoning Ordinance for each and every building existing at the time of the passage of these regulations or for any building hereafter erected shall not be encroached upon or considered as required yard or open space for any other building, except as hereinafter provided, nor shall any lot area or lot dimensions be

reduced below the requirements of these regulations.

**§ 80-54. Availability of copies of other regulations.**

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

**§ 80-55. Construction in special flood hazard areas.**

- A. The following regulations are applicable to those areas determined to be special flood hazard areas by the Federal Insurance Administration of the Department of Housing and Urban Development and are shown on the flood hazard boundary maps available in the Town office of Millington.
- B. The authority and responsibility for implementation and enforcement of the floodplain regulations in the Town of Millington are vested in the County Commissioners of Queen Anne's County and of Kent County.
- C. All new construction, substantial improvements or major repairs to any building or structure in a flood hazard area must:
  - 1. Be anchored to prevent movement or collapse.
  - 2. Use flood-resistant materials or equipment.
  - 3. Use construction methods and practices to prevent flood damage.
  - 4. The lowest floor of new construction or substantial improvements must be located:
    - a. For residences, at least two (2) feet above the one-hundred-year flood level.
    - b. For nonresidential buildings and structures at least two (2) feet above the one-hundred-year flood level or be flood proofed.
- D. In riverine areas:
  - 1. Designated floodways must be able to pass the one-hundred-year flow.
  - 2. No use will raise the one-hundred-year flood level more than one (1) foot.
  - 3. Encroachments in the floodway must be offset by channel improvements.
- E. In coastal high hazard areas:

1. Nonconforming uses on land below the one-hundred-year level cannot be expanded.
2. New structures or substantial improvements must:
  - a. Be located landward of mean high tide.
  - b. Be elevated above the one-hundred-year level and anchored to piles.
  - c. Have space below the lowest floor free of obstruction.

## **ARTICLE VI PERMISSIBLE USES**

### **§ 80-56. Use of the Designations P, PC, SE and SC in the Table of Permissible Uses.**

When used in connection with a particular use in the Table of Permissible Uses included in this Article, the letter "P" means that the use is permissible in the indicated zone with a zoning permit issued by the Town Administrator, the letter "PC" means that the use is permissible in the indicated zone with a zoning permit recommended by the Planning Commission and issued by the Town Administrator provided the conditions stipulated in Article VIII of this Ordinance are met; the letters "SC" mean the conditions of approval stipulated in Article VIII of this Ordinance for the proposed use must be met and a special exception permit must be recommended by the Planning Commission, approved by the Board of Appeals and issued by the Town Administrator; the letters "SE" means a special exception permit must be recommended by the Planning Commission and approved by the Board of Appeals.

### **§ 80-57. Unclassified Uses.**

In the event an applicant wishes to use property for a use which is not specifically identified as a principal permitted use or a special exception use and where such use is not specifically prohibited from the district, the following provisions shall apply:

- A. The Town Administrator shall submit to the Planning Commission and the Board of Appeals a written request for a determination of the unclassified use.
- B. The Planning Commission if agreeable with request will recommend to the Board of Appeals their determination. The Board of Appeals shall review the request as submitted and determine if the proposed use is of a similar character to the district in which it is proposed.
- C. If the Board of Appeals determines that the use is of a similar character and meets the intent of the principal permitted uses within the district, then it shall instruct the Town Administrator to issue a zoning certificate.
- D. In the event that the Board of Appeals determines that the proposed use in the district is consistent with the character and intent of the uses permitted by special exception within the district, then the applicant shall apply for a special exception in the normal manner.
- E. In no event shall the provisions of this section be used to allow an incompatible use or a use specifically prohibited by this Ordinance within a certain district.

- F. This section shall not apply to the residential districts.
- G. Once a use has been allowed or disallowed by the Board of Appeals, it shall then be considered classified under the appropriate category in the district.

**§ 80-58. Board of Appeals Jurisdiction.**

- A. Notwithstanding any other provisions of this article, whenever the Table of Permissible Uses (interpreted in the light of the applicable provisions contained in this article) provides that a use in a nonresidential zone or a nonconforming use in a residential zone is permissible with a zoning permit, a special-exception permit shall nevertheless be required if the Planning Commission finds that the proposed use would have an extraordinary impact on neighboring properties or the general public.
- B. In making this determination, the Planning Commission shall consider, among other factors, whether the use is proposed for an undeveloped or previously developed lot, whether the proposed use constitutes a change from one principal use classification to another, whether the use is proposed for a site that poses peculiar traffic or other hazards or difficulties, and whether the proposed use is substantially unique or is likely to have impacts that differ substantially from those presented by other uses that are permissible in the zoning district in question.

**§ 80-59. Permissible Uses and Specific Exclusions.**

- A. The presumption established by this Zoning Ordinance is that all legitimate uses of land in the Town are provided for within at least one zoning district in the Town's planning jurisdiction. Because the list of permissible uses set forth in the Table of Permissible Uses cannot be all inclusive, those uses that are listed shall be interpreted liberally to include other uses that have similar impacts to the listed uses.
- B. Notwithstanding Subsection A, all uses that are not listed in the Table of Permissible Uses, even given the liberal interpretation mandated by Subsection 1, are prohibited. Nor shall the Table of Permissible Uses be interpreted to allow a use in one zoning district when the use in question is more closely related to another specified use that is permissible in other zoning districts.
- C. No building or tract of land shall be devoted to any use other than a use permitted hereinafter in the zoning district in which such building or tract of land shall be located, with the exception of the following:
  - 1. Uses lawfully existing on the effective date of this Ordinance.
  - 2. Special exceptions recommended by the Planning Commission and approved by the Board of Appeals.
- D. Uses lawfully existing on the effective date of this Ordinance and rendered non-conforming by the provisions thereof shall be subject to the regulations of Article XIII of this Zoning Ordinance.



- E. The following uses are specifically prohibited in all districts:
1. Any use that involves the manufacture, handling, sale, distribution, or storage of any highly combustible or explosive materials (solid or liquid substances that can easily ignite and burn).
  2. Stockyards, slaughterhouses, rendering plants.
  3. Use of a travel trailer or accessory building as a temporary or permanent residence; unless classified as an accessory dwelling unit.
  4. Use of a motor vehicle parked on a lot as a structure in which, out of which, or from which any goods are sold or stored, any services are performed, or other business is conducted unless approved as a Food Truck vendor with the appropriate licensing.
  5. Solid or hazardous waste collection or disposal facilities excluding approved waste water treatment facilities.
  6. Sanitary landfills.
  7. Adult oriented businesses, establishments providing adult entertainment or material, adult oriented commercial enterprises adult nightclub, bar, restaurant, or similar establishment adult bookstore; or massage parlor. See definitions.

**§ 80-60. No More Than One Principal Structure on a Lot.**

- A. Every structure hereafter erected, reconstructed, converted, moved or structurally altered shall be located on a lot of record and in no case shall there be more than one (1) principal structure on a lot unless as provided in 2 below or as an approved accessory dwelling unit.
- B. More than one principal structure may be located upon a lot in the following instances subject to the lot, yard and density requirements and other provisions of this Ordinance:
1. Institutional buildings.
  2. Public or semi-public buildings.
  3. Multiple family dwellings.
  4. Commercial or industrial buildings.
  5. Additional principal structures in permitted mixed-use projects with the prior approval of the Planning Commission.
  6. Condominiums.

**§ 80-61. Accessory Uses.**

- A. The Table of Permissible Uses classifies different principal uses according to their different impacts. Whenever an activity (which may or may not be separately listed as a principal use in this table) is conducted in conjunction with another principal use and the former use (a) constitutes only an incidental or insubstantial part of the total activity that takes place on a lot, or (b) is commonly associated with the principal use and integrally related to it, then the former use may be regarded as accessory to the principal use and may be carried on underneath the umbrella of the permit issued for the principal use. For example, a swimming pool/tennis court complex is customarily associated with and integrally related to a residential subdivision or multi-family development and would be

regarded as accessory to such principal uses, even though such facilities, if developed apart from a residential development, would require a separate permit.

- B. The following activities, so long as they satisfy the general criteria set forth above, are specifically regarded as accessory to residential principal uses:
  - 1. Offices or studios within an enclosed building and used by an occupant of a residence located on the same lot as such building to carry on administrative or artistic activities, so long as such activities do not fall within the definition of a home occupation.
  - 2. Hobbies or recreational activities of a non-commercial nature.
  - 3. Yard sales or garage sales, so long as such sales are not conducted on the same lot for more than three days (whether consecutive or not) during any 90-day period.
- C. The following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts.
  - 1. Storage outside of a substantially enclosed structure of any motor vehicle that is neither licensed nor operational.
  - 2. Storage of more than two (2) recreation vehicles and/or boat and boat trailer requiring Maryland Registration on a residential lot.

**§ 80-62. Permissible Uses Not Requiring Permits.**

Notwithstanding any other provisions of this Zoning Ordinance or the Town Code, no zoning or special-exception permit is necessary for the following uses:

- A. Streets.
- B. Access driveways to an individual detached single-family dwelling.
- C. Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right-of-way.
- D. Neighborhood Essential Services – those services vital for the well-being and functionality of a community – including but not limited to healthcare, education, public safety, and infrastructure.

**§ 80-63. Permissible Uses Tables.**

- A. More specific use controls. Whenever a development could fall within more than one use classification in the Table of Permissible Uses, the classification that most closely and most specifically describes the development controls shall apply.
- B. Permitted uses in the PN Planned Neighborhood Floating Zone are separately enumerated in Article IV, Part II.
- C. Table of Permissible Uses (see following pages)

**LEGEND:**

P = Permitted Use

PC = Permitted Use with Conditions

SE = Special Exception Use

SC = Special Exception with Conditions

AG = Agriculture

R-1 = Rural Conservation

R-2 = Single Family Residence

R-3 = Old Town Center

TC = Town Center

L-1 = Light Industrial

<b>ZONING CLASSIFICATION</b>	<b>AG</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>TC</b>	<b>LI</b>
<b>USE DESCRIPTION</b>						
<b>AGRICULTURE</b>						
Agriculture, including horticultural, hydroponics, general farming, orchards, groves, or nurseries for growing or propagation of plants, trees, and shrubs on properties of ten (10) acres or more, but not including feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.	P	PC	PC			PC
Aquaculture, including accessory processing and sales.	P					
Greenhouses, wholesale or retail	P					
Data Center	PC				PC	PC
Farm Brewery	P					PC
Farm employee housing	SE					
<b>RESIDENTIAL USES</b>						
Detached single-family dwellings	P	P	P	P	P	
Two-family dwellings			PC	PC	PC	
Townhouses				PC	PC	

<b>ZONING CLASSIFICATION</b>	<b>AG</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>TC</b>	<b>LI</b>
<b>USE DESCRIPTION</b>						
Multiple-family dwellings		P		PC	PC	
Bed and Breakfast establishments		PC		PC	PC	
Accessory apartment		SC				
Modular Home	P	P	P	P	P	
Manufactured Home	P	P	P	P	P	
Qualified projects developed by nonprofits		SE	SE	SE	SE	SE
Cottage Housing Development (CHD)		P	P	P		
<b>LODGING</b>						
Rooming, boarding, and lodging houses		SC	SC	SC		
Hotel, Motel					SC	
<b>INSTITUTIONAL USE</b>						
Cemeteries		PC				
Churches, temples, and synagogues		PC	PC	PC	PC	PC
Child care center		SC	SC	SC	SC	
Funeral homes		PC	PC	PC	PC	
Group Home		PC				
Government buildings and structures		SC	SC	SC		
Housing for the elderly, Nursing Home, Assisted Living Facility		SC	SC	SC		
Private clubs				SC	SC	
Public Safety						SC
Trade, artistic, or technical schools					SC	P
Schools and colleges, public and private		SC	SC	SC	SC	
<b>RETAIL TRADE/COMMERCIAL/SERVICES USES</b>						
Banks					P	
Business services					P	

<b>ZONING CLASSIFICATION</b>	<b>AG</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>TC</b>	<b>LI</b>
<b>USE DESCRIPTION</b>						
Car wash.						SC
Computer programming and software services including data banks and data retrieval					P	P
Convenience Store					P	
Data Center	PC				PC	PC
Duplicating, mailing and copy services					P	P
Dry-cleaning and pressing pickup stations or shops.					SC	
Farm implement sales, service, rental and repair, but not salvage or junk						P
Food service establishments					P	
General offices					P	P
Health Services					P	
Lawn mower and yard and garden equipment sales, service, rental and repair.					SC	
Medical Cannabis Licensed Dispensary					SC	
Motor Vehicle and Related Services uses					SC	SC
Offices, general business and professional					P	
Personal services					P	
Parking garages and lots					P	
Private clubs, lodges, and meeting halls.					P	
Professional services					P	
Retail stores					P	
Radio and television stations and studios and recording studios, but not towers					P	
Schools for industrial training, trade, or business.					P	
Specialty shops					P	
<b>RECREATION USE</b>						
Billiard or pool parlors					P	
Bowling alley					P	
Dance halls					P	
Golf Courses		PC				

<b>ZONING CLASSIFICATION</b>	<b>AG</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>TC</b>	<b>LI</b>
<b>USE DESCRIPTION</b>						
Health clubs					P	P
Indoor model racing tracks and similar activities					P	
Recreational or entertainment establishments, commercial					P	
Recreational uses, non-commercial		PC	PC	PC	PC	
<b>LIGHT INDUSTRIAL USES</b>						
Artisan Industrial		P	P	P	P	
Bakery						P
Blacksmith shops, welding shops, ornamental iron works, and machinery shops						P
Bottling plants						P
Confectionery production						P
Contractors storage yards						P
Craft distillery and microbrewery establishments		PC	PC	PC	P	
Data Center	PC				PC	PC
Dry cleaning plants						P
Electroplating and manufacturing of small parts such as coils, condensers, transformers, and crystal holders						P
Utilities		SC	SC	SC	SC	SC
Food production, packaging, packing and canning						P
Fuel storage yards						P
Ice manufacturing and storage						P
Laundry plants and dry-cleaning establishments (combined operation)						P
Manufacturing of light sheet metal products						P
Manufacturing, compounding, assembling or treatment of articles from the previously prepared materials						P
Manufacturing, compounding, processing or packaging of cosmetics, drugs, perfumes, pharmaceuticals, toiletries and products resulting from biotechnical and biogenetic research and development						P
Manufacturing, fabrication and/or subassembly of aircraft or satellite parts, components, and equipment						P

<b>ZONING CLASSIFICATION</b>	<b>AG</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>TC</b>	<b>LI</b>
<b>USE DESCRIPTION</b>						
Manufacturing of musical instruments, toys, novelties, and rubber and metal stamps						P
Manufacturing of paint not employing a boiling or rendering process						P
Manufacturing of pottery and figurines or other products using previously pulverized clay and kilns fired only by electricity or gas						P
Manufacturing and assembly of electronic components, instruments, and devices						P
Manufacturing and assembly of machine parts, components, and equipment						P
Manufacturing and assembly of medical, scientific or technical instruments, devices and equipment						P
Manufacturing and assembly of mobile, modular, and manufactured homes						P
Manufacturing and assembly of semi-conductors, microchips, circuits, and circuit boards						P
Manufacturing of yeasts, molds, and other natural products necessary for medical and biotechnical research and development						P
Paper products manufacturing						P
Printing, publishing and engraving						P
Research, development, and related activities						P
Sawmills						P
Sign making shop						P
Stone works						P
Tinsmith and roofing services						P
Winery		PC	PC	PC	P	
Wood products manufacturing						P
Transportation, communication, and utilities uses						P
Cable communications system						P
Heliports						P
Pipelines						P
Radio and television broadcasting stations, towers, and accessory structures						P
Telephone offices, communication and telecommunication centers						P
Trucking terminals						P

<b>ZONING CLASSIFICATION</b>	<b>AG</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>TC</b>	<b>LI</b>
<b>USE DESCRIPTION</b>						
Commercial uses:						
General Merchandise						P
Construction Services						P
Lumberyards						P
Retail sales and personal services, dealing primarily with employees in the zone						P
Wholesale trades limited to sale or rental of products intended for industrial or commercial users						P
Animal boarding places						P
Laboratories						
Storage, outdoor						P
Warehousing and storage services including self-storage facilities						P
<b>ACCESSORY USES</b>						
Accessory storage structures with a floor area of more than 1,200 square feet or a height that exceeds 17 feet on parcels less than 5 acres	SE					
Accessory structures for sale or processing farm products raised on the premises on a farm of ten (10) acres or more.	P	P	P			
Accessory open or enclosed storage of farm materials, products or equipment on a farm of ten (10) acres or more.	P	P	P			
Accessory farm buildings, including barns, stables, shed, tool rooms, shops, bins, tanks and silos on a farm of ten (10) acres or more.	P	P	P		P	
Accessory boathouses, piers, and bulkheads		PC	PC	PC	PC	PC
Data Center	PC	SC	SC	SC	PC	PC
Domestic storage		PC	PC	PC		
Private garage		PC	PC		PC	
Guest houses		P	P		P	
Home Occupation		PC	PC	PC		
Keeping of small animals, insects, reptiles, fish, or birds		PC	PC	PC		



<b>ZONING CLASSIFICATION</b>	<b>AG</b>	<b>R-1</b>	<b>R-2</b>	<b>R-3</b>	<b>TC</b>	<b>LI</b>
<b>USE DESCRIPTION</b>						
Storage of a recreational vehicle and/or boat and boat trailer		PC	PC	PC		
Swimming pools		PC	PC	PC	PC	
Temporary buildings		PC	PC	PC	PC	PC
Accessory off-street parking		PC	PC	PC		
Storage of office supplies or merchandise normally carried in stock in connection with a permitted office, business or commercial use.					P	
Storage of goods or materials used in or produced by permitted commercial and industrial uses and related activities subject to applicable district regulations.					P	P

#### **ARTICLE VII DENSITY DIMENSIONAL REGULATIONS**

##### **§ 80-64. Minimum Lot Size.**

- A. Subject to the exceptions listed below all lots shall have at least the amount of square footage indicated for the appropriate zoning district.
- B. If the owner of a lot in any district does not own a parcel or tract of land immediately adjacent to such lot, and if the deed or instrument under which such owner acquired title to such lot was of record prior to the application of any zoning regulations and restrictions to the premises, and if such lot does not conform to the requirements of such regulations and restrictions as to width of lots and lot area, the provisions of such lot-area-per-family and lot-width regulations and restrictions shall not prevent the owner of such lot from erecting a single-family dwelling or making other improvements on the lot, provided that such improvements conform in all other respects to applicable zoning regulations and restrictions.

##### **§ 80-65. Residential Density.**

- A. Every lot developed for residential purposes shall have the minimum number of square feet of land area per dwelling unit as required by the Schedule of Zone Regulations. In determining the number of dwelling units permitted on a tract of land, fractions shall be rounded to the nearest whole number.

##### **§ 80-66. Density on Lots Where Portion Dedicated to the Town.**

- A. Subject to the other provisions of this section, if (1) any portion of a tract lies within an area designated on any officially adopted Town plan as part of a proposed public park, greenway, or bikeway, and (2) before the tract is developed, the owner of the tract, with the concurrence of the Town, dedicates that portion of the tract so designated, then when the remainder of the tract is developed for residential purposes, the permissible density at which the remainder may be developed shall be calculated in accordance with the provisions of this

section.

- B. If the proposed use of the remainder is a single-family detached residential subdivision, then the minimum lot size and minimum setbacks in such subdivision may be reduced, as determined appropriate by the Planning Commission to achieve the development, and the permitted density shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.
- C. If the proposed use of the remainder is a two-family or multi-family project, then the permissible density at which the remainder may be developed shall be calculated by regarding the dedicated portion of the original lot as if it were still part of the lot proposed for development.
- D. If the portion of the tract that remains after dedication as provided in Subsection A is divided in such a way that the resultant parcels are intended for future subdivision or development, then each of the resultant parcels shall be entitled to its pro rata share of the "density bonus" provided for in Subsections B. and C.

#### **§ 80-67. Minimum Lot Widths.**

- A. No lot may be created that is so narrow or otherwise so irregularly shaped that it would be impracticable to construct on it a building that:
  - 1. Could be used for purposes that are permissible in that zoning district, and
  - 2. Could satisfy any applicable setback requirements for that district.
- B. The Schedule of Zone Regulations indicates minimum lot widths and depths that are recommended and are deemed presumptively to satisfy the standard set forth in Subsection A.
- C. No lot created after the effective date of this Ordinance that is less than the recommended width shall be entitled to a variance from any building setback requirement.

#### **§ 80-68. Building Setback Requirements.**

- A. Subject to other provisions of this section, no portion of any building or any freestanding sign may be located on any lot closer to any lot or property line than is authorized in the table set forth in Section 80-69.

1. If the lot or property line is not readily determined (by reference to a recorded map, set irons, or other means), the setback shall be measured from the boundary line of any adjacent right-of-way. If the boundary line of the right-of-way is not readily determinable the setback shall be measured from the centerline of the right-of-way and half the width of the right-of-way shall be added to the minimum setback requirement.
2. Whenever a lot abuts upon a public alley, the alley width may not be considered as a portion of the required yard.
3. Where these regulations refer to side streets, the Zoning Administrator shall be guided by the pattern of development in the vicinity of the lot in question in determining which of two (2) streets is the side street.
4. Every part of a required yard shall be open to the sky, except as authorized by this Ordinance and except ordinary projections of sills, belt courses, window air-conditioning units, chimneys, cornices and ornamental features which may project to a distance not to exceed twenty-four (24) inches into a required yard.

**§ 80-69. Height, Area and Bulk requirements.**

**A. Modification of height regulations.**

1. Except within an area defined as an Airport Approach Zone by the Federal Aviation Agency, the height limitations of this Zoning Ordinance shall not apply to belfries, chimneys, church spires, conveyors, cooling towers, elevator bulkheads, fire towers, public monuments, commercial radio and television towers less than one hundred twenty-five (125) feet in height, silos, smokestacks, tanks, and water towers and standpipes.
2. Except within an area defined as an Airport Approach Zone by the Federal Aviation Agency, public, semipublic and public service buildings, hospitals, institutions and schools, when permitted in a district, may be erected to a height not exceeding sixty (60) feet, and churches and temples may be erected to a height not exceeding seventy-five (75) feet when the required side and rear yards are each increased by at least one (1) foot for each one (1) foot of additional building height above the height regulations for the district in which the building is located.

**B. Lot area.**

1. Requirements for lot area per family do not apply to dormitories, fraternities, sororities and other similar living quarters which are accessory to a permitted use and which have no cooking facilities in individual rooms or apartments.
2. Requirements for lot area per family do not apply to rental units in a hotel, motel, motor lodge or tourist home or to rooms in rooming, boarding or lodging housing.

**C. Front yards.**

1. Where an official line has been established for the future widening or opening of a street or major thoroughfare upon which a lot

- abuts, the depth of a front or side yard shall be measured from such official line to the nearest line of the building.
2. On through lots, the required front yard shall be provided on each street.
  3. There shall be a front yard of at least fifteen (15) feet on the side street of a corner lot in any district: provided, however, that the buildable width of a lot of record at the time of passage of this Zoning Ordinance shall not be reduced to less than twenty-eight (28) feet.
  4. Open, unenclosed porches, platforms or paved terraces not covered by a roof or canopy and which do not extend above the level of the first floor of the building may extend or project into the required front or side yard not more than six (6) feet.
  5. Where twenty-five percent (25%) or more of the street frontage or where twenty-five percent (25%) or more of the street frontage within four hundred (400) feet of the property in question is improved with buildings that have a front yard (with a variation of six (6) feet or less) that is greater or less than the required front yard in the district, no building shall project beyond the average front yard so established; provided however, that a depth of front yard of more than fifty percent (50%) in excess of the depth of the required front yard in the district in which the lot is located shall not be required. Where forty percent (40%) or more of the street frontage is improved with buildings that have no front yard, no front yard shall be required for the remainder of the street frontage.

E. Side yards.

1. The minimum width of side yards for schools, libraries, churches, community houses and other public and semipublic buildings in residential districts shall be twenty-five (25) feet, except where a side yard is adjacent to a business or industrial district, in which case the width of that yard shall be as required in the Table of District Height, Area and Bulk Requirements for the district in which the building is located.

F. Corner visibility.

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

G. Accessory buildings and structures.

1. An ornamental fence or wall not more than three (3) feet in height may project into or enclose any required front or side yard to a depth from the street line equal to the required depth of the front yard. Ornamental fences or walls may project into or enclose other required yards, provided that such fences and walls do not exceed a height of six (6) feet.
2. Accessory buildings which are not a part of the main building, although they may be connected by an open breezeway, may be constructed in a rear yard, provided that such accessory building does not occupy more than thirty percent (30%) of the area of the

required rear yard, and provided that it is not located closer than five (5) feet to the rear lot line nor closer than three (3) feet to a side lot line.

3. Filling station pumps and pump islands may occupy the required yards; provided, however, that they are not less than fifteen (15) feet from street lines.

H. Table of Height, Area and Bulk Requirements follows:

[illegible]

<b>LI-1</b>	45	3	NA	None	None	None	50	20	50	None (4)
(1) The maximum residential density permitted in the AR Agriculture District shall be one dwelling unit per 30 acres. The minimum lot size shall be $\frac{3}{4}$ of an acre. The maximum percentage of property in lots shall be ten (10) percent.										
(2) See additional regulations pertaining to two-family dwellings and townhouses.										
(3) There shall be a side yard not less than twenty (20) feet in width on the side of a lot adjoining a residential district and there shall be a rear yard not less than thirty (30) feet in depth on the rear side of a lot adjoining a residential district.										
(4) There shall be a rear yard not less than forty (40) feet in depth on the rear side of a lot adjoining a residential district.										

**§ 80-70. Reserved**

**§ 80-71. Reserved**

## ARTICLE VIII SUPPLEMENTARY USE REGULATIONS

This Article contains regulations to specific uses that supplement the requirements found in other articles of this Ordinance. The following specific supplementary use regulations are applicable to both specific uses permitted by right and to uses permitted by special exception as indicated in Article VI and in the Table of Permissible Uses.

### **§ 80-72. Accessory Apartment.**

The Board of Appeals may permit an accessory apartment as a special exception in the R-1 and R-2 districts subject to the following:

- A. The accessory apartment is second dwelling unit that is part of a one-family detached dwelling and is suitable for use as a complete living facility with provision within the facility for cooking, eating, sanitation and sleeping.
- B. Either the primary unit or accessory unit must be owner-occupied.
- C. No subdivision of property shall be allowed where a second unit has been established unless the subdivision meets all requirements of this Zoning Ordinance and the Millington Subdivision Regulations.
- D. The requirements of this Zoning Ordinance shall also apply to new owners of property where a second unit has been established if the property is sold. All conditions of the use permit, restrictive covenants, and other contractual agreements with the Town shall apply to the property and new owners.
- E. The accessory rental unit may be created only through an internal conversion of the existing living area, basement, or attic. An accessory rental unit may not be created through the conversion of an existing garage. Additional off-street parking is not required.
- F. Only one entrance to the house may be located on the front of the house, unless the house contained additional front doors before the conversion.
- G. The gross floor area of the second unit shall not exceed 500 square feet. An exception to this standard may be authorized upon finding that: the purpose of this Zoning Ordinance is served and strict compliance with the size limitation would require significant structural modifications that would not be required otherwise or adversely affect an historic or architecturally significant building located in the Community Design Overlay District.
- H. The applicant shall apply for a special exception use as defined in this Zoning Ordinance and the owner shall enter into an agreement with the Town, on a form approved by the Town Attorney, agreeing that the property will be owner-occupied.



- I. Owners receiving approvals for second units and establishing the use pursuant to this Zoning Ordinance shall also agree to reimburse the Town for costs of all necessary enforcement actions.
- J. The owner shall submit an agreement that will provide constructive notice to all future owners of the property, of the use and owner occupancy restrictions affecting the property. If owner occupancy is not possible, the use will terminate, and the structure will be returned to its original condition to the satisfaction of the Administrator.
- K. Second units shall be subject to review after the first year and every two (2) years thereafter. It shall be the responsibility of the property owner to initiate the review and pay applicable fees. Violation of any of the provisions shall be basis for revocation of the use permit.

**§ 80-73. Accessory Boathouses, Piers and Bulkheads.**

- A. Accessory boathouses, piers and bulkheads are permitted in all districts subject to the following regulations:
  - 1. A boathouse may not be used as a dwelling, guest house or servants' quarters unless specifically permitted by other sections of this Ordinance.
  - 2. The height of a boathouse shall not exceed twenty (20) feet above mean high water.
  - 3. No boathouse shall exceed twenty (20) feet in width or forty (40) feet in depth.
  - 4. No boathouse shall be built beyond the established bulkhead line or waterway line or closer than ten (10) feet to a side lot line.
  - 5. Boathouses and boat slips, together with other accessory buildings, may occupy no more than thirty-five percent (35%) of a required rear yard.
  - 6. Boat house must comply with the requirements of the CA Critical Area Overlay District.

**§ 80-74. Accessory Off-Street Parking.**

Accessory off-street parking for one (1) commercial vehicle of not more than one (1) ton's capacity and used by the occupant of a dwelling may be permitted R-1, R-2, R-3 and PN Districts.

**§ 80-75. Bed and Breakfast Establishments.**

Bed and breakfast establishments are permitted in the R-1, R-2, R-3 and PN Districts subject to the following:

- A. The facility shall operate in accordance with all State and local health and fire code requirements.
- B. Breakfast is the only meal that may be served to a transient visitor; and it must not be provided, for compensation, to any other nonresident of the dwelling unit.

#### **§ 80-76. Car Wash.**

The Board of Appeals may permit a car wash as a special exception use in the LI district subject to the following:

- A. The business shall be effectively screened from the view of any abutting land in a residential District or land proposed to be used for residential purposes.
- B. The subject property shall be of sufficient size to accommodate development of the type and scope proposed.
- C. Materials, textures, colors and designs of fences, walls, and screening shall be compatible with the on-site development, the adjacent properties and the neighborhood.
- D. Drive through lanes shall be marked with distinctive pavement markings and/or special striping, and shall not block exit or entry to off-street parking spaces otherwise required on the site.

#### **§ 80-77. Cemeteries**

Cemeteries may be permitted in the R-1 District subject to the following:

- A. A minimum parcel area of ten (10) acres for cemeteries shall be established, unless such uses are accessory to a house of worship.
- B. Structures used for interment (including mausoleums and vaults) shall be set back not less than eighty (80) feet from any road bounding the cemetery, and not less than fifty-five (55) feet from any other lot line.
- C. All graves or burial plots shall be set back not less than thirty (30) feet from any public road right-of-way and not less than fifty (50) feet from any adjacent lot line.
- D. The buffer areas created by the setbacks shall be suitably landscaped with trees and shrubs.
- E. Satisfactory arrangements must be made for perpetual maintenance of the cemetery.

#### **§ 80-78. Child Care Center.**

The Board of Appeals may permit a child care center as a special exception use in the R-1, R-2 and R-3 TC and PN districts subject to the following:

- A. Applicant shall meet the requirements of appropriate State and local agencies for child care.
- B. Applicant shall provide verification of qualifications to conduct the proposed use.
- C. The Planning Commission may prescribe specific conditions determined necessary to minimize effects of the use on neighboring properties given identification of concerns specific to a particular site.
- D. The facility shall operate in accordance with all State and local health and fire code requirements.

#### **§ 80-79. Churches, Temples, and Synagogues.**

Churches, temples and synagogues may be permitted in any district provided:

- A. Structures used primarily for religious activities may be erected to a greater height than permitted in the district in which it is located, provided that the front, side, and rear setbacks shall be increased one foot for each foot by which such structure exceeds the height limitation established for the District in which such structure is located.
- B. Structures erected after the date of passage of this Ordinance shall have their principal means of access from a major street and shall be located on a lot of at least two (2) acres in area.

#### **§ 80-80. Dry-Cleaning and Pressing Pickup Stations or Shops**

The Board of Appeals may permit a dry-cleaning and pressing pickup stations or shop as a special exception use in the TC district subject to the following:

- A. The facility may not occupy more than two thousand five hundred (2,500) square feet of floor area.
- B. The facility may not use any cleaning fluid whose base is petroleum or one of its derivatives.

#### **§ 80-81. Domestic Storage**

Domestic storage in an accessory building or buildings is permitted provided the total square footage of which is not to exceed fifteen percent (15%) of the total area of the required rear yard for lots greater than five thousand square feet (5,000 sq. ft.) and twenty five percent (25%) of the total area of the required rear yard for lots smaller than five thousand square feet (5,000 sq. ft.).

#### **§ 80-82. Funeral Homes.**

Funeral homes may be permitted in the R-1, R-2, R-3, TC and PN districts provided the proposed use shall be located in a building which is residential in character and architectural style.

#### **§ 80-83. Golf Courses.**

Golf courses not lighted for night play and not including miniature golf courses, putting greens, driving ranges and similar activities operated as a business may be permitted in the R-1 and PN Districts provided:

- A. Any building for a golf shop, locker room and snack bar as an accessory use to a permitted golf course shall not be located closer than one hundred (100) feet to adjoining property lines.
- B. Practice greens and tees may accompany a standard nine-hole or eighteen-hole golf course occupying at least seventy-five (75) acres.
- C. Golf courses located in the CA District shall be developed in accordance with the guidance provided by the Critical Area Commission.

#### **§ 80-84. Group Homes**

The Board of Appeals may permit a group home as special exception uses in the R-1 district subject to the following:

- A. A statement shall be submitted by the applicant explaining the character of the facility, the program's policies, goals, means proposed to accomplish these goals, characteristics of the service population and number of residents to be served, operating methods and procedures, and any other aspects pertinent to the facility's program.
- B. All proposed accessory uses shall be identified and the maximum square footage allotted for each use shall be indicated on the site plan.
- C. Subject property shall have frontage on and direct vehicular access to an existing street with sufficient capacity to accommodate any traffic generated by the proposed use.
- D. Parking and loading shall be provided at the rear of the site.
- E. All trash and refuse shall be stored in a self-enclosed storage area at the rear of the site.
- F. The proposed site shall be of sufficient size to accommodate the use without adversely affecting adjacent land uses.

- G. The applicant shall meet the requirements of appropriate State and local agencies for group homes.
- H. The total number of residents and supervisors shall not exceed eight (8) persons.
- I. The facility shall operate in accordance with all State and local health and fire code requirements.

**§ 80-85. Home Occupation.**

A home occupation which is clearly subordinate to the residential use of the dwelling is permitted in the R-1, R-2, R-3 and PN Districts subject to the following provisions:

- A. A home occupation shall be incidental to the use of a dwelling unit for residential purposes and shall be conducted only by members of the family residing in the dwelling unit, plus no more than one non-resident assistant or employee. No more than fifteen percent (15%) of the floor area of the dwelling unit may be used in connection with a home occupation or for storage purposes in connection with a home occupation.
- B. No more than one home occupation shall be permitted within any single dwelling unit.
- C. A home occupation shall be carried on wholly within the principal building. No home occupation shall be allowed in accessory buildings or detached garages. There shall be no outdoor storage of materials or products on the premises.
- D. There shall not be conducted on the premises the business of selling stocks or merchandise, supplies, or products, except that orders previously made by telephone or at a sales party may be filled on the premises. That is, direct sales of products off display shelves or racks are not allowed, but a person may pick up an order placed earlier as directed above.
- E. The home occupation shall not cause any significant effect associated with the home occupation, such as increased noise, excessive lighting, or offensive odor, which is incompatible with the gases into the sewer system or any other manner of discharging such item in violation of any applicable government code.
- F. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in a residential neighborhood, and any need for parking generated by the conduct of such home occupation shall be met off the street and other than in a required front yard.
- G. A home occupation shall limit any external evidence of an occupation to one identification sign not to exceed two (2) square feet in area.

## **§ 80-86. Hotel/Motel**

The Board of Appeals may permit hotel or motel as special exception uses in the TC district subject to the following:

- A. The applicant shall site new structures to ensure that adjacent properties have visual privacy and sunlight as well as protection from the new development's site illumination, noise, and odor, as applicable.
- B. The applicant shall design structures to complement and contribute to a desirable community character in terms of shape and style, roof lines, color, and materials.
- C. Circulation and parking shall be adequate to fulfill requirements of all proposed uses - principal and accessory. The Board may require a traffic analysis provided by the applicant demonstrating adequacy of the system.
- D. The applicant shall design and site structures to screen from public view unsightly elements such as shipping and loading areas, transformers, dumpsters, and meters.
- E. The applicant shall design the structure roof to screen mechanical equipment from public view and to contribute to an attractive streetscape.
- G. The applicant shall develop the public streetscape between the structure and the street curb as a safe and convenient pedestrian way with attractive amenities such as paving, lighting, seating, shelter, and landscaping.
- H. The applicant shall design fences and retaining walls that are consistent in materials and quality to that of the structure and the adjacent properties.
- J. The applicant shall design and locate signs so that their illumination is directed away from adjacent neighbors.
- J. The applicant shall integrate ground signs into the design of the site and the streetscape.

## **§ 80-87. Housing for the Elderly and Nursing Home, Assisted Living Facility**

The Board of Appeals may permit housing for the elderly or a nursing home or an assisted living facility as a special exception in the R-1, R-2, R-3 and PN Districts subject to the following:

- A. The development must be subject to management or other legal restrictions that require at least eighty (80%) of the units in the project to

be occupied by households of persons aged 62 or over.

- B. One or more of the following ancillary, occasional services may be included to serve the residents and possibly nonresident elderly persons:
  - 1. Provision for on-site meal service, medical or therapy facilities;
  - 2. Space for mobile services, nursing care, personal care services;
  - 3. Day care for elderly; and
  - 4. On-site facilities for recreation, hobbies, or similar activities.
- C. The project shall be designed to provide a transition near the periphery of the site, either with open space areas and landscaping, or by designing the structures near the periphery to be harmonious in density and type with the surrounding neighborhood.
- D. Open space areas, recreational facilities, and other accessory facilities shall be developed in each phase of development to meet the needs of the residents. The developer shall provide a schedule for the installation of facilities at the time the project is submitted.
- E. The height, area, and bulk requirements of the R-2 District shall apply.

**§ 80-88. Keeping of Small Animals.**

Keeping of small animals, insects, reptiles, fish, or birds, but only for personal enjoyment or household use and not as a business is permitted in R-1, R-2, R-3 TC and PN Districts. This provision does not include chickens, other edible fowl, or swine.

**§ 80-89. Lawn Mower and Yard and Garden Equipment Sales, Service, Rental or Repair.**

The Board of Appeals may permit lawn mower and yard and garden equipment sales, service, rental or repair as a special exception in the TC Districts provided facilities are located in a completely enclosed building.

**§ 80-90. Manufactured Homes.**

A manufactured home outside a mobile park or mobile home subdivision shall be permitted provided:

- A. The manufactured home complies with all code requirements applicable to residential units.
- B. The manufactured home is attached to a permanent foundation.

- C. The ownership interests of the manufactured home and the parcel of land it is affixed to are identical.
- D. An affidavit of affixation has been recorded with the Clerk of the Court for Kent or Queen Anne's County (appropriate jurisdiction) as provided in Title 8B Manufactured Homes, Subtitle 2 Conversion to Real Property, Section 8B-202 Affidavit of Affixation.

**§ 80-91. Motor Vehicles and Related Services.**

The Board of Appeals may permit motor vehicles and related services as a special exception in the TC district subject to the following:

- A. All sales and installation facilities operations shall be conducted within a wholly enclosed structure.
- B. Outdoor display of motor vehicles for sale shall be permitted if areas for this purpose are integrated into the overall site design and are compatible with the adjacent and neighboring properties.
- C. Applicant shall submit a plan indicating outdoor storage areas and screening of such areas. The Board may require additional landscape treatment to address this requirement. Neighboring properties shall be protected from site illumination, noise, and odor.
- D. The applicant shall design structures to complement and contribute to desirable community character in terms of shape and style, roof lines, color and materials.
- E. The applicant shall design and site structures to screen from public view unsightly site elements such as shipping and loading areas, car storage areas, dumpsters, etc.
- F. Pollutant and waste disposal shall be carried out in compliance with applicable Town, State, and Federal regulations.
- G. Where a residential use abuts, buffering shall be provided by the applicant.
- H. Outdoor storage of vehicles, tires, and equipment and the erection or location of accessory structures on the premises shall be prohibited unless approved by the Planning Commission.
- I. The storage of trailers, boats, or trucks shall be prohibited.
- J. Any outdoor storage or refuse area approved shall be fenced and screened from adjacent property.
- K. Materials, textures, colors, and designs of fences, walls and screening shall be compatible with the on-site development, the adjacent properties, and the neighborhood.



- L. Major repair work such as motor replacement, body and fender repair, or spray painting shall be prohibited.
- M. Lighting shall be arranged so as not to reflect or cause glare into any residential district.

**§ 80-92. Private Garage.**

A private garage used for storage purposes only is permitted in the R-1, R-2 and PN Districts provided:

- A. The garage shall have a capacity of not more than four (4) automobiles or not more than two (2) automobiles per family housed in the building to which the garage is accessory, whichever is the greater.
- B. Space therein may be used for not more than one (1) commercial vehicle of not more than one-ton capacity and space may be rented for not more than two (2) vehicles to persons other than occupants of the buildings to which such a garage is accessory.

## § 80-93. Qualified Projects Developed by Nonprofits.

The Board of Appeals may approve a special exception for a qualified project controlled by a §501©(3) in any zoning district where permitted, subject to the following:

A. The nonprofit that has been designated as such for at least 3 years. “Controlled by” in this application means a business structure in which the nonprofit organization is a managing member, general partner, or otherwise controlling entity with a for-profit member or partner, as demonstrated by an attorney licensed in Maryland.

B. The “qualified project” under this section meets all of the following three criteria:

(1) The project consists of a new construction or substantial renovation. Substantial renovation means the project meets the criteria outlined within DHCD’s Multifamily Rental Financing Program Guide, including the following:

(a) Total hard construction costs of rehabilitation for projects must be at least \$25,000 per unit.

(b) The project provides an improved visual impact on the neighborhood, upgrades aging fixtures, and updates ventilation standards.

(2) The project is on land, including land that is subject to a ground lease, that is either (a) wholly owned by a nonprofit organization or (b) includes improvements owned by an entity that a nonprofit organization controls.

(3) The project is deed-restricted to include twenty-five (25%) percent of units that are affordable dwelling units for Kent County for at least (40) years.

(4) Qualified may include duplex, triplex, quadplex, cottage cluster, or town house units.

(5) Height, area, and bulk requirements for the R-3 Residential district shall apply.

C. Qualified projects developed by nonprofits in the L1 District.

(1) May include detached single-family, duplex, triplex, quadplex, cottage cluster, or townhouse units.

(2) Height, area, and bulk requirements for the R-3 district shall apply subject to a public health assessment approved by the Maryland Department of Housing and Community Development.

(3) The Board of Appeals may vary other development standards, e.g., height, setback, bulk, parking, loading, dimensional, area, or other requirements, if such limitations or requirements are demonstrated to be unreasonable. An unreasonable limitation or requirement is one that an applicant demonstrates amounts to a de facto denial of the project by having a substantial adverse impact on either (a) the viability of an affordable housing development in a

qualified project, (b) the degree of affordability of units in a  
of the qualified project.

qualified project; or (c) the allowable density or number of units

#### **§ 80-94. Recreational Uses.**

Recreational uses such as tennis courts, swimming pools, and other similar activities operated exclusively for the use of private membership and not for commercial purposes may be permitted in all districts except the AR and LI districts provided:

- A. No such use, structure or accessory use is located closer than fifty (50) feet to any adjoining property line unless such property line fronts on a public street or waterway with a right-of-way not less than twenty-five (25) feet, in which instance the required setback need not exceed twenty-five (25) feet; and
- B. All such facilities must be located on a site having a minimum of five (5) acres.

#### **§ 80-95. Rooming, Boarding, and Lodging Houses.**

The Board of Appeals may permit rooming, boarding, and lodging houses as a special exception in the R-1, R-2, R-3 and PN Districts provided:

- A. Facilities for dining shall be in a common location customarily used by a single family in the structure. No separate kitchen shall be provided. Meals shall be provided for rooming house guests and residents only.
- B. Parking and loading shall be provided at the rear of the site.
- C. The Board must find that the rooming or boarding house will not constitute a nuisance because of sidewalk or street traffic, noise, or type of physical activity, and that the use will not tend to affect adversely the use and development of adjoining properties in the immediate neighborhood.
- D. The facility may contain no more than five sleeping rooms.

#### **§ 80-96. Schools and Colleges, Public and Private.**

The Board of Appeals may permit public and private schools and colleges as a special exception in the R-1, R-2, R-3, PN and TC districts provided:

- A. The allowable number of pupils permitted to occupy the premises at any one time shall be specified by the Board upon consideration of the following factors:

1. Traffic patterns, including the impact of increased traffic on residential streets.
2. Noise or type of physical activity.
3. Character, percentage and density of existing development and zoning within the community.

**§ 80-97. Storage of a Boat, Boat Trailer and Recreational Vehicle.**

Storage of no more than two (2) recreational vehicles, boats, or boat trailers is permitted in the R-1, R-2, R-3 and PN Districts provide:

- A. The combined total of recreational vehicles and boat and boat trailer shall not exceed two (2);
- B. The boat has a current Maryland boat registration;
- C. Storage may not be in a front yard; and
- D. None of the equipment may be used for human habitation.

**§ 80-98. Swimming Pools and Game Courts.**

Swimming pools and game courts, lighted or unlighted, for use of occupants or their guests may be permitted in the any district except the LI district provided:

- A. Accessory swimming pools, open and unenclosed, and game courts may occupy a required rear or side yard, provided that they are not located closer than six (6) feet to a rear lot line or ten (10) feet to an interior side lot line.
- B. A walk space at least three (3) feet wide shall be provided between pool walls and protective fences or barrier walls.
- C. Every swimming pool shall be protected by a forty-eight inch high safety fence or barrier including automatic closing gates subject to approved by the Administrator.

**§ 80-99. Temporary Buildings.**

Temporary buildings, the use of which is incidental to construction, operations for sale of lots during development being conducted on the same or adjoining tract or subdivision may be permitted in any district provided such buildings shall be removed upon completion or abandonment of such construction.

**§ 80-100. Two-family Dwellings, Townhouses and Multi-family Units.**

A. The following regulations shall apply to two-family dwellings in any district where permitted:

1. Each dwelling unit of a two-family dwelling must comply with the minimum lot area per dwelling unit specified in the Table of District Height, Area and Bulk Requirements §80-69 .
2. The dwelling units and individual lots of a two-family dwelling or townhouse may be sold separately if separate utility systems are provided and if separate lots for all dwelling units in a building are created at the same time and in conformance with the applicable regulations and standards governing the subdivision of land.

B. The following regulations shall apply to townhouses in any district where permitted:

1. The townhouse building shall comply with minimum lot requirements contained in the §80-69, Table of District Height, Area and Bulk Requirements, but each dwelling unit of a townhouse need not be located on a lot complying with minimum lot area and lot area per family requirements in the table, provided that the average for all dwelling units in the building equals or exceeds the minimum requirements, and provided that no lot is created with lot area less than two thousand (2,000) square feet.
2. Lot frontage, measured at a building line, for individual dwelling units of a townhouse may be reduced to not less than eighteen (18) feet. Lot width for end units shall be adequate to provide required front and side yards.
3. For the purpose of the side yard regulations, a townhouse building shall be considered as one (1) building on one (1) lot, with side yards required for end units only, in accordance with §80-69, Table of District Height, Area and Bulk Requirements. Any side yard adjacent to the line of a lot occupied by a detached single-family dwelling or a lot in a single-family residential district shall not be less than twenty-five (25) feet.
4. Unless otherwise restricted by district regulations, not more than six (6) dwelling units shall be included in any one (1) townhouse building.
5. The facades of dwelling units in a townhouse shall be varied by changed front yards of not less than three (3) feet and variation in materials or design, so that no more than three (3) abutting units will have the same front yard depth or the same or essentially the same architectural treatment of facades and rooflines.
6. Provision satisfactory to the Mayor and Council and approved by the Town Attorney shall be made to assure that nonpublic areas for the common use and enjoyment of occupants of townhouses, but not in individual ownership by such occupants shall be maintained in a satisfactory manner without expense to the general public.

C. Apartments and other multi-family residential units shall be permitted in the R-3, TC and PN districts provided:

1. Maximum density. The density shall not exceed the maximum permitted density for the Zoning District as averaged for the total area.
2. Code requirements. All structures will comply with all Town, County and State codes.

3. Setbacks.
  - (a) PN District - All buildings and structures shall be set back according to an approved site plan.
  - (b) TC District - Buildings and structures shall have a minimum front set back according to the prevailing front yard characteristics in the areas, as determined by the Planning Commission.
  - (c) The minimum setback between any two principal buildings on the same lot shall be twenty-five (25) feet.
4. Area to be landscaped. All lot area not occupied by principal and accessory structures, required off-street parking and loading, access and circulation facilities, or other required areas shall be landscaped by lawns, trees, shrubs, ground cover, and other appropriate materials.

#### **§ 80-101. Utilities.**

The Board of Appeals may permit utilities, other than neighborhood essential services, as a special exception in any district provided:

- A. The proposed use does not have an adverse effect on the Comprehensive Plan for development of the community.
- B. The proposed use will not affect adversely the health and safety of residents or workers in the area.
- C. There is a public necessity for the proposed building, structure, or facility at the location selected.
- D. The proposed use will have the least possible detrimental effect on the use or development of adjacent properties or the general neighborhood.
- E. In making these findings, the Board shall consider the following factors, and such other factors as the Board may find to be necessary or important to effectuate its review:
  1. Points at which the proposed utility crosses heavily traveled highways or streets, or other arteries of transportation, either existing or proposed;
  2. Proximity of the utility to schools, churches, theaters, or other places of assembly, either existing or proposed;
  3. Effect upon property values of those who will not be compensated for a taking under the laws of the State; and
  4. Proximity of the utility to historic sites and structures.

#### **§ 80-102. Medical Cannabis Licensed Dispensary.**

A medical cannabis licensed dispensary may be permitted by the Planning Commission, as a special exception by the Board of Appeals with site plan approval and subject to the following conditions:

1. Signage shall be limited to one internally illuminated sign not exceeding twelve (12) square feet, and;
2. All facilities and uses shall be located at least 500 feet from any public or private church, school, or correctional facility;
3. All aspects of use shall comply with COMAR Title 10.62;
4. Shall take access from a public right-of-way that meets or exceeds Kent County Public Roads Standards;
5. Shall not have an on-site physician for the purpose of issuing written certifications for medical cannabis; and
6. The use shall be limited to the sale of Medical Cannabis and related products.

### **§80-103. Farm Brewery.**

A farm brewery may be permitted by the Planning Commission, with site plan approval and subject to the following conditions:

1. Retail sales and tasting facilities for beer and related promotional items shall be permitted as part of the use.
2. All permits and approvals required by the Maryland Alcoholic Beverage Commission are obtained and remain in full force and effect. Planned promotional events or other organized activities as permitted under Section 2-110 of the Alcoholic Beverages Article, as amended of the Annotated Code of Maryland are permitted.
3. Signage shall be approved by the Planning Commission through the Master Sign Plan.
4. All facilities and uses shall be located at least 500 feet from any public or private church, school, or municipal facility.
5. All facilities and uses shall be located on property at least 100 feet from any residential dwelling. Shall not be located on a property that abuts any property with an existing residential use.
6. Shall take access from public right-of-way that meets or exceeds Kent County's Public Road Standards.
7. Shall be located on a property that comprises 20 acres or more.
8. Outdoor seating and gathering areas shall be permitted subject to approval of a building permit approved by the Planning Commission. Outdoor seating and gathering areas shall include physical barriers from public rights-of-way and physical and visual barriers from adjoining properties. Physical barriers along public rights-of-way shall restrict access from the public rights-of-way to the outdoor seating and gathering areas and shall not exceed four feet in height. Barriers along adjoining property lines shall create a physical and visual barrier consisting of fencing six feet in height or vegetation at least six feet in height. Maximum occupancy and points of ingress/egress shall be clearly marked. Occupancy of outdoor seating and gathering areas shall not exceed one person per 15 square feet of the outdoor seating and gathering areas identified in the building plans or any other occupancy limit established by the Office of the State Fire Marshall. Tables, chairs, umbrellas, equipment, games, and any other items provided in connection with outdoor seating and gathering areas shall be maintained in good repair and shall be secured during non-business hours in a safe and orderly manner.
9. On-site consumption or tasting associated with a craft distillery or microbrewery establishments shall be permitted; only those products brewed or distilled on the premises. Any area associated with on-site consumption

or tasting shall not operate as a stand-alone bar or tavern, shall be located on the premises of the craft distillery or microbrewery establishment, and shall be ancillary to the primary use. Any food sales shall be limited to prepackaged snack foods or those food items prepared by an approved food establishment licensed by the State of Maryland.

#### **§80-104. Craft Distillery and Microbrewery Establishments.**

Craft distillery and microbrewery establishments shall be permitted by the Planning Commission, with site plan approval and subject to the following conditions:

1. All aspects of the distilling and brewing process are completely confined within a building, including storage of all materials and finished product.
2. All permits and approvals required by the Maryland Alcoholic Beverage Commission are obtained and remain in full force and effect. Planned promotional events or other organized activities as permitted under Section 2-110 of the Alcoholic Beverages Article, as amended by the Annotated Code of Maryland are permitted.
3. Signage shall be approved by the Planning Commission through the Master Sign Plan.
4. All facilities and uses shall be located at least 500 feet from any public or private church, school, or municipal facility.
5. Shall take access from public right-of-way that meets or exceeds Kent County's Public Road Standards.
6. Outdoor seating and gathering areas shall be permitted subject to approval of a building permit approved by the Planning Commission. Outdoor seating and gathering areas shall include physical barriers from public rights-of-way and physical and visual barriers from adjoining properties. Physical barriers along public rights-of-way shall restrict access from the public rights-of-way to the outdoor seating and gathering areas and shall not exceed four feet in height. Barriers along adjoining property lines shall create a physical and visual barrier consisting of fencing six feet in height or vegetation at least six feet in height. Maximum occupancy and points of ingress/egress shall be clearly marked. Occupancy of outdoor seating and gathering areas shall not exceed one person per 15 square feet of the outdoor seating and gathering areas identified in the building plans or any other occupancy limit established by the Office of the State Fire Marshall. Tables, chairs, umbrellas, equipment, games, and any other items provided in connection with outdoor seating and gathering areas shall be maintained in good repair and shall be secured during non-business hours in a safe and orderly manner.
7. On-site consumption or tasting associated with a craft distillery or microbrewery establishments shall be permitted; only those products brewed or distilled on the premises. Any area associated with on-site consumption or tasting shall not operate as a stand-alone bar or tavern, shall be located on the premises of the craft distillery or



microbrewery establishment, and shall be ancillary to the primary use. Any food sales shall be limited to prepackaged snack foods or those food items prepared by an approved food establishment licensed by the State of Maryland.

#### **§80-105. Winery.**

Wineries may be permitted by the Planning Commission, with site plan approval and subject to the following conditions:

1. Shall be located on a property that comprises 20 acres or more.
2. Shall not be located on a property that butts any property with an existing residential use.
3. All permits and approvals required by the Maryland Alcoholic Beverage Commission are obtained and remain in full force and effect. Planned promotional events or other organized activities as permitted under Section 2-110 of the Alcoholic Beverages Article, as amended of the Annotated Code of Maryland are permitted.
4. Signage shall be approved by the Planning Commission through the Master Sign Plan.
5. All facilities and uses shall be located at least 500 feet from any public or private church, school, or municipal facility.
6. Shall take access from public right-of-way that meets or exceeds Kent County's Public Road Standards.
7. Outdoor seating and gathering areas shall be permitted subject to approval of a building permit approved by the Planning Commission. Outdoor seating and gathering areas shall include physical barriers from public rights-of-way and physical and visual barriers from adjoining properties. Physical barriers along public rights-of-way shall restrict access from the public rights-of-way to the outdoor seating and gathering areas and shall not exceed four feet in height. Barriers along adjoining property lines shall create a physical and visual barrier consisting of fencing six feet in height or vegetation at least six feet in height. Maximum occupancy and points of ingress/egress shall be clearly marked. Occupancy of outdoor seating and gathering areas shall not exceed one person per 15 square feet of the outdoor seating and gathering areas identified in the building plans or any other occupancy limit established by the Office of the State Fire Marshall. Tables, chairs, umbrellas, equipment, games, and any other items provided in connection with outdoor seating and gathering areas shall be maintained in good repair and shall be secured during non-business hours in a safe and orderly manner.
8. On-site consumption or tasting associated with a craft distillery or microbrewery establishments shall be permitted; only those products brewed or distilled on the premises. Any area associated with on-site consumption or tasting shall not operate as a stand-alone bar or tavern, shall be located on the premises of the craft distillery or

microbrewery establishment, and shall be ancillary to the primary use. Any food sales shall be limited to prepackaged snack foods or those food items prepared by an approved food establishment licensed by the State of Maryland.

**§80-106 through 80-110. Reserved**

## **ARTICLE IX GENERAL SIGN REGULATIONS**

### **§ 80-111. Statement of intent.**

The purpose of this section is to establish minimum regulations for the design and display of signs and to ensure that signage promotes the safety of persons and property, promotes the efficient transfer of general public and commercial information, and protects the public welfare by enhancing the overall appearance and economic value of the community.

### **§ 80-112. Definitions.**

The purpose of this Section is to define certain terms and words pertaining to signs.

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

**ACCESSORY SIGN** - A sign relating only to uses of the premises on which the sign is located or products sold on the premises on which the sign is located or indicating the name or address of a building or the occupants or management of a building on the premises where the sign is located.

**BANNERS, FLAGS, PENNANTS, AND BALLOONS** - Any animated, rotating, fluttering, or non-stationary device made of flexible materials designed to attract attention.

**DETACHED SIGN** - A sign not attached to or painted on a building, but which is affixed to the ground. A sign attached to a flat surface, such as a fence or wall not a part of a building, shall be considered a detached sign.

**DOUBLE-FACED SIGN** - A sign with two faces, back to back, which are usually, but not necessarily, parallel, and located not more than 24 inches from each other.

**EXISTING SIGN** - Any sign that was erected, mounted, or displayed prior to the adoption of this Zoning Ordinance.

**FACADE** - The entire building wall, including parapet, fascia, windows, doors, canopy, and roof on any street-facing elevation.

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

**FLAT SIGN** - A sign affixed directly to or painted on or otherwise inscribed on an exterior wall and confined within the limits thereof of any building and which projects from that surface less than 18 (eighteen) inches at all points.

**ILLUMINATED SIGN** - Any sign designed to give forth artificial light, reflect light from another source, or back-lighted by spot lights or flood lights not a part of or attached to the sign itself.

**INDIRECTLY ILLUMINATED SIGN** - A sign which does not produce artificial light from within itself but which is opaque and back lighted or illuminated by spotlights or floodlights not a part of or attached to the sign itself or a sign of translucent nontransparent material illuminated from within but with no exposed or exterior bulbs, tubes or other light source.

**MARQUEE** - A covered structure projecting from and supported by the building, with independent roof and drainage provisions, and which is erected over a doorway or doorways as protection against the weather.

**MARQUEE SIGN** - Any sign attached to or hung from a marquee.

**MURAL SIGN** - An expression of public art painted directly on the exterior of a building or on a backing that is affixed to the building and is sanctioned by the property owner.

**NONCONFORMING SIGN** - Any sign which has a valid permit, was erected or displayed prior to the effective date of this Article or any subsequent amendment hereto, and does not conform with the provisions of this Article.

**PORTABLE SIGN** - Any sign which is not permanently affixed to a building, structure, or the ground, or which is attached to a mobile vehicle.

**PROJECTING SIGN** - A sign, other than a wall sign, which projects from and is supported by a wall of a building or structure. The term projecting sign includes a marquee sign.

**SEASONAL/HOLIDAY SIGN** - A sign, used for emphasizing the celebration of a local or historic American holiday, which is erected for a limited period of time.

**SIGN** - Any letters, figures, design, symbol, trademark, or illuminating device intended to attract attention to any place, subject, person, firm, corporation, public performance, or merchandise, whatsoever for advertisement, announcement, identification, description, or direction purposes. However, this shall not include any official court or public notices nor the flag, emblem or insignia of a government, school, or religious group when displayed for official purposes.

**SIGN AREA** - That area within a line including the outer extremities of letters, fixtures, characters, and delineations, or within a line including the outer extremities of the framework or background of the sign, whichever line includes the larger area. The support for the sign, whether it is columns, a pylon, or a building or part thereof, shall not be included in a computation of sign area. Only one side of a double-faced sign shall be included in a computation of sign area. The area of a cylindrical sign shall be computed by multiplying one-half of the circumference by height of the sign.

**TEMPORARY SIGN** - Any sign or information transmitting structure intended to be erected or displayed for a limited period.

**WINDOW SIGN** - Any sign which is painted on, applied to, attached to, or projected upon or within the exterior or interior of a building glass area, including doors, or located within a distance equal to the greatest dimension of the window if obviously intended for viewing from the exterior.

**WINDOW SIGN, TEMPORARY** - A window sign of a temporary nature used to direct attention to the sale of merchandise, or a change in the status of the business, including, but not limited to, sign for sales, specials, going out of business, and grand openings.

## **§ 80-113. Requirements.**

### **A. General**

1. No sign shall be erected, hung, placed, constructed, posted, altered, maintained, relocated or painted in any District except as hereby provided and included in the approved Master Sign Plan.
2. No sign shall be erected, hung, affixed, painted, or otherwise displayed or altered unless a permit has been issued by the Administrator.
3. Any sign existing as of the effective date of this Article which does not have a valid permit from the Town is deemed to be an illegal sign.
4. Every sign shall have good scale and proportion in its design and in its visual relationship to buildings and surroundings.
5. Every sign shall be designed as an integral architectural element of the building and site to which it principally relates.
6. The colors, materials, and lighting of every sign shall be restrained and harmonious with the building and site to which it principally relates.
7. The number of graphic elements on a sign shall be held to the minimum needed to convey the sign's major message and shall be composed in proportion to the sign face.

8. Each sign shall be compatible with the signs on adjoining premises and shall not compete for attention.
9. Identification signs of a prototype design and corporation logos shall conform to the criteria for all other signs.
10. Each permit will expire two (2) years after issuance date. At that time all signs must be submitted for reapproval with the appropriate fee.
11. Advertisement on materials, propane tanks, distribution vehicles, etc. are not subject to this sign ordinance.
12. Regarding advertisement on vehicles, as long as the vehicle is located on the owner's property there is no enforcement necessary; if vehicle is located on other property vehicle must be move within 72 hours.

B. Notwithstanding any other provision of these regulations, no signs visible from the main-traveled way of the public travel ways, which have any of the following characteristics shall be erected or maintained:

1. Signs advertising activities that are illegal under state or federal laws or regulations in effect at the location of such signs or at the location of such activities.
2. Illegal, destroyed, abandoned, or discontinued signs.
3. Signs that are not clean and in good repair.
4. Signs that are not securely affixed to a substantial structure.
5. Signs which attempt or appear to attempt to direct the movement of traffic or which interfere with, imitate, or resemble any official traffic sign, signal or device.
6. Signs which prevent the driver of a vehicle from having a clear and unobstructed view of at-grade intersections, approaching or merging traffic, official traffic control signs, or other traffic control devices.
7. Signs which have, lasers, strobe lights, or other lights with stroboscopic effect.
8. Signs which use any lighting in any way unless it is so effectively shielded as to prevent beams or rays of light from being directed at any portion of the traveled ways of the highway or is of such low intensity or brilliance as not to cause glare or to impair the vision of the driver of any motor vehicle, or to otherwise interfere with any driver's operation of a motor vehicle.
9. Signs which are erected or maintained upon trees, power poles or painted or drawn upon rocks or other natural features.
10. Balloons, searchlights, clusters of flags, strings of twirlers or propellers, flares, and other displays of a carnival nature; except as architectural features, or on a limited basis as seasonal decorations or grand opening displays, or the following other exceptions:
  - a. Flags of the United States, the state, the Town, foreign nations having diplomatic relations with the United States, and any other flag adopted or sanctioned by the Mayor and Council, provided that such a flag shall not exceed sixty (60) square feet in area and shall not be flown from a pole the top of which is more than forty (40) feet in height. These flags must be flown in accordance with protocol established by the Congress of the United States for the Stars and Stripes. Any flag not meeting any one or more of these conditions shall be considered a banner sign and shall be subject to regulation as such, and

C. Nonconforming Signs

1. Any sign existing as of the effective date of this Article which has a valid permit from the Town, but which does not conform to the provisions of this Article, is hereby deemed a nonconforming sign.
2. A nonconforming sign may be maintained only by painting or refinishing the surface of the sign face or sign structure so as to keep the appearance of the sign as it was when the prior permit was issued.
3. Nonconforming signs which are structurally altered, relocated, or replaced shall comply with all provisions of this ordinance.
4. Upon a determination by the Administrator and notice to the permittee that a nonconforming sign has become dilapidated or structurally unsound, such sign shall be removed within thirty days.
5. All signs deemed nonconforming shall be removed or replaced with legal signs within five (5) years of the effective date of this Article.

D. Exemptions

The following signs are exempted from the provisions of these regulations and may be erected or constructed without a permit, so long as they are in accordance with the structural and safety requirements of the applicable codes:

1. Public signs of a non-commercial nature and in the public interest, erected by, or on the order of a public official such as safety signs, danger signs, trespassing, traffic, memorial plaques, signs of historic interest, civic events, and the like.
2. Institutional signs setting forth the name or simple announcement for any public charitable, educational, or religious institution, located entirely on the premises of that institution, up to an area of fifteen (15) square feet.
3. Temporary, non-illuminated signs not more than ten (10) square feet in area, erected in connection with new construction work and displayed on the premises during such time as the actual construction work is in progress, one (1) such sign for each street frontage.
4. Changing of the copy on a bulletin board, poster board, display encasement or marquee.
5. Temporary non-illuminated signs, not more than six (6) square feet in area, advertising real estate for sale or lease or announcing contemplated improvements of real estate and located on the premises, one (1) such sign for each street frontage.
6. Non-illuminated signs, not exceeding ten (10) square feet in area with letters not exceeding one (1) foot in height, painted, stamped, perforated or stitched on the surface area of an awning, canopy, roller curtain or umbrella.
7. Non-illuminated signs warning trespassers or announcing property as posted.
8. Sign on a truck, bus, or other vehicle while in use in the normal course of business. This section should not be interpreted to permit parking for display purposes of a vehicle to which signs are attached in a district where such signs are not permitted.
9. Signs of political parties and candidates seeking public office; provided that such signs are installed and removed in accordance with Maryland law governing political signs.

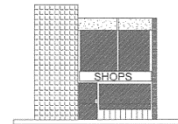
## SIGN REQUIREMENTS

Sign Types:

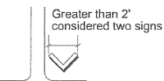
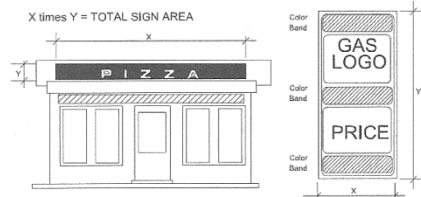


### Sign Design

- Good scale and proportion
- Design as integral part of architecture
- Color, materials and lighting restrained
- Graphic elements held to minimum
- Compatible with adjoining premises
- Prototype signs comply with criteria of all signs



### Sign Area Computation



#### Free-Standing Sign(s)



**Sign Area** - That area enclosed by the periphery connecting the extreme points or edges of a sign. The area shall be determined using the largest sign area or silhouette visible at any one time from any one point. This area does not include the main supporting sign structure, but all other ornamental attachments, inner connecting lines, etc., which are not part of the main supports of the sign are to be included in determining sign area. On a two-sided sign, only one face is counted in computing the sign's area provided the faces are located not more than two (2) feet from each other.

#### §80-114. Master Signage Plan.

1. A master signage plan shall be required for all commercial businesses, proposed shopping centers, industrial park, institutional or industrial development. No permit shall be issued for an individual sign requirement a permit unless and until a Master Signage Plan has been approved by the Planning Committee.
2. Information required. A Master Signage Plan shall contain the following information:
  - a. An accurate plot plan of the proposed development site, at such scale as the Zoning Administrator may reasonably require.
  - b. Location of buildings, parking lots, driveways, and landscaped areas;
  - c. Computation of the maximum total sign area, the maximum area for individual signs, the height of signs and the number of freestanding signs and banners allowed on the zone lot(s) included in the plan;
  - d. Sign plans and, if requested, photo simulation of the signs in the proposed location; and
  - e. An accurate indication on the plot plan of the proposed location of each present and future sign of any type, whether requiring a permit or not, except that incidental signs need not be shown.
3. Proposed standards for consistency among all signs affected by the Master Signage Plan with regard to:
  - a. Color scheme;
  - b. Lettering or graphic style;
  - c. Lighting;
  - d. Location of each sign on the buildings;
  - e. Material; and
  - f. Sign proportions.
4. No sign permit shall be issued for a sign included in a master signage plan that does not conform to the standards of the master signage plan. A master signage plan may be amended at any time.
5. The following principles shall control the computation of sign area and sign height.
  - a. Computation of area of individual signs. The area of a sign face (which is also the sign area of a wall sign or other sign with only one face) shall be computed by means of the smallest square, circle, rectangle, triangle, or combination thereof that will encompass the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, but not including any supporting framework, bracing, or decorative fence or wall when such fence or wall otherwise meets zoning ordinance regulations and is clearly incidental to the display itself.
  - b. Computation of area of multi-faced signs. The sign area for a sign with more than one face shall be computed by adding together the area of all sign faces visible from any one point. When two identical sign faces are placed back to back so that both faces cannot be viewed from any point at the same time, and when such sign faces are part of the same sign structure and are not more than 42 inches apart, the sign area shall be computed by the measurement of one of the faces.
  - c. Computation of height. The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the lower of (1) existing grade prior to



construction or (2) the newly established grade after construction, exclusive of any filling, berming, mounding, or excavating solely for the purpose of locating the sign. In cases in which the normal grade cannot reasonably be determined, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public street or the grade of the land at the principal entrance to the principal structure on the zone lot, whichever is lower.

**§ 80-115. Permitted signs.**

- A. Except as otherwise provided, these regulations shall be interpreted to permit signs as approved by the Master Sign Plan.
- B. The following signs are permitted in any district:
  - 1. One name plate, limited in area to two (2) square feet, to identify the owner or occupant of a dwelling or building.
  - 2. One sign, limited in area to two (2) square feet, to identify a permitted home occupation.
  - 3. No trespassing or no hunting signs, without limitation on number or placement, limited in area to two (2) square feet.
  - 4. Directional signs, limited in area to two (2) square feet.
  - 5. One sign, limited in area to ten (10) square feet to identify a farm or approved subdivision.
  - 6. One sign, limited in area to twenty (20) square feet, advertising products raised on the premises.
- C. The following signs are permitted in association with certain public and semipublic uses:
  - 1. A customary church bulletin board, limited in area to twenty (20) square feet.
  - 2. A sign, limited in area to twenty (20) square feet, for identification of permitted public and semipublic uses, recreational uses, or clubs.
- D. The following signs are permitted in association with multi-family dwellings:
  - 1. A sign, limited in area to ten (10) square feet, giving the name and/or address of the owner or management of a multiple-family dwelling or group of multiple-family dwellings. If such sign is placed on a marquee, awning or canopy, the height of letters shall not exceed one (1) foot.
- E. The following signs and amounts of signage are permitted in the TC Town Center District:
  - 1. Flat signs with total aggregate sign area not more than ten percent (10%) of the area of walls fronting on a street, and no one (1) sign with sign area of more than thirty (30) square feet.
  - 2. Projecting signs, if there are no marquee or detached signs, one (1) for each business on the premises, with sign area limited to

fifteen (15) square feet.

3. Detached signs, if there are no projecting signs, limited in area to thirty (30) square feet and limited in height to fifteen (15) feet, one (1) for each business on the premises. A group of three (3) or more contiguous stores, such as those forming a shopping center, may combine permitted detached sign area to provide a single sign advertising the group if there are no other detached signs advertising the group and if the combined sign area does not exceed sixty (60) square feet.
4. Marquee signs, if there are no projecting signs, two (2) for each business on the premises, with sign area for each sign limited to three (3) square feet.
5. Directional signs, limited in area to two (2) square feet, giving directions to motorists regarding the location of parking areas and access drives, shall be permitted as accessory signs and not included in any computation of sign area.

F. The following signs and amounts of signage are permitted in the LI Light Industrial District:

1. For permitted business and commercial uses, any sign permitted in the TC Town Center District.
2. For permitted manufacturing, processing, storage or distributing use, any sign permitted in the TC Town Center, with permitted area of flat signs increased to one hundred: (100) square feet, one (1) for each street frontage or one (1) for each building of more than twenty thousand (20,000) square feet of floor area on the premises, and with permitted area of directional signs increased to ten (10) square feet.

**§ 80-116. Height and placement restrictions.**

- A. Except as otherwise provided, any sign may be a flat, detached or projecting sign, and, except as otherwise provided, no detached sign shall exceed a height of fifteen (15) feet.
- B. Signs of permitted types and sign area may be placed on walls of buildings other than the front except on side or rear walls facing and within one hundred (100) feet of a residential district.
- C. Unless otherwise specified in these regulations, all signs shall comply with the yard requirements of the district in which they are located, provided that one (1) accessory sign may occupy required yards in a district where such sign is permitted by these regulations if such sign is not more than thirty (30) square feet in area and other requirements of these regulations are complied with.
- D. No sign, portable or otherwise, is to be placed or located to conflict with the vision clearance or other requirements of applicable traffic ordinances.
- E. No signs shall be attached to trees, utility poles or any other unapproved supporting structure.

**§ 80-117. Reserved.**

**§ 80-118. Temporary permits.**

- A. The Administrator, upon application may issue temporary permits for the following signs and displays for a period not exceeding thirty (30) days when, in his opinion, the use of such signs and displays would be in the public interest and would not result in damage to private property:
  - 1. Signs advertising a social, civic or cultural event, such as a fair or exposition, play, concert or meeting, sponsored by a governmental or charitable organization.
  - 2. Special decorative displays used for holidays, public demonstrations or promotion for nonpartisan civic purposes.
  - 3. Special sales promotion displays in a district where such sales are permitted, including displays incidental to the opening of a new business.

**§ 80-119. Prohibited signs.**

The following signs are prohibited in all districts:

- A. Signs that are of a size, location, movement, content, coloring, or manner of illumination which may be confused with or construed as a traffic control device or which hide from view any traffic or street sign or signal.
- B. Signs advertising an activity, business, product, or service no longer conducted on the premises.
- C. Exposed neon tubing.
- D. Roof signs and signs fastened to, or supported by, the roof of a building.
- E. Outdoor advertising structures, poster panels, or billboards, or signs of any other type advertising products or services not available on the premises.
- G. Any sign or sign structure, any portion of which extends above the parapet, building roof line at the soffit, or canopy against which the sign is located.
- H. Except as otherwise provided, no sign whether temporary or permanent, except by a public agency, is permitted within any street or street right-of-way.

- I. Signs painted on or attached to trees, fence posts, rocks, or other natural features, telephone or utility poles.
- J. Portable signs.
- K. Inflatable signs.
- L. Any sign which is not an integral part of the building design shall be fastened to and supported by or on the roof of a building, and no projecting sign shall extend over or above the roofline or parapet wall of a building.

**§ 80-120. Reserved**

**§ 80-121. Illumination.**

- A. The light from any illuminated sign shall be so shaded, shielded, or directed that the light intensity or brightness will not be objectionable to surrounding area.
- B. Beacon lights are not permitted.
- C. No colored lights shall be used at any location or in any manner so as to be confused with or construed as traffic control devices.
- D. Neither the direct, nor reflected light from primary light sources shall create a traffic hazard to operators of motor vehicles on public thoroughfares.
- E. No exposed reflective type bulbs or incandescent lamp which exceeds fifteen (15) watts shall be used on the exterior surface of any sign so as to expose the face of the bulb, light, or lamp to any public street or adjacent property.

**§ 80-122. Signs for nonconforming uses in residential district.**

Permitted signs for a nonconforming business, commercial or industrial use in a residential district shall consist of those signs permitted in the TC Town Center District.

**§ 80-123. Unusual signs requiring interpretation of provisions.**

- A. Applications for unusual signs or displays which give rise to questions of interpretation of these regulations shall be referred to the Board of Appeals.

- B. If, in the opinion of the Board, the application is not adequately covered by these regulations, the Board may make recommendations for amendment of this Zoning Ordinance.

**§ 80-124. Enforcement.**

- A. The owner and/or tenant of the premises and the owner and/or erector of the sign shall be held responsible for any violation of these regulations. Where a sign has been erected in accordance with these regulations, the sign company shall be relieved of further responsibility under these regulations after final approval of the sign by the Administrator.
- B. Inspection, Removal, and Safety
1. Signs for which a permit is required may be inspected periodically by the Administrator for compliance with this and other codes of the municipality.
  2. All signs and components thereof shall be kept in good repair and in safe, neat, clean, and attractive condition. After due notice has been given as provided below, the Administrator may cause to be removed any sign which shows gross neglect or becomes dilapidated.
  3. A sign shall be removed by the owner or lessee of the premises upon which the sign is located when the business which advertises is no longer conducted on the premises. If the owner or lessee fails to remove the sign, the zoning administrator shall give the owner thirty (30) days written notice to remove it. Upon failure to comply with this notice, the Administrator or his duly authorized representative may remove the sign at cost to the owner.
  4. When a successor to a defunct business agrees to maintain the signs as provided in this Ordinance, this removal requirement shall not apply.
  5. Repeat violators will be subject to a fine of \$500 per day and required to remove all signs from the property for 30 days each violation.
- C. Permits
1. Before any permit is issued a Master Sign Plan must be submitted and approved by the Planning Commission. Upon approval of the Master Sign Plan an application shall be filed, together with three (3) sets of drawings and/or specifications, one (1) to be returned to the applicant as may be necessary to fully advise and acquaint the Administrator with the location, construction, materials, manner of illuminating and/or securing or fastening, number of signs applied for and the wording of the sign or advertisement to be carried on the sign.
  2. All signs which are electrically illuminated shall require a separate electrical permit and inspection.
  3. Upon compliance with the provisions of this Article, the Administrator shall make a decision to issue, deny, or issue with conditions a permit for such sign or sign structure within thirty (30) days of receipt of a complete permit application. Permits shall

be numbered and shall contain the following information.

- a. The type of sign as defined in this Article.
- b. The street address of the property upon which the sign is proposed to be located and the proposed location of the sign on the property.
- c. The amount of the fee paid for the permit.
- d. The date of issuance.
- e. In the case of a temporary sign, the date of expiration of the permit.
- f. Each sign requiring a permit shall be clearly marked with the permit number and name of the person or firm placing the sign on the premises.
- g. All signs shall be erected on or before the expiration of thirty (30) days from the date of issuance of the permit. Otherwise, the permit shall become null and void, and a new permit shall be required.

**§ 80-125. Compliance with technical codes and ordinances required.**

- A. Structural and safety features and electrical systems shall be in accordance with the requirements of the applicable codes and ordinances.
- B. No sign shall be approved for use unless it has been inspected by the department issuing the permit and is found to be in compliance with all the requirements of this Zoning Ordinance and applicable technical codes.

**§ 80-126. Penalties.**

- A. The Administrator and duly authorized staff shall have the authority to issue a sign violation notice and shall be empowered to enter upon the premises of any person subject to this Article for the purpose of enforcing the provisions herein.
- B. The Administrator shall remove or cause to be removed any sign erected or maintained in conflict with these regulations if the owner or lessee of such signs, or of the building, structure, or premises on which such sign is located fails to correct the violation within thirty (30) days after receiving written notice of violation from the Administrator.
- C. The sign may be removed at cost to the owner.
- D. The Zoning Administrator may remove a sign immediately and without notice if, in his opinion, the condition of the sign is such as to present an immediate threat to the safety of the public.
- E. Removal of a sign by the Administrator shall not affect any proceedings instituted prior to removal of such sign.
- F. Penalties for violations of the provisions of this Article are contained in Article XVI of this Ordinance.

**§ 80-127. Reserved.**

**ARTICLE X OFF-STREET PARKING**

**§ 80-128. Requirements.**

Except as otherwise provided in this Zoning Ordinance, when any building or structure is hereafter erected or structurally altered or any building or structure hereafter erected is converted for the uses listed in Column 1 of the chart below, accessory off-street parking spaces shall be provided as required in Column 2 or Column 3 or as required in subsequent sections of this Article.

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Use or Use Category</b>	<b>Spaces Required Per Basic Measuring Unit</b>	<b>Additional Requirements</b>
1-, 2-, and 3-family dwellings	2 per dwelling unit	
Church or temple, auditorium or place of assembly	1 per 5 seats or bench seating spaces	Seats in main auditorium only
College or high school	1 per 5 seats in main auditorium	Or 1 per 8 classroom seats, whichever is greater
Elementary, junior high or nursery school	1 per 10 seats in main assembly room	Or 1 per 10 classroom seats, whichever is greater
Country club or golf club	1 per 20% of rated rapacity	
Public library, museum, art gallery or community center	1 per 30% of rated capacity	Plus 1 additional space for each 300 sq. ft. of floor area in excess of 1,000 sq. ft.
Multiple-family dwelling, more than 3 dwelling units	1.5 per dwelling unit	Plus 1 per 2 roomers
Private clubs	1 per 30% of rated capacity	Or 1 per 5 active members, whichever is greater
Housing for the Elderly	1 per dwelling unit	
Sanitarium, convalescent home, home for the aged or similar institution	1 per 3 patient beds	
Tourist home, motel, motor hotel, motor lodge or hotel	1 per sleeping room or suite	

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Use or Use Category</b>	<b>Spaces Required Per Basic Measuring Unit</b>	<b>Additional Requirements</b>
Rooming, boarding, or lodging house	1 per sleeping room	
Hospital	1 per 2 patient beds	
Office or office building, post office, studio or clinic	1 per 400 sq. ft. of floor area	3 spaces minimum; 10 spaces minimum for a clinic
Funeral home	1 per 50 sq. ft. of floor area, excluding storage and work area	30 spaces minimum
Retail store or personal service establishment or bank	1 per 300 sq. ft. of floor area	Retail food stores over 4,000 sq. ft.: 1 per 150 sq. ft. of floor area
Furniture or appliance store, machinery, equipment and automobile and boat sales and service	1 per 300 sq. ft. of floor area	2 spaces minimum; automobile sales and service, 10 minimum
Auditorium, theater, gymnasium, stadium, arena or convention hall	1 per 5 seats or seating spaces	
Bowling alley	4 per alley	
Food storage locker	1 per 200 sq. ft. of customer service area	
Amusement place, dance hall, skating rink, swimming pool, natatorium or exhibition hall, without fixed seats	1 per 100 sq. ft. of floor area	Does not apply to accessory use
General service or repair establishment, printing, publishing, plumbing, heating, broadcasting station	1 per 3 employees on premises	
Animal hospital	1 per 400 sq. ft. of floor area	4 spaces minimum
Manufacturing or industrial establishment, testing laboratory, creamery, bottling plant, wholesale, warehouse or similar establishment	1 per 2 employees on maximum working shift	Plus space for storage of trucks or other research or vehicles used in connection with the business or industry



<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Use or Use Category</b>	<b>Spaces Required Per Basic Measuring Unit</b>	<b>Additional Requirements</b>
Restaurant or other establishment for consumption of food or beverages on the premises	1 per 30% of rated capacity	Plus 1 per 2 employees

**§ 80-129. Interpretation of chart.**

- A. The use regulations for each district are not affected by arrangement of uses in the chart.
- B. The parking requirements in the chart are in addition to space for storage of trucks or other vehicles used in connection with any use.
- C. The parking requirements in the chart do not limit other parking requirements contained in the district regulations.
- D. The parking requirements in the chart do not limit special requirements which may be imposed with special exception uses.
- E. Where fractional spaces result, the parking spaces required shall be construed to be the next highest whole number.
- F. Except as otherwise provided, the number of employees shall be compiled on the basis of the maximum number of persons employed on the premises at one (1) time on an average day or average night, whichever is greater. Seasonal variations in employment may be recognized in determining an average day.
- G. The parking space requirements for a use not specifically listed in the chart shall be the same as for a listed use of similar characteristics of parking demand generation.
- H. In the case of mixed uses or uses with different parking requirements occupying the same building or premises or in the case of joint use of a building or premises by more than one (1) use having the same parking requirements, the parking spaces required shall equal the sum of the requirements of the various uses computed separately.
- I. Whenever a building or use is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise to create a need under the requirements of this Article for an increase in parking spaces of ten percent (10%) or more than those required before the change or enlargement, such additional spaces shall be provided on the basis of the change or enlargement. No additional spaces shall be required for the first change or enlargement which would result in an increase of spaces of less than ten percent (10%) of those required before the change or enlargement, but this exception shall not apply to a series of changes or enlargements which together result in a need for an increase in parking space of ten percent (10%) more.

**§ 80-130. Flexibility.**

- A. The Mayor and Council recognizes that, due to the particularities of any given development, the inflexible application of the parking standards may result in a development either with inadequate parking space or parking space far in excess of its needs. The former situation may lead to traffic congestion or parking violations in adjacent streets as well as unauthorized parking in nearby private lots. The latter situation wastes money as well as space that could more desirably be used for valuable development or environmentally useful open space.
- B. The Planning Commission may permit deviations from the presumptive requirements and may require more parking or allow less parking as deemed appropriate.

**§ 80-131. Joint use and off-site facilities.**

- A. All parking spaces required herein shall be located on the same lot with the building or use served, except that where an increase in the number of spaces is required by a change or enlargement of use or where such spaces are provided collectively or used jointly by two (2) or more buildings or establishments, the required spaces may be located and maintained at a distance not to exceed three hundred (300) feet from an institutional building or other nonresidential building served.
- B. Up to 50 percent (50%) of the parking spaces required for theaters, parking auditoriums, bowling alleys, dance halls and night clubs and up to one hundred percent (100%) of the parking spaces required for a church auditorium may be provided and used jointly by banks, offices, retail stores, repair shops, service establishments and similar uses not normally open, used or operated during the same hours as theaters, parking auditoriums, bowling alleys, dance halls and night clubs, and up to one hundred percent (100%) of parking spaces required for schools may be provided and used jointly by a church auditorium: provided, however, that written agreement thereto is properly executed and recorded as specified below.
- C. In any case where the required parking spaces are not located on the same lot with the building or use served or where such spaces are collectively or jointly provided and used, such parking space shall be established by a recorded covenant or agreement as parking space to be used in conjunction with the principal use and shall be reserved as such through an encumbrance on the title of the property to be designated as required parking space, such encumbrance to be valid for the total period the use or uses for which the parking is needed are in existence. A certificate of recording of the covenant or agreement shall be furnished to the Administrator.
- D. Whenever the Planning Commission allows or requires a deviation from the presumptive parking requirements it shall enter on the face of the permit the parking requirements that it imposes.

**§ 80-132. Design standards.**

- A. Minimum area. For the purpose of these regulations, an off-street parking space is an all-weather surface area not in a street or alley and having an area of not less than one hundred and sixty-two (162) square feet and minimum dimensions of nine (9) feet wide by eighteen (18) feet deep, exclusive of driveways permanently reserved for the temporary storage of one (1) vehicle and connected with a street or alley by a paved driveway which affords ingress and egress for an automobile without requiring another automobile to be moved.
- B. Drainage and maintenance. Off-street parking facilities shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys and surfaced with erosion-resistant material in accordance with applicable town specifications. Off-street parking areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and not used for the sale, repair or dismantling or servicing of any vehicles, equipment, materials or supplies.
- C. Separation from walkways and streets. Off-street parking spaces shall be separated from walkways, sidewalks, streets or alleys by a wall, fence, curbing or other approved protective device or by distance so that vehicles cannot protrude over publicly owned areas.
- D. Entrances and exits. Location and design of entrances and exits shall be in accordance with the applicable requirements of town traffic regulations and standards. Landscaping, curbing or approved barriers shall be provided along lot boundaries to control entrance and exit of vehicles or pedestrians.
- E. Interior drives. Interior drives shall be of adequate width to serve the particular design arrangement of parking spaces.
- F. Marking. Parking spaces in lots of more than ten (10) spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used as necessary to ensure efficient traffic operation of the lot.
- G. Lighting. Adequate lighting shall be provided if off-street parking spaces are to be used at night. The lighting shall be arranged and installed to minimize glare on property in any residential district.
- H. Screening. When off-street parking areas for ten (10) or more automobiles are located closer than fifty (50) feet to a lot in a residential district or to any lot upon which there is a dwelling as a permitted use under these regulations and where such parking areas are not entirely screened visually from such lot by an intervening building or structure, there shall be provided a continuous, visual screen with a minimum height of six (6) feet. Such screen may consist of a compact evergreen hedge or foliage screening or a louvered wall or fence.

**§ 80-133. Reserved.**

**ARTICLE XI OFF-STREET LOADING**

#### § 80-134. Spaces required.

Except as otherwise provided in this Zoning Ordinance, when any building or structure is hereafter erected or structurally altered to the extent of increasing the floor area by twenty-five percent (25%) or more or any building is hereafter converted, for the uses listed in Column 1 of the chart below, when such buildings contain the floor areas specified in Column 2, accessory off-street loading spaces shall be provided as required in Column 3 or as required in subsequent sections of this Article.

Column 1	Column 2	Column 3
Use or Use Category	Floor Area as Defined in § 80-4 (Square Feet)	Loading Spaces Required
Retail store, department store, restaurant, wholesale house, warehouse, general service, manufacturing, or industrial establishment	2,000 to 10,000	1
	10,000 to 20,000	2
	20,000 to 40,000	3
	40,000 to 60,000	4
	Each 50,000 over 60,000	1 additional
Apartment building, motel, hotel, offices or office building, hospital or similar institution, or place of public assembly	5,000 to 10,000	1
	10,000 to 100,000	2
	100,000 to 200,000	3
	Each 100,000 over 200,000	1 additional
Funeral home	2,500 to 4,000	1
	4,000 to 6,000	2
	Each 10,000 over 6,000	1 additional

#### § 80-135. Interpretation.

- A. The loading space requirements apply to all districts but do not limit the special requirements which may be imposed in the district regulations
- B. The loading space requirements in this Article do not limit special requirements which may be imposed in connection with special exception uses.
- C. The Board of Appeals may waive or reduce the loading space requirements whenever the character of the use is such as to make unnecessary the full provision of loading facilities, where provision is made for community loading facilities or where provision of loading space requirements is impractical under certain conditions for uses which contain less than ten thousand (10,000) square feet of floor area.

**§ 80-136. Mixed uses in one building.**

Where a building is used for more than one (1) use or for different uses and where the floor area used for each use for which loading space is required is below the minimum for required spaces, but the aggregate floor area used is greater than such minimum, then off-street loading space shall be provided as if the entire building were used for that use in the building for which the most spaces are required. In such cases, the Administrator may make reasonable requirements for the location of required loading spaces.

**§ 80-137. Design standards.**

- A. Minimum size. For the purpose of these regulations, a loading space is a space within the main building or on the same lot, providing for the standing, loading or unloading of trucks, having a minimum area of five hundred forty (540) square feet, a minimum width of twelve (12) feet, a minimum depth of thirty-five (35) feet and a vertical clearance of at least fourteen and five-tenths (14.5) feet.
- B. Loading space for funeral homes. Loading spaces for a funeral home may be reduced in size to ten by twenty- five (10 x 25) feet and vertical clearance reduced to eight (8) feet.
- C. Off-street loading areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and not used for the sale, repair, dismantling or servicing of any vehicles, equipment, materials or supplies.

**§ 80-138. Reserved.**

**ARTICLE XIII NONCONFORMING USES**

**§ 80-139. Nonconforming uses.**

- A. Any use of land or building actually existing at the time of the passage of this Ordinance and which does not conform with the requirements of regulations of the district in which it is located shall be known as a nonconforming uses.
- B. Continuance
  - 1. Except as otherwise provided herein, the lawful use of land or buildings existing at the effective date of this Zoning Ordinance may be continued although such use does not conform to the provisions hereof.
  - 2. If no structural alterations are made, a nonconforming use of a building may be changed to another nonconforming use of the same or of a more restricted classification.
  - 3. Whenever a nonconforming use of land or buildings has been changed to a more restricted use or to a conforming use, such use shall not thereafter be changed to a less restricted use.

4. The nonconforming use of a building may be hereafter extended throughout those parts of a building which were lawfully and manifestly arranged or designed for such use at the time of the enactment of this Zoning Ordinance.

C. Restoration after damage or reconstruction

Nothing in these regulations shall prevent the continuance of a use or the reconstruction of a structure occupied by a lawful nonconforming use destroyed by fire, explosion, act of God or, act of the public enemy, as it existed at the time of such destruction provided that a permit is obtained and reconstruction begun within six (6) months after the occurrence and substantially completed within twelve (12) months, unless an extension is granted by the Board of Appeals.

D. Discontinuance of nonconforming use

No building or portion thereof used in whole or in part for a nonconforming use which remains idle or unused for a continuous period of one (1) year, whether or not the equipment or fixtures are removed, shall again be used except in conformity with the regulations of the district in which such building or land is located.

E. Intermittent use

The casual intermittent, illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

F. Ordinary Repair and Maintenance

1. The normal maintenance and repair or the replacement, installation or relocation of non-bearing partitions, fixtures, wiring, or plumbing may be performed on any structure that is devoted in whole or in part to the nonconforming use or structure.
2. Neither this nor any other provision of this Zoning Ordinance shall be interpreted to authorize any increase in the size or degree of the nonconforming use or structure in violation of the provisions of any other subsection of this section.
3. Nothing in this section shall be deemed to prevent the strengthening or restoring of a structure to a safe condition by order of a public official who is charged with protecting the public safety and who declares such structure to be unsafe and orders its restoration to a safe condition.

G. Existence of a nonconforming use

1. Whether a nonconforming use exists shall be a question of fact and shall be decided by the Board of Appeals after public notice and hearing and in accordance with the rules of the Board.

2. Those nonconforming uses in existence prior to adoption of this Zoning Ordinance are hereby validated, albeit the nonconforming use failed to obtain certification from the Administrator.

**§ 80-140. Nonconforming structures.**

- A. Continuance. A lawful nonconforming structure existing on the effective date of this Article may be continued, repaired, maintained or altered, subject to the provision of this section.
- B. Additions or enlargements to nonconforming structures. A building nonconforming only as to height, area or bulk requirements may be altered or extended, provided that such alteration or extension does not increase the degree of nonconformity in any respect.
- C. Moving of nonconforming structures. A lawful nonconforming building or structure shall not be moved in whole or in part to another location on its lot unless every part of the structure conforms to all site development regulations applicable to the applicable zoning district.
- D. Repair of Nonconforming Structures. Nothing in these regulations shall prevent the repair or reconstruction of a lawful nonconforming building damaged by fire, explosion, act of God or, act of the public enemy provided that the degree of nonconformity is not increased, that a permit is obtained, and construction begun within six months after the occurrence and substantially completed within twelve months, unless an extension is granted by the Board of Appeals.

**§ 80-141. Nonconforming lots.**

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

**§ 80-142. Nonconforming Signs**

Refer to Article IXI, § 80-113 of this Ordinance.

**ARTICLE XIV Board of Appeals – Appeals, Variances, Conditional Uses and Special Exceptions**

**Part I Board Of Appeals**

**§ 80-143. Board of Appeals.**

- A. The Board of Appeals is hereby created. The Board shall consist of three (3) members. The members shall be appointed by the Mayor and confirmed by the Town Council, and they shall be removable for cause, upon written charges and after public hearing. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant. Of the members first appointed, one (1) shall be appointed for a term of one (1) year, one (1) for a term of two (2) years and one (1) for a term of three (3) years. Thereafter, members shall be appointed for terms of three (3) years each. The Mayor and Council shall designate one (1) alternate member for the Board, who may be empowered to sit on the Board in the absence of any member of the Board, when the alternate is absent, the Mayor and Council may designate a temporary alternate.
- B. The Board shall adopt rules for the conduct of its business, such rules to be made available to the public. For the conduct of any hearing, a quorum shall be not less than two (2) members and an affirmative vote of two (2) members of the Board shall be required to overrule any decision, ruling, or determination of the official charged with enforcement of this Zoning Ordinance or to approve any conditional use or variance. All meetings of the Board shall be open to the public.

**§ 80-144. Application procedure; appeals; hearing.**

- A. Applications for special exceptions uses and variances may be made by any property owner, tenant, government official, department, board, or bureau. Such application shall be made to the Town Administrator in accordance with rules adopted by the Board of Appeals. The application and accompanying maps, plans or other information shall be submitted to the Planning Commission for a recommendation and the Board of Appeals for preview. Upon the recommendation by the Planning Commission a hearing will be scheduled, an advertisement for a public hearing will be listed in a local newspaper, the Town's website, and on the Town Office's public bulletin board, and written notice of such hearing to the parties in interest. The Administrator shall also transmit a copy of the application to the Board of Appeals Attorney.
- B. An appeal to the Board of Appeals may be taken by any person aggrieved or by any officer, department, board or bureau of the Town affected by any decision of the Town Administrator or Planning Commission. Such appeal shall be taken within thirty (30) days after the decision appealed from by filing with the Administrator and with the Board of Appeals a notice of appeal, specifying the grounds thereof. The Administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the Administrator certifies to the Board of Appeals that, by reason of facts stated in the certificate, a stay would, in his opinion, cause imminent peril to life or property, in which case proceedings shall be not stayed other than by a restraining order granted by the Board of Appeals or by a Court of record, on application and on notice to the Administrator and on due cause shown.
- C. The Board of Appeals shall fix a reasonable time for the hearing of an application or appeal, give public notice thereof as well as due notice to the parties in interest and decide the same within sixty (60) days following the hearing. Upon the hearing, any party may appear in person or by agent or by attorney. Public notice of hearing shall consist of publication at least fifteen (15) days prior to the hearing in a



newspaper of general circulation in the Town, specifying the time, place and nature of the hearing. In addition, the Board of Appeals shall cause the date, time, place and nature of the hearing to be posted conspicuously on the property in accordance with the rules of the Board of Appeals. In exercising its powers, the Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision or determination as ought to be made and, to that end, shall have all the powers of the Administrator.

- D. The Board of Appeals shall keep minutes of its proceedings and other official actions, showing the vote of each member upon each question or, if absent or failing to vote, indicating such facts and shall keep records of its examinations and other official actions, all of which shall be filed in the Town Office and shall be a public record. The Chairman of the Board of Appeals or, in his/her absence the Acting Chairman, may administer oaths and compel the attendance of witnesses.

#### **§ 80-145. Powers of Board of Appeals.**

- A. The Board of Appeals shall have the following powers:
1. To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the administration or enforcement of this Zoning Ordinance.
  2. To hear and decide on applications for special exceptions uses upon which the Board of Appeals is specifically authorized to pass under this Zoning Ordinance.
  3. To authorize upon appeal in specific cases, such area variances from the terms of this Zoning Ordinance as will not be contrary to the public interest where, owing to special conditions, the enforcement of the provisions of this Zoning Ordinance will result in practical difficulties and injustices, but which will most nearly accomplish the purpose and intent of this Zoning Ordinance.

#### **§ 80-146. Lapse of special exception or variance.**

After the Board of Appeals has approved a special exception use or granted a variance, the special exception use or variance so approved or granted shall lapse after the expiration of one (1) year if no substantial construction or change of use has taken place in accordance with the plans for which such conditional use or variance was granted or if the Board of Appeals does not specify some longer period than one (1) year for good cause shown, and the provisions of these regulations shall thereafter govern.

#### **§ 80-147. Amendment of special exception or variance.**

The procedure for amendment of a special exception use or variance already approved or a request for a change of conditions attached to an approval shall be the same as for a new application, except that, where the Administrator determines the change to be minor relative to the original approval, he may transmit the same to the Board of Appeals with the original record without requiring that a new application be filed.

#### **§ 80-148. Appeals to courts.**

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

#### **§ 80-149. Conditions attached to approvals.**

- A. Where, in these regulations, special exception uses are permitted, provided they are approved by the Board of Appeals, and where the Board of Appeals is authorized to decide appeals or approve certain uses, and where the Board is authorized to approve variances, such approval, decision or authorization shall be limited by such conditions as the case may require, including the imposition of requirements for any or all of the following:
1. Prohibition against outside signs or advertising structures except professional directional signs.
  2. Limitation of signs as to size, type, color, location or illumination.
  3. Amount, direction and location of outdoor lighting.
  4. Amount and location of off-street parking and loading space.
  5. Cleaning or painting of buildings or structures.
  6. Gable roof or other roof type.
  7. Building construction and materials.
  8. Building connected or disconnected with other buildings.
  9. Exits or entrances, doors and windows.
  10. Paving, shrubbery, landscaping or ornamental or screening fences, walls or hedges.
  11. Time of day or night for operating.
  12. Prohibition against storefronts.
  13. Prohibition against structural changes.
  14. Control or elimination of smoke, dust, gas, noise or vibration caused by operations.
  15. Requirements for termination of a use, based on lapse of time or such other conditions as the Board of Appeals may specify.
  16. Such other conditions as are necessary.

#### **Part II Variances.**

#### **§ 80-150. Variances.**

- A. Subject to the provisions of § 80-151 of this Article, the Board of Appeals shall have the power to grant the following variances:
1. A variation in the yard requirements in any district so as to relieve practical difficulties and injustices in cases when and where, by

reason of exceptional narrowness, shallowness or other unusual characteristic of size or shape of a specific piece of property at the time of the enactment of such regulation or restriction or by reason of exceptional topographical conditions or other extraordinary situation or condition of such piece of property or by reason of the use or development of property immediately adjacent thereto, the strict application of each regulation or restriction would result in peculiar and exceptional practical difficulties to the owner of such property.

2. Such grant of variance shall comply, as nearly as possible, in every respect with the spirit, intent and purpose of this Zoning Ordinance, it being the purpose of this provision to authorize the granting of variation only for reasons of demonstrable and exceptional practical difficulty, as distinguished from variations sought by applicants for purposes or reasons of convenience, profit or caprice.
3. No such variance shall be authorized by the Board unless it finds all of the following:
  - a. That the variance will not cause a substantial detriment to adjacent or neighboring property.
  - b. That the variance will not change the character of the neighborhood or district.
  - c. That the variance is consistent with the Comprehensive Plan and the general intent of this Zoning Ordinance.
  - d. That the practical difficulty or other injustice was caused by the following:
    - (1) Some unusual characteristic of size or shape of the property.
    - (2) Extraordinary topographical or other condition of the property.
    - (3) The use or development of property immediately adjacent to the property.
    - (4) That the practical difficulty or other injustice was not caused by the applicants own actions.
4. No variance shall be authorized unless the Board of Appeals finds that the condition or situation of the property concerned or the intended use of the property is not of so general or recurring nature as to make reasonably practicable the formulation of a general regulation to be adopted as an amendment to the Zoning Ordinance.

#### **§ 80-151. Specific Provisions for Variances in the Millington Critical Area.**

- A. **Applicability.** The Town has established provisions where, owing to special features of a site or other circumstances literal enforcement of the CA District provisions of this Zoning Ordinance would result in unwarranted hardship to an applicant, a variance may be obtained. In considering an application for a variance, the Board of Appeals shall presume that the specific development activity in the CA District, that is subject to the application and for which a variance is required, does not conform with the general purpose and intent of Natural Resources Article, Title 8 Subtitle 18, COMAR Title 27, and the requirements of this Zoning Ordinance.
- B. **Standards.** The provisions for granting such a variance shall include evidence submitted by the applicant that the following standards are met:
  1. Special conditions or circumstances exist that are peculiar to the land or structure involved and that a literal enforcement of provisions and requirements of this Ordinance would result in unwarranted hardship;

2. A literal interpretation of the provisions of the CA District provisions will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the CA District;
3. The granting of a variance will not confer upon an applicant any special privilege that would be denied by this Zoning Ordinance to other lands or structures within the CA District;
4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property; and
5. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife or plant habitat within the CA District and the granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law.

- C. Process. Applications for a variance will be made in writing to the Board of Appeals with a copy provided to the Critical Area Commission. Notice shall be provided as provided in §80-144. After hearing an application for a variance, the Board of Appeals shall make written findings reflecting analysis of each standard. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in paragraph A above. The Town shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.
- D. Findings. Based on competent and substantial evidence, the Town shall make written findings as to whether the applicant has overcome the presumption of nonconformance as established in subsection A above. With due regard for the person's technical competence, and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:
1. The applicant;
  2. The Town or any other government agency; or
  3. Any other person deemed appropriate by the Town.
- E. Appeals. Appeals from decision concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the Town for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation or governmental agency aggrieved or adversely affected by any decision made under this Zoning Ordinance.
- F. Conditions and mitigation. The Board of Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of the CA District is maintained including, but not limited to the following:
1. Adverse impacts resulting from the granting of the variance shall be mitigated by planting on the site per square foot of the variance granted at no less than a three to one basis or as recommended by Zoning Administrator or Planning Commission.
  2. New or expanded structures or lot coverage shall be located the greatest possible distance from mean high water, the landward

edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

- G. Commission notification. Within ten (10) working days after a written decision regarding a variance application is issued, a copy of the decision will be sent to the Critical Area Commission. The Town may not issue a permit for the activity that was the subject of the application until the applicable 30-day appeal period has elapsed.

### **Part III Special Exceptions**

#### **§ 80-152. Intent.**

- A. The development and execution of this Zoning Ordinance are based upon the division of the Town into districts within which the use of land and buildings and the bulk and location of buildings and structures in relation to the land are substantially uniform. It is recognized, however, that there are certain uses which, because of their unique characteristics, cannot be properly classified in any particular district or districts without consideration in each case of the impact of those uses upon neighboring land and of the public need for the particular use at the particular location.
- B. The intent of this Part is to establish procedures and minimum standards to be used as guidelines for the consideration and authorization of those uses classified as special exceptions under the respective District regulations.
- C. The granting of a special exception does not exempt the applicant from complying with all other requirements of this Ordinance or of the law.

#### **§ 80-153. Initiation of Special Exceptions.**

Any property owner or other person with an enforceable legal interest in a property may file an application to use such land for one or more of the special exceptions provided in the zoning district in which the land is located.

#### **§ 80-154. Application for Special Exception.**

- A. Such application for special exception shall be filed with the Town Administrator on a form prescribed by the Planning Commission.
- B. The application shall be accompanied by such plans and/or data as necessary, and shall include a statement in writing by the applicant and adequate evidence showing that the proposed use will conform to the standards hereinafter set forth. Such application shall be forwarded from the Town Administrator to the Planning Commission for recommendation to the Board of Appeals for review within forty-five (45) days of receipt of the application by the Town Administrator.

#### **§ 80-155. Hearing on Application.**

- A. The Board of Appeals shall hold a public hearing on each application for a special exception at such time and place as shall be established by the Board of Appeals. The hearing shall be conducted and a record of such proceedings shall be preserved in such a manner as the Board of Appeals shall, by rule, prescribe from time to time.
- B. Notice is required as provided in §80-144.

#### **§ 80-156. Authorization.**

For each application for a special exception, the Board of Appeals shall normally, within ninety (90) days of receipt of the application, conduct its public hearing and report its findings and decisions, including the stipulations or additional conditions and guarantees deemed necessary for the protection of the public interest.

#### **§ 80-157. Standards.**

No special exception shall be approved by the Board of Appeals unless such Board shall find:

- A. That the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.
- B. That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
- C. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause a substantial depreciation in the property values within the neighborhood.
- D. That adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements have been or are being provided.
- E. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
- F. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the Town of Millington.

- G. That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use.
- H. Prior to the granting of any special exception, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as is deemed necessary for the protection of the public interest and to secure compliance with the standards and requirements specified in herein. In all cases in which special exceptions are granted, the Board of Appeals shall require such evidence and guarantees as it may deem necessary as proof that the conditions stipulated in connection therewith are being and will be complied with.

**§ 80-158. Effect of Denial of a Special Exception.**

No application for a special exception which has been denied wholly or in part by the Board of Appeals shall be resubmitted for a period of one year from the date of said order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the Board of Appeals.

**§ 80-159. Complaints.**

Notice of complaints received by any representative of the Town concerning the operation of any special exceptions shall be transmitted promptly to the Board which shall take appropriate action as provided by law. The complainant shall be notified of the action taken.

**§ 80-160. Revocation.**

- A. Whenever the Board shall find, in case of any permit heretofore or hereafter granted pursuant to the provisions of this Article that any of the terms, conditions, or restrictions upon which such permit was granted are not being complied with, the Board is authorized, after due notice to all parties concerned and granting full opportunity for a public hearing, to suspend or revoke such permit or take other action as it deems necessary to ensure compliance. The Board is authorized to request and obtain investigations and reports as to compliance from such Town or state agencies or administrative officers as may be appropriate.
- B. Whenever the Board shall determine that a special exception appears to have been abandoned, that an approved special exception is not initiated within one year after the date of approval, that its annual proof referred to above has not been filed within forth-five (45) days of its due date, or that all of the terms and conditions of its grant are not being complied with, the Administrator shall notify the Board and the Town attorney's office. Upon receipts of notice of such determination by the Board, the Board shall issue an order to show cause why such special exception should not be revoked. Notice thereof shall be given to the party to whom the special exception has been granted and to all parties who would be entitled to receive notice of a new application for special exception concerning the property. The applicant

shall have 60 days from the date of written notice of expiration to file an appeal of said notice.

**§ 80-161. Reserved**

**§ 80-162. Reserved**

## **ARTICLE XV LANDSCAPING AND ENVIRONMENTAL STANDARDS**

### **Part I Tree Protection**

#### **§ 80-163. Findings and Declaration of Policy: Shade Trees.**

A. Finding:

1. Trees are proven producers of oxygen - a necessary element for human survival;
2. Trees appreciably reduce the ever-increasing environmentally dangerous carbon dioxide content of the air and play a vital role in purifying the air we breathe;
3. Trees transpire considerable amounts of water each day and thereby purify the air much like the air-washer devices used on commercial air conditioning systems;
4. Trees have an important role in neutralizing wastewater passing through the ground from the surface to ground water tables and lower aquifers;
5. Trees, through their root systems, stabilize the ground water tables and play an important and effective part in soil conservation, erosion control, and flood control;
6. Trees are an invaluable physical, aesthetic, and psychological counterpoint to the urban setting, making urban life more comfortable by providing shade and cooling the air and land, reducing noise levels and glare, and breaking the monotony of human developments on the land, particularly parking areas; and
7. For the reasons indicated herein, trees have an important impact on the desirability of land and therefore on property values.

- B. Based upon the findings set forth in Subsection A, it is not only desirable but essential to the health, safety, and welfare of all persons living or working within the Town's planning jurisdiction to protect existing trees and, under the circumstances set forth in this article, to require the planting of new trees in certain types of developments.

#### **§ 80-164. Required Trees Along Dedicated Streets.**

Along both sides of all newly created streets that are constructed in accordance with the street standards approved by the Mayor and Council, the developer shall at a minimum either plant or retain sufficient trees so that between the paved portion of the street and a line running parallel to and fifty (50) feet from the centerline of the street, there is for every fifty (50) feet of street frontage at least an average of one deciduous tree that has



or will have when fully mature a trunk at least twelve (12) inches in diameter.

**§ 80-165. Retention and Protection of Large Trees.**

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

**§ 80-166. Forest Protection**

- A. For the alteration of forest and developed woodlands the following requirements shall apply:
  - 1. The total acreage in forest coverage within the Town shall be maintained or preferably increased;
  - 2. All forests that are allowed to be cleared or developed shall be replaced on not less than an equal area basis;
  - 3. No more than twenty (20) percent of any forest or developed woodland may be removed from forest use, except as provided in paragraph 4 below. The remaining eighty (80) percent shall be maintained through recorded, restrictive covenants or similar instruments approved by the Town Attorney; and
  - 4. Developed woodland vegetation shall be conserved to the greatest extent practicable.
- B. For replacement of forest and developed woodland, if more than twenty (20) percent is to be removed from forest use, an applicant may clear or develop not more than thirty (30) percent of the total forest area provided that the afforested area shall consist of 1.5 times the total surface acreage of the disturbed forest or developed woodland area, or both.
- C. In addition, applicants shall adhere to the following criteria for forest and woodland development:

1. A performance bond shall be collected by the Town in an amount determined by the Town to ensure satisfactory replacement as required by subsections A and B above;
  2. Grading permits shall be required before forest or developed woodland is cleared;
  3. Forests which have been cleared before obtaining a grading permit or that exceed the maximum area allowed in A.3 above shall be replanted at three times the area extent of the cleared forest;
  4. All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants or other protective instruments approved by the Town Attorney;
  5. The applicant shall designate, subject to the approval of the Town, a new forest area on a part of the site not forested; and
  6. The afforested area shall be maintained as forest cover through easements, restrictive covenants or other protective instruments approved by the Town Attorney.
- D. If the area extent of the site limits the application of the reforestation required or afforestation required in this Part, the Town shall collect a fee-in-lieu in accordance with the following standards:
1. Fee-in-lieu shall be assessed at \$1.50 per square foot of required reforestation or afforestation area;
  2. Fee-in-lieu monies shall be used for the following project to establish forest or developed woodlands on an alternative site or sites where planting is not a condition of development or redevelopment;
  3. Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to the Town's general fund; and
  4. A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed twenty (20) percent of the fees collected.

## **Part II Landscape Standards**

### **§ 80-167. Plan Requirements for Landscaping and Screening.**

- A. Applicability. A master landscaping plan or screening plan meeting the standards of this part is required for any development, except applications involving a detached single family dwelling unit requiring only a zoning certificate and building permit.
- B. A master landscape or screening plan shall consist of one (1) or more sheets drawn to scale or combined with a site plan and shall include the following information:
1. The location and footprint of all proposed buildings, structures, and facilities on the site and proposed landscaping areas.
  2. The approximate location of rivers or stream branches or natural, intermittent streams or drainage channels, ponds, wooded areas, or other special natural features on the development site.
  3. A tabular summary of type of species, height, diameter, and quantity of shrubbery and trees, including street trees, to be planted

- within landscaped or screening areas.
- 4. The height, length, type and location of fencing and related planting areas to be used for screening purposes.
- 5. Location of underground and overhead utilities.
- 6. The continuity of proposed open space with contiguous and other nearby open spaces, existing or proposed.

C. The plan shall show landscaping proposals for the following areas or facilities where applicable to the type of development proposed.

- 1. Street trees
- 2. Buffer yard plantings
- 3. Foundation plantings
- 4. Screening for dumpsters or other solid waste collection areas
- 5. Stormwater management retention or detention areas landscaping
- 6. Above ground utility box screening
- 7. Parking lot plantings/screening
- 8. Perimeter plantings
- 9. Recreation facilities landscaping
- 10. Loading and unloading space screening

D. The plan shall be consistent with the specific requirements of a site plan or comprehensive development plan or the specific requirements for the type of development proposed.

#### **80-168. Landscaping Materials.**

- A. Whenever landscaping is required, it shall consist of, as a minimum, a combination of grass, trees and shrubs including the following species at the sizes specified, arranged in such a manner as to complement the proposed structure or project and its adjacent neighborhood. The total linear amount of property lines or perimeter of the development site and each lot shall be used as a guide to compute the amount of plantings as required. All such materials may be randomly placed on the site except as may be required to meet the Buffer yard requirements of this Ordinance. Plantings required in other sections of this Zoning Ordinance shall count against the requirements of this part.
- B. Landscaping shall emphasize native species trees, shrubs, and flowers to reduce maintenance, to help ensure longevity, and to reinforce the natural character of the area. Species shall be selected partly on the basis of their visual appeal during different seasons of the year.
- C. Any applicant may incorporate and combine the mitigation requirements for meeting the provisions of the Forest Conservation Act and the State's Non-Tidal Wetlands Act with these provisions. The Planning Commission may approve such mitigation plans as a substitute for compliance with these conditions. Any plan may also use existing trees to count toward the requirements of these guidelines.
- D. The applicant shall be required to post a performance bond with the Town to ensure that any landscape materials that die within eighteen

(18) months of planting shall be replaced with the same species and size, and that any landscape material shall be well maintained, specifically irrigated and fertilized, for a total of twenty-four (24) months from time of planting. If landscape materials are removed, they shall be replaced with material of similar size, shapeliness, function, hardiness, longevity, and appearance.

**§ 80-169. Shade Trees.**

- A. Shade trees, with a height of more than thirty (30) feet at maturity, shall be a minimum 1.5 inches in caliper and a minimum six (6) feet or more in height at the time of planting and shall be planted in continuous rows along the edges of properties in accordance with the following spacing standards:
  - 1. Residential districts - one per one fifty (50) feet.
  - 2. Commercial districts - one per fifty (50) feet.
  - 3. Industrial district - one per thirty (30) feet.
  - 4. Special exceptions - the requirements for the district in which the use is located or an alternate as may be determined by the Planning Commission, Town Administrator, or Board of Appeals.
  - 5. Maintain a minimum distance of twenty (20) feet from overhead utilities for species that exceed thirty (30) feet at maturity.
- B. Street Trees - Street trees meeting the standards of 1 above shall be planted along internal streets, with at least one tree for every fifty (50) feet of street frontage in residential, commercial, business, institutional and industrial projects.

**§ 80-170. Under story (Decorative) Trees.**

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

- A. Residential districts - none.
- B. Commercial districts - one per fifty (50) feet.
- C. Industrial district - one per seventy-five (75) feet.
- D. Special exceptions - the requirements for the district in which the use is located or an alternate as may be determined by the Planning Commission, Zoning Administrator, or Board of Zoning Appeals.
- E. Maintain a minimum distance of twenty (20) feet from overhead utilities for species that exceed thirty (30) feet at maturity.

**§ 80-171. Evergreen Trees.**

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

- A. Residential districts – none.
- B. Commercial - one per one hundred (100) feet.
- C. Industrial district - one per one hundred fifty (150) feet.
- D. Special exceptions - the requirements for the district in which the use is located or an alternate as may be determined by the Planning and Zoning Commission, Planning Staff, or Board of Zoning Appeals.
- E. Maintain a minimum distance of twenty (20) feet from overhead utilities for species that exceed 30' at maturity

**§ 80-172. Shrubs.**

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

- A. Residential districts - none.
- B. Commercial districts - one per fifteen (15) feet.
- C. Industrial district - one per forty (40) feet.
- D. Special exceptions - the requirements for the district in which the use is located or an alternate as determined by the Planning Commission, Zoning Administrator, or Board of Appeals.

**§ 80-173. Alternatives and Additional Landscape Requirements.**

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

- A. The retention of natural growth on the site to meet the requirements of this section, depending on width, density, and type of natural growth, provided that the Board or Commission may require additional, supplemental plantings to obtain the effect intended by the purpose and intent of these requirements.
- B. Landscaping consisting of a combination of the plantings listed in this article and alternate plantings of various species and sizes.
- C. Landscaping consisting of a combination of architectural materials, including fountains, special bricks, interlocking paving, decorative

features, statues, and other combinations of landscaping features, materials, or plantings, including street trees.

- D. Whenever deemed appropriate, the Planning Commission may require installation of a vegetated and/or structural buffer along property lines to protect adjoining residential properties from the potential impacts of a proposed non-residential use and/or to maintain or enhance the general visual character of the property and surrounding area. Buffer standards shall be selected from Appendix B.
- E. The Planning Commission may approve variations to the specific landscaping standards, including but not limited to species, size, spacing, or quantity of plantings, provided that the proposed alternative achieves the objectives of the planting requirements, including visual appeal, environmental benefits, compatibility with the surrounding area, and compliance with the purpose and intent of this Ordinance. Such variations shall be supported by a written justification submitted by the applicant, demonstrating how the alternative meets or exceeds the intended outcomes of the original standards.

#### **§ 80-174. Complementary Plantings**

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

### **Part III Landscaping of Parking Facilities**

#### **§ 80-175. Intent.**

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

#### **§ 80-176. Sites Affected.**

- A. New sites. No new parking areas shall hereafter be constructed or used unless landscaping is provided as required by the provision of this Article.
- B. Existing sites. No parking areas shall be expanded, moved, or removed and/or reconstructed unless the minimum landscaping required by the provision of this Article is provided for the property to the extent of its alteration or expansion, but not for the entire property.
- C. Change of use. No use shall be changed to another use for which the Zoning Ordinance requires additional parking over and above that required for the previous use, unless perimeter landscaping as required by this Article is provided for such additional parking. The provisions of this section shall be effective regardless of whether or not new construction is necessary to meet the parking requirements for the new uses. Where new construction will not be necessary to meet the parking requirements, such additional required parking shall be deemed to be on the perimeter for as much as possible of the existing parking area. Where the previous use had no required parking,

perimeter landscaping shall be provided for the entire parking area serving the new use. Interior landscaping shall not be required where only the use of the property is changed and no new construction or reconstruction is proposed.

- D. Change of zone. No use of an existing building, structure, or vehicular use area shall be commenced subsequent to a change in zoning unless perimeter landscaping as required herein has been provided.

**§ 80-177. Perimeter Landscaping.**

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

existing trees.

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

**§ 80-178. Interior Landscaping for Parking Lots.**

- A. For any parking lot containing more than 6,000 square feet of area or fifteen (15) or more spaces, interior landscaping shall be provided in addition to required perimeter landscaping. Interior landscaping shall be contained in peninsulas or islands. An interior parking lot landscape island or peninsula is defined as a landscaped area containing a minimum area of one hundred fifty-three (153) square feet having a minimum width of eight and one-half (8.5) feet and a minimum length of eighteen (18) feet. There shall be a minimum of four (4) feet to all trees from the edge of paving where vehicles overhang. The minimum landscape area permitted shall be ten (10) percent of the parking area. Each island or peninsula shall be enclosed by appropriate curbing or a similar device at least six (6) inches wide and six (6) inches in height above the paving surface. For purposes of Subsection D below and subject to the limits established in E below, up to 4 islands can be combined.
- B. Where a parking area is altered or expanded to increase the size to 6,000 or more square feet of area or fifteen (15) or more vehicular parking spaces, interior landscaping for the entire parking area shall be provided and not merely to the extent of its alteration or expansion.
- C. Landscape area. For each 100 square feet, or fraction thereof, of parking lot, five (5) square feet of landscaped area shall be provided. The interior landscaping requirement shall be computed on the basis of the "net parking facility." For the purposes of this Section, "net parking facility" shall include parking stalls, access drives, aisles, walkways, dead spaces, and required separations from structures, but shall not include required street setbacks or access driveways or walkways within such setbacks.
- D. Landscape islands or peninsulas - number required:
  - 1. For less than 100 spaces one island or peninsula is required for every 7 parking spaces.
  - 2. For 100 spaces or more, one island or peninsula is required for every 10 spaces.
  - 3. Each 10 parking spaces shall require an interior planting island.
  - 4. All interior parking aisles shall end in a landscape island.



- E. Maximum contiguous areas for interior parking lot landscaping. In order to encourage the required landscape areas to be properly dispersed, no required landscape area shall be larger than the following:
1. 350 square feet in parking areas under 30,000 square feet.
  2. 1,500 square feet in parking areas over 30,000 square feet.
- F. Landscape areas larger than the above are permitted as long as the additional area is in excess of the required minimum, except that landscape areas larger than the maximum permitted may be allowed as required landscaping areas in those cases where significant natural vegetation exists.
- G. Minimum plant materials. A minimum of one tree for each two hundred and fifty (250) square feet or fraction thereof of required landscape or for each five (5) spaces of required parking or for each one hundred and sixty-one (161) square feet of island or peninsula, whichever is greater, shall be required. The remaining area of the required landscaped area shall be landscaped with shrubs or ground cover not to exceed two (2) feet in height, or grass.
- H. Landscaping for service structures. All service structures shall be fully screened, except when located more than thirty-five (35) feet above the established grade, and shall not be visible from a public way to the maximum extent possible, as determined by the Town Administrator. Service structures in an industrial zone shall be fully screened when located within one hundred (100) feet of any zone other than industrial. For the purposes of this article, service structures shall include propane tanks, dumpsters, air conditioning units and condensers, electrical transformers and other equipment or elements providing service to a building or a site.
1. Location of screening. A continuous planting, hedge, fence, wall, or earth mound shall enclose any service structure or loading zone on all sides unless such structure must be frequently moved, in which case screening on all but one side is required. The average height of the screening material shall be one foot more than the height of the enclosed structure. Whenever a service structure is located next to a building wall, perimeter landscaping material, or vehicular use area landscaping material, such walls or screening material may fulfill the screening requirement for that side of the service structure if that wall or screening material is of an average height sufficient to meet the height requirement set out in this section. Whenever service structures are screened by plant material, such material may count towards the fulfillment of required interior or perimeter landscaping. No interior landscaping shall be required within an area screened for service structures.
  2. Protection of screening material. Whenever screening material is placed around any trash disposal unit or waste collection unit that is emptied or removed mechanically on a regular basis, a fixed barrier to contain the placement of the container shall be provided within the screening material on those sides where there is such material. The barrier shall be at least 18 inches from the material and shall be of sufficient strength to prevent possible damage to the screening when the container is moved or emptied. The minimum front opening of the screening material shall be twelve (12) feet to allow service vehicles access to the container.
- I. Interior landscaping for parking areas shall be installed and continuously maintained by the owner.
- J. Plan submission and approval. Whenever any property is affected by these parking area landscape requirements, the property owner or

developer shall prepare a landscape plan for approval according to the requirements contained in this Zoning Ordinance.

- K. Unnecessary paving or irregular paving plans are strongly discouraged and, if incorporated in a site plan, shall be subject to approval by the Town.
- L. Alternative parking area landscaping design may be considered by the Planning Commission in cases where unique topography and site constraints dictate such alternative. The innovative use of planting design and materials is encouraged and will be evaluated on the intent demonstrated to fulfill the stated objectives of this Zoning Ordinance.

#### **Part IV Buffers**

##### **§ 80-179. Purpose.**

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

##### **§ 80-180. Location of Buffer yards.**

Buffer yards shall be located on the outer perimeter of a lot or parcel, extending to the lot or parcel boundary line. Buffer yards shall not be located on any portion of an existing or dedicated public or private street or right-of-way.

##### **§ 80-181. Determination of Required Buffer yard.**

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

- A. Identify whether any portion or property line of the site constitutes a zoning district boundary. If it does, determine the zoning on both

sides of the property.

- B. Determine whether the land on the adjoining property is vacant or developed or whether a plat of the subdivision has been approved.
- C. Classify any street adjacent to the proposed use as a local, collector, or arterial street.
- D. Determine the buffer yard required on each boundary (or segment thereof) of the subject parcel by referring to the Tables of Required Buffer yards.
- E. Determine if the proposed development is a use which has buffer yards required to separate that use from certain uses. Then determine the buffer yard required between such uses by referring to the Tables of Required Buffer yards.

**§ 80-182. Responsibility for Buffer yards.**

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

**Tables of Required Buffer yards (See Examples in Appendix B)**

	REQUIRED BUFFERYARDS BETWEEN ADJACENT ZONING DISTRICTS					
ZONE	AR	R-1	R-2	R-3	TC	LI-1
AR	--	--	--	--	--	E
R-1	--	--	--	--	--	E
R-2	--	--	--	--	--	E
R-3	--	--	--	--	--	E
TC	--	--	--	--	--	E
LI	E	E	E	E	E	E

<b>REQUIRED STREET BUFFERS</b>	<b>FUNCTIONAL CLASSIFICATION</b>		
<b>ZONING DISTRICTS</b>	<b>ARTERIAL</b>	<b>COLLECTOR</b>	<b>LOCAL</b>
AR, R-1, R-2, R-3, PN	C	B	A
TC	A	A	A
LI	E	E	D

#### **§ 80-183. Buffer yard Requirements.**

Illustrations graphically indicating the specification of each buffer yard are contained in Appendix B.

#### **§ 80-184. Buffer yard Use.**

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

#### **§ 80-185. Ownership of Buffer yards**

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

### **Part V Environmental Standards for Sensitive Areas**

#### **§ 80-186. Environmental Standards**

The following provisions shall apply to all development activities requiring site plan or subdivision plat approval.

A. Perennial Stream no-disturbance buffer

1. A one hundred (100) foot natural buffer from all perennial streams shall be required for all development. Permanent or temporary stormwater and/or sediment control devices shall not be permitted in this Buffer.
2. This buffer requirement may be reduced to no less than seventy-five (75) feet by the Planning Commission for the following:
  - a. If evidence is provided that the design, construction and use of the site will provide the same or better protection of water quality as the one hundred (100) foot buffer, and if evidence is provided that said development will meet all other applicable requirements, as required.
  - b. Road crossings, if disturbance is minimized.
  - c. Other public or community facilities provided disturbance is minimized in so far as possible.

B. Intermittent Stream no-disturbance buffer

1. A fifty (50) foot buffer from all intermittent streams shall be required for all development. Permanent or temporary stormwater management and sediment control devices shall not be permitted in this buffer.
2. This buffer requirement may be waived by the Planning Commission for the following:
  - a. Road crossings, if disturbance is minimized.
  - b. Other public or community facilities provided disturbance is minimized in so far as possible.

C. Sensitive Soil no-disturbance buffer. The one-hundred (100) foot perennial stream buffer shall be expanded to include contiguous 100 year floodplain and nontidal wetlands. In addition, the one-hundred (100) foot perennial stream buffer shall be expanded to include hydric soils, highly erodible soils and soils on slopes greater than fifteen percent (15%) that are contiguous with the perennial stream, any 100 year flood plain adjacent to the stream, or any nontidal wetlands adjacent to the stream to a maximum distance of two hundred (200) feet.

D. Non-tidal Wetland buffer. A twenty-five (25) foot setback from all non-tidal wetlands shall be required for all development around the extent of the delineated nontidal wetland except as permitted by the U.S. Army Corp of Engineers and the State of Maryland, Department of Natural Resources, Non-tidal Wetland Division.

E. Steep Slopes.

The following steep slope provisions shall apply.

1. Grading, removal of vegetative cover and trees, and paving are not permitted on any land in excess of twenty-five percent slope for an area of forty thousand (40,000) square feet.
2. Not more than forty (40%) percent of any land in excess of fifteen percent slope and less than twenty-five percent slope for an area of forty thousand (40,000) square feet shall be cleared of natural ground cover or vegetation in preparation for development.

F. Habitat Protection Areas.

1. Identification.

An applicant for a development activity, redevelopment activity or change in land use shall identify all applicable Habitat Protection Areas and follow the standards contained in this section. Habitat Protection Areas includes:

- a. Threatened or endangered species or species in need of conservation;
- b. Forest areas utilized as breeding areas by future interior dwelling birds and other wildlife species;
- c. Natural Heritage Areas; and
- d. Other plant and wildlife habitats determined to be of local significance.

2. Standards

- a. An applicant for a development activity proposed that is in or near a Habitat Protection Area listed above shall request review by the Department of Natural Resources Wildlife and Heritage Service for comment and technical advice. Based on the Department's recommendations, additional research and site analysis may be required to identify the specific location of a Habitat Protection Area on or near a site.
- b. If the presence of a Habitat Protection Area is confirmed by the Department of Natural Resources, the applicant shall develop a Habitat Protection Plan in coordination with the Department of Natural Resource.
- c. The applicant shall obtain approval of the Habitat Protection Plan from the Planning Commission or the appropriate designated approving authority. The specific protection and conservation measures included in the Plan shall be considered conditions of approval of the project.

**§ 80-187. Reserved**

**ARTICLE XVI Administration and Enforcement**

**§ 80-188. Changes and amendments.**

- A. Initiation of change. The Mayor and Council may from time to time amend, supplement or change, by Ordinance, the boundaries of the districts or the regulations herein established. Any such amendment may be initiated by resolution of the Mayor and Council or by motion of the Planning Commission or by petition of any property owner addressed to the Mayor and Council. Petitions for change or amendment shall be on forms and filed in a manner prescribed by the Planning Commission.
- B. Report from Planning Commission. Before taking any action on any proposed amendment, supplement or change, the Mayor and Council shall submit the same to the Planning Commission for its recommendations and report. Failure of the Commission to report within sixty (60) days after the first meeting of the Planning Commission subsequent to the proposal being referred to the Planning Commission shall be deemed approval.
- C. Notice and hearings. The Planning Commission shall hold a public hearing on any proposed amendment, supplement or change before

submitting its report to the Mayor and Council. Notice of public hearing before the Commission shall be given at least fifteen (15) days prior to the bearing by publishing the time, place and nature of the bearing in a newspaper having general circulation in the Town. In addition, the Planning Commission shall cause the date, time, place and nature of the hearing to be posted conspicuously on the property, in accordance with the rules of the Commission. The published and posted notices shall contain reference to the place or places within the town where the plans, ordinances or amendments may be examined.

- D. Before approving any proposed change or amendment, the Mayor and Council shall hold a public hearing thereon. Notice of public hearing before the Mayor and Council shall be given at least fifteen (15) days prior to the bearing by publishing the time, place and nature of the hearing in a newspaper having general circulation in the Town.
- E. In reaching a decision on zoning amendments, the Mayor and Council shall make findings of fact in each specific case including, but not limited to, the following matters: population change, adequacy of public facilities, present and future transportation patterns, compatibility with existing and proposed development for the area, the recommendations of the Planning Commission, consistency with the Comprehensive Plan, fiscal impact upon Town government, and the suitability of the property in question to the uses permitted under the existing and proposed zoning classifications; and may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. It shall be the responsibility of the applicant to delineate the boundaries of the neighborhood and to identify the change in the character of the neighborhood.
- F. One-year limitation on reconsideration. Whenever a petition requesting an amendment, supplement or change has been denied by the Mayor and Council, such petition, or one substantially similar, shall not be reconsidered sooner than one (1) year after the previous denial.
- G. The record in all zoning cases shall include the application, all documents or communications submitted regarding the application, the recorded testimony received at the hearing, any reports or communications to or from any public officials or agency concerning the application, and the final decision of the Mayor and Council. The record shall be open to public inspection and shall be maintained in the Town Office. The burden of proof for any zoning change shall be upon the applicant.

#### **§ 80-189. Amendments for floating zones.**

The provisions of this Article regarding the procedures and requirements of public hearings and findings of fact to be made regarding applications shall also apply to requests for floating zone designation except that it shall not be necessary to prove change in the character of the neighborhood or mistake in the original zoning of the property in order to gain approval. In floating zones the test for approval or denial shall be compatibility with the neighborhood and consistency with the comprehensive plan.

#### **§ 80-190. Critical Area Amendments.**

- A. Program changes. The Mayor and Council may from time to time amend the provisions of this Zoning Ordinance that apply to the CA

Critical Area Overlay District. CA District amendments include, but are not limited to, amendments, revisions, and modifications to zoning regulations, Critical Area Maps, implementation procedures, and local policies that affect the CA District. All such amendments, revisions, and modifications shall also be approved by the Critical Area Commission as established in § 8-1809 of the Natural Resources Article of the Annotated Code of Maryland. No such amendment shall be implemented without approval of the Critical Area Commission. Standards and procedures for Critical Area Commission approval of proposed amendments are as set forth in the Critical Area Law § 8-1809(i) and § 8-1809(d), respectively.

- B. Comprehensive reviews. The Town will review its entirety of CA District provision and propose any necessary amendments at least every six (6) years. The anniversary of the date that the adoption of this Zoning Ordinance shall be used to determine when the review shall be completed. Within sixty (60) days after the completion of the review, the Town will send the following information in writing to the Commission:
  - a. A statement certifying that the required review has been accomplished;
  - b. A necessary requests for amendments, refinements, or other matters that the Town wishes the Commission to consider;
  - c. An updated resource inventory; and
  - d. A statement quantifying acreages within each land classification, the growth allocation used, and the growth allocation remaining.
- C. Zoning map amendments. Except for amendments or refinements developed during a six-year comprehensive review, a zoning map amendment in the CA District may only be granted by the Mayor and Council upon proof of a mistake in the existing zoning. This requirement does not apply to proposed changes to a zoning map that meet the following criteria:
  - a. Are wholly consistent with the land classifications in the originally adopted Program; or
  - b. The Town proposes the use of growth allocation in accordance with the growth allocation provisions of this ordinance.
- D. Process. When an amendment is requested, the applicant shall submit the amendment to the Planning Commission for review and research. Upon completing Findings of Fact, these documents shall be forwarded to the Mayor and Council. The Mayor and Council shall hold a public hearing at which parties of interest and citizens shall have an opportunity to be heard. At least fifteen (15) days' notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town. After the Mayor and Council approve an amendment, they shall forward their decision and applicable ordinances and resolutions along with the amendment request to the Critical Area Commission for final approval.
- E. Critical Area Commission review. When the Town submits a request for review and approval of changes to any element of the Zoning Ordinance provisions applicable to the CA District including, but not limited to Zoning Ordinance text or maps, the request will include all relevant information necessary for the Chairman of the Commission, and as appropriate, the Commission, to evaluate the changes. The Chairman, and as appropriate, the Commission, shall determine if the requests for amendment(s) are consistent with the purposes, policies, goals, and provisions of the Critical Area Law and all Criteria of the Commission.



- F. Critical Area Commission decision. In accordance with the determination of consistency outline above, the Chairman, or as appropriate, the Commission will:
- a. Approve the proposed refinement or amendment and notify the local jurisdiction;
  - b. Deny the proposed refinement or amendment;
  - c. Approve the proposed refinement or amendment subject to one or more conditions; or
  - d. Return the proposed refinement or amendment to the Town with a list of changes to be made.

**§ 80-191. Conformity with Zoning Ordinance Provisions.**

The regulations set by this Zoning Ordinance within each zone shall be minimum regulations and shall apply uniformly to each class or kind of structure or land, except and particularly as hereinafter provided:

- A. No building, structure or land shall hereinafter be used or occupied, and no building or structure or part thereof shall hereafter be erected, constructed, reconstructed, moved or structurally altered externally, unless in conformity with all the regulations herein specified for the zoning district in which it is located.
- B. No building or other structure shall hereafter be erected or altered to: exceed the height; accommodate or house a greater number of families; occupy a greater percentage of lot area; or have narrower or smaller rear yards, front yards, side yards or other open spaces than herein required, or in any other manner contrary to the provisions of this Zoning Ordinance.
- C. No part of a yard, or other open space, or off-street parking or loading space required about or in connection with any building for the purpose of complying with this Zoning Ordinance shall be included as part of a yard, open space or off-street parking or loading space similarly required for any other building.
- D. No yard or lot existing at the time of passage of this Zoning Ordinance shall be reduced in dimension or area below the minimum requirements set forth herein. Yards or lots created after the effective date of this Zoning Ordinance shall meet at least the minimum requirements established by this Zoning Ordinance.
- E. It is the intent of this Zoning Ordinance that it be interpreted as excluding any use that is not expressly permitted whether as a permitted, accessory, or special exception use.

**§ 80-192. Permits Required**

- A. No building or other structure shall be erected, moved, added to, or structurally altered, or use of land be changed without a zoning

certificate (certificate of approval) therefore, issued by the Planning Commission. No zoning certificate shall be issued except in conformity with the provisions of this Zoning Ordinance, except after written order from the Board of Appeals.

- B. No building or other structure shall be erected, nor shall any existing building or structure be moved, added to, enlarged, or structurally altered, and no excavation for any building or other structure shall begin without the issuance of a building permit. When issued, such permit shall be valid for a period of six (6) months.
- C. In addition to the building permit and zoning certificate, the following permits may be required by the Town Administrator:
  - 1. Applications Approved by the Board of Appeals. The Town Administrator shall issue permits in conformance with the written authorization of the Board of Appeals concerning administrative review appeals, special exception permit appeals, dimensional variance appeals, or other appeals as authorized in this Zoning Ordinance.
  - 2. Sign Permits. No sign shall be created, erected, moved, added to, or structurally altered, nor shall any of said activities be commenced without a sign permit.
  - 3. Subdivision Plat. If the permit involves the subdivision of land, an approved subdivision plat shall be required as provided in the Millington Subdivision Regulations.
  - 4. Other Permits. Additional permits, including approvals by other agencies, may be required to enforce the provisions of this Zoning Ordinance.
- D. Permits are issued under this Zoning Ordinance when a review of the application submitted, including the plans contained therein, indicates that the development will comply with the provisions of this Zoning Ordinance if completed as proposed. Such plans and applications as are finally approved are incorporated into any permit issued, all development shall occur strictly in accordance with such approved plans and applications.
- E. Physical improvements to land to be subdivided shall not be commenced without a signed, recorded final plat, a Bond, or Letter of Credit and a public works agreement approved by the Mayor and Council.

**§ 80-193. Drawings and plats.**

- A. All applications for zoning certificate or building permits shall be accompanied by a drawing containing the information shown in Appendix A or plat, in duplicate or as required by the Town Administrator.
- B. The drawings shall contain suitable notations indicating the proposed use of all land and buildings. A careful record of the original copy of such applications and plats shall be kept in the office of the Administrator, and a duplicate copy shall be kept at the building at all times during construction.

#### **§ 80-194. Site Plan Review and Approval**

- A. Prior to issuing a zoning certificate or building permit for construction, expansion or change in use, a site plan and supporting documentation shall be submitted to the Planning Commission for its review and approval.
- B. The purpose of major site plans is to assure detailed compliance with applicable provisions of enacted regulations and to prescribe standards for the design and construction of site improvements. Development requiring site plan approval shall be permitted only in accordance with all specifications contained on an approved site plan, and shall not be undertaken until the site plan is approved and all required construction permits have been obtained subsequent to such approval.
- C. Applicability. All development or land use activities within the Town shall require site plan review before being undertaken, except the following:
  - 1. Construction or expansion of a single one-family dwelling and ordinary accessory structures, and related land use activities.
  - 2. Landscaping or grading which is not intended to be used in connection with a land use reviewable under the provisions of this Zoning Ordinance.
  - 3. Ordinary repair or maintenance or interior alterations to existing structures or uses.
  - 4. Exterior alterations or additions to existing structures which would not increase the square footage of the existing structure by more than 500 square feet or have a cost value of less than \$10,000.00.
  - 5. Agricultural or gardening uses.
  - 6. All signs except in conjunction with new development.
- D. Site plan applications shall include the information listed in Appendix A for preliminary and final site plans. The Planning Commission may at its discretion waive any information or preliminary requirements which are not relevant to the proposed use and site.
- E. The Planning Commission's review of the preliminary site plan shall include, but is not limited to the following considerations:
  - 1. Adequacy and arrangement of vehicular traffic access and circulation, including emergency vehicle access.
  - 2. Location, arrangement, appearance and sufficiency of off-street parking and loading.
  - 3. Location, arrangement, size and design of buildings, lighting and signs.
  - 4. Relationship of the various uses to one another and their scale.
  - 5. Adequacy, type and arrangement of trees, shrubs and other landscaping constituting a visual and noise buffer between adjacent uses and adjoining lands.
  - 6. Adequacy of storm water and sanitary waste disposal.
  - 7. Adequacy of structures, roadways and landscaping in areas susceptible to flooding and ponding or erosion.

8. Compatibility of development with natural features of the site and with surrounding land uses.
  9. Adequacy of flood proofing and flood prevention measures consistent with the flood hazard prevention regulations of the Federal Emergency Management Agency.
  10. Adequacy of open space for play areas, informal recreation and the retention of natural areas such as wildlife habitats, wetlands and wooded areas.
  11. Adequacy of pedestrian access.
- F. The Planning Commission may require additional information which appears necessary for a complete assessment of the project.
- G. Major site plans shall be prepared and certified by an engineer, architect, landscape architect, or land surveyor duly registered to practice in the State of Maryland.
- H. Upon receipt of the major site plan, the Planning Commission shall review the site plan, soliciting comments from other departments, agencies, and officials as may appropriate. The site plan shall be approved if it meets the requirements of this section, Appendix A, other requirements of this Zoning Ordinance and all other Federal, State, and County regulations. Notice of approval or disapproval of the site plan shall be given in writing to the applicant.
- I. Construction of required improvements.
1. Upon approval of a site plan, the applicant shall then secure the necessary construction permits from appropriate agencies before commencing work. The applicant may construct only such improvements as have been approved by the Planning Commission or appropriate Town review and approval agencies.
  2. The Town may require inspection after construction has been completed, and inspection of site improvements.
- J. Expiration and Extension
1. Approval of site plans shall be for a two (2) year period and shall expire at the end of such period unless building construction has begun.
  2. Upon written request by the applicant, within thirty (30) days prior to the expiration of said approval, a one (1) year extension may be given by the Planning Commission.
  3. Such request shall be acknowledged and a decision rendered thereon not more than thirty (30) days after filing of said request.

**§ 80-195. Fees.**

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

**§ 80-196. Interpretation; conflict.**

- A. In interpreting and applying the provisions of this Zoning Ordinance, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, comfort, prosperity and general welfare.
- B. It is not intended by this Zoning Ordinance to interfere with or abrogate or annul any easements, covenants or other agreements between parties; provided, however, that where this Zoning Ordinance imposes a greater restriction upon the use of buildings or premises or upon height of buildings or requires larger open spaces than are imposed or required by other resolutions ordinances, rules or regulations or by easements, covenants or agreements, the provisions of this Zoning Ordinance shall govern.
- C. If, because of error or omission in the Zoning District Map, any property in the jurisdiction of this Zoning Ordinance is not shown as being in a zoning district, the classification of such property shall be the zoning classification permitting the lowest residential density until changed by amendment.
- D. Whenever these regulations, subdivision plats, or development plans approved in conformance with these regulations, are in conflict with other local Ordinances, regulations, or laws, the more restrictive Ordinance, regulation, law, plat, or plan shall govern and shall be enforced by appropriate local agencies. When subdivision and development plans, approved by the Planning Commission, contain setback or other features in excess of the minimum Zoning Ordinance requirements, such features as shown on the approved plan shall govern and shall be enforced by the Town. Private deed restrictions or private covenants for a subdivision, which have not been approved by the Planning Commission and made a part of the approved subdivision plan, do not fall within the jurisdiction of enforcement by any Town agency and cannot be enforced by the Town.
- E. To avoid undue hardship, nothing in this Zoning Ordinance shall be deemed to require change in the plans, construction, or designated use of any building or premises on which an application for a certificate or permit was filed with the Town prior to the date of adoption of this Zoning Ordinance or amendment thereto, providing that the application meets all zoning and other requirements in effect on the date of said application. The issuance of said certificate or permit shall be valid only if it is exercised within one hundred and eighty (180) days

from the date of issuance of the certificate or permit. "Exercised", as set forth in this section, shall mean that binding contracts for the construction of the main building or other main improvement have been let, or in the absence of contracts, that the main building or other main improvement is under construction to a substantial degree or that prerequisite conditions involving substantial investments shall be under contract, in development, or completed. When construction is not a part of the use, "exercised" shall mean that the use is in operation in compliance with the conditions as set forth in the permit or certificate.

**§ 80-197. Enforcement.**

- A. It shall be the duty of the Town Administrator to enforce the provisions of this Zoning Ordinance and to refuse to issue any permit for any building or for the use of any premises which would violate any of the provisions of this Zoning Ordinance.
- B. It shall also be the duty of all officers and employees of the Town to assist the enforcing officer by reporting to him any seeming violation in new construction or reconstruction or in the use of land or building.

**§ 80-198. Institution of action to end violation.**

In case any building is erected, constructed, reconstructed, altered, repaired or converted or any building or land is used in violation of this Zoning Ordinance the Town Administrator is authorized and directed to institute any appropriate action to put an end to such violation.

**§ 80-199. Violations and penalties.**

- A. Except as may otherwise be provided in this Zoning Ordinance, any person or corporation who shall violate any of the provisions of this Zoning Ordinance or fail to comply therewith or with any of the requirements thereof or who shall build or alter any building in violation of any detailed statement or plan submitted and approved hereunder shall be guilty of a misdemeanor and shall be liable to a fine of not more than five hundred dollars (\$500.00), and each day such violation shall be permitted to exist shall constitute a separate offense.
- B. The owner or owners of any building or premises or part thereof where anything in violation of this Zoning Ordinance shall be placed or shall exist and any architect, builder, contractor, agent, person or corporation employed in connection therewith and who has assisted in the commission of any such violation shall be guilty of a separate offense and, upon conviction thereof, shall be fined as hereinbefore provided.
- C. Additional enforcement provisions apply in the CA District.

## APPENDIX A BASIC INFORMATION REQUIRED WITH ZONING AND BUILDING PERMIT APPLICATIONS

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

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

Item#	DESCRIPTION	Sketch/ Concept Plan	Minor Site Plan	DEVELOPMENT STAGE		
				General Develop. Plan	Major Site Plan	
					Prelim.	Final
	ning commission chairman, and the health department.					
11.	Appropriate certification blocks.		X			X
12.	Certification and dedication by the owner or owners to the effect that the subdivision as shown on the final plat is made with his or her consent and that it is desired to record same.		X			X
13.	Monumentation, location and description.		X			X
14.	Standardized sheets 18"x24" (final - black ink on mylar).		X		X	X
15.	Metes and bounds survey showing dimensions, bearings, curve, data, length of tangents, radii, arc, chords, and central angles for all centerlines and rights-of-way, and centerline curves on streets, datum and benchmark, primary central points approved by the Town Engineer. (Boundary of proposed subdivision can be a deed plot).		X		X	X
16.	Acreage of tract to the nearest thousandth of an acre.	X	X	X	X	X
17.	Date of original and all revisions.	X	X	X	X	X
18.	Size and location of any existing or proposed structures with all setbacks dimensioned (for concept plan, GDP general location but not setbacks). Include storm drains, culverts, retaining walls, fences, stormwater management facilities, sediment and erosion structures.	X	X	X	X	X
19.	Number of dwelling units.	X	X	X	X	X
20.	Location, dimensions, bearings, names of any existing or proposed roads or streets. The location of pedestrian ways, driveways. Right of way widths. (for GDP, concept plans, general locations).	X	X	X	X	X
21.	All proposed lot lines (width and depth) and area of lots in square feet, number of lots, lot numbers.		X		X	X
22.	Location and type of utilities.		X		X	
23.	Copy and/or delineation of any existing or proposed deed restrictions or covenants.		X		X	



				DEVELOPMENT STAGE		
					Major Site Plan	
Item#	DESCRIPTION	Sketch/ Concept Plan	Minor Site Plan	General Develop. Plan	Prelim.	Final
24.	References to protective covenants governing the maintenance of undedicated public spaces or reservations.		X			X
25.	Location and size of proposed Natural Park areas, play grounds and other public areas.	X		X	X	X
26.	Any existing or proposed easement (drainage and utility) or land reserved for or dedicated to public use*. Location, dimensions of proposed reservations, right of ways, open space, buffers, forested areas along with means by which these areas will be permanently maintained.	X	X	X	X	X
27.	Statement of owner dedicating streets, right-of-way, and any sites for public use.		X			X
28.	Development stages or phasing plans (for GDP and concept plans, general phasing). Sections numbered by phase.	X		X		
29.	Total number of off-street parking spaces including ratio and number of units per space.	X	X	X	X	
30.	List of required regulatory approvals/permits.	X	X	X	X	X
31.	List of variances required or requested.	X	X	X	X	X
32.	Requested or obtained design waivers or exceptions.	X	X	X	X	X
33.	Payment of application fees.	X	X	X	X	X
34.	Total area of the site that will be temporarily and/or permanently disturbed.		X		X	
<b>II.</b>	<b>SETTING-ENVIRONMENTAL INFORMATION</b>					
35.	All existing streets, water courses, flood plains wetlands, or other environmentally sensitive areas on or adjacent to the site.	X	X	X	X	
36.	Existing rights-of-way and/or easements on or immediately adjacent to the tract.	X	X	X	X	X
37.	Topographical features of subject property from USGS map or more accurate source at 2'-5' intervals, 50' beyond the boundary, with source stated on maps.	X		X	X	

				DEVELOPMENT STAGE		
					Major Site Plan	
Item#	DESCRIPTION	Sketch/ Concept Plan	Minor Site Plan	General Develop. Plan	Prelim.	Final
38.	Field delineated or survey topo.		X			X
39.	General areas of >15% slope shaded and identified as steep slopes.	X	X	X		
40.	Slope analysis of >15% slopes. These areas shall be shaded and identified as steep slopes.				X	X
41.	Forest Stand Delineation (See Zoning Ordinance).		X		X	
42.	Existing system of drainage of subject site and adjacent sites and of any larger tract or basin of which it is a part.		X		X	X
43.	A 100 Year Flood Plain based on FEMA maps.	X	X	X	X	X
44.	Tidal and non-tidal wetland delineation based on NWI maps and field review.	X	X	X	X	
45.	Non-tidal wetlands identification based on field delineation/determination.					X
46.	Location of sensitive areas and their Buffers (Zoning Ordinance).	X	X	X	X	X
47.	Location and width of Buffer yards.	X	X	X	X	X
48.	Soil types based on County Soil Survey.		X		X	
49.	Traffic Impact Study, as required.				X	
50.	Statement of effect on school district and school bus service, as required.				X	
<b>The following additional information items are required in the areas designated Critical Areas</b>						
51.	Location of the Critical Area District boundary and Critical Area designation.	X	X	X	X	X
52.	Number of acres in the Critical Area.	X	X	X	X	
53.	Mean high waterline and landward edge of tidal wetlands.	X	X	X	X	
54.	Location of existing forested areas to be disturbed by construction. Planting plan approved by the Maryland Forest Service (final).	X	X	X	X	

				DEVELOPMENT STAGE		
					Major Site Plan	
Item#	DESCRIPTION	Sketch/ Concept Plan	Minor Site Plan	General Develop. Plan	Prelim.	Final
55.	The known locations of HPA's, the habitat of any threatened or endangered species, and the habitat of any Species in Need of Conservation. Habitat Protection Plan reviewed by the Maryland Fish, Heritage and Wildlife Administration.	X	X	X	X	X
56.	The location of the Critical Area Buffer and the expanded Buffer, as required.	X	X	X	X	X
57.	Hydric and highly erodible soils based on the County Soil Survey.	X	X	X	X	
58.	Natural Park management plan, if applicable.					X
59.	Shore erosion protection plan, if applicable.					X
60.	Environmental assessment.		X	X	X	
61.	Statement of consistency with the Critical Area Program.	X	X	X	X	
<b>III.</b>	<b>PLATS, IMPROVEMENT PLANS, AND CONSTRUCTION INFORMATION</b>					
62.	Subdivision Plat meeting requirements of Millington Subdivision Regulations.		X			X
63.	Grading and drainage plans including roads, drainage ditches, sediment basins, and berms.		X		X	X
64.	Existing and proposed contour intervals as follows:		X		X	X
	Less than 5% slope = 1 foot					
	5 to 15% slopes = 2 feet or less					
	>15% = as required for construction					
65.	Proposed street grades, typical cross sections and profiles, right-of-way widths, pedestrian ways, total area of roads.		X		X	X
66.	Existing and proposed utility infrastructure plans and profiles including sanitary sewer, water, storm drainage and stormwater management, as appropriate in the case of minor subdivisions.		X		X	X
67.	Grades and sizes of sanitary sewers and waterlines.		X		X	X
68.	Direction and distance to water and sewer if not available		X		X	

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

**APPENDIX B BUFFERYARD REQUIREMENTS AND LANDSCAPE GUIDELINES**

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## **PART I Buffer yard Requirements**

### **B-1: Buffer yard Specifications**

The following illustrations graphically indicate the specifications of each buffer yard. Buffer yard requirements are stated in terms of the width of the buffer yard and the number of plant units required per one hundred (100) linear feet of buffer yard. The recommended buffer yard should be one of the options illustrated. The "plant unit multiplier" is a factor by which the basic number of plant materials required for a given buffer yard is determined given a change in the width of that yard. The type and quantity of plant materials required by each buffer yard, and each buffer yard option, are specified in this section.

Afforestation and reforestation plantings required under the Forest Conservation requirements contained in the Zoning Code may occur in buffer yards provided such plantings meet the minimum requirements for afforestation or reforestation.

The options within any buffer yard are designed to be equivalent in terms of their effectiveness in eliminating the impact of adjoining uses. Cost equivalence between options was attempted where possible. Generally, the plant materials which are identified as acceptable are determined by the type(s) of soil present on the site. Each illustration depicts the total buffer yard located between two uses.

Whenever a wall, fence, or berm is required within a buffer yard, these are shown as "structure required" in the following illustrations, wherein their respective specifications are also shown. All required structures shall be the responsibility of the higher intensity use.

### **B-2: Plant Material**

The following plant material substitutions shall satisfy the requirements of this section.

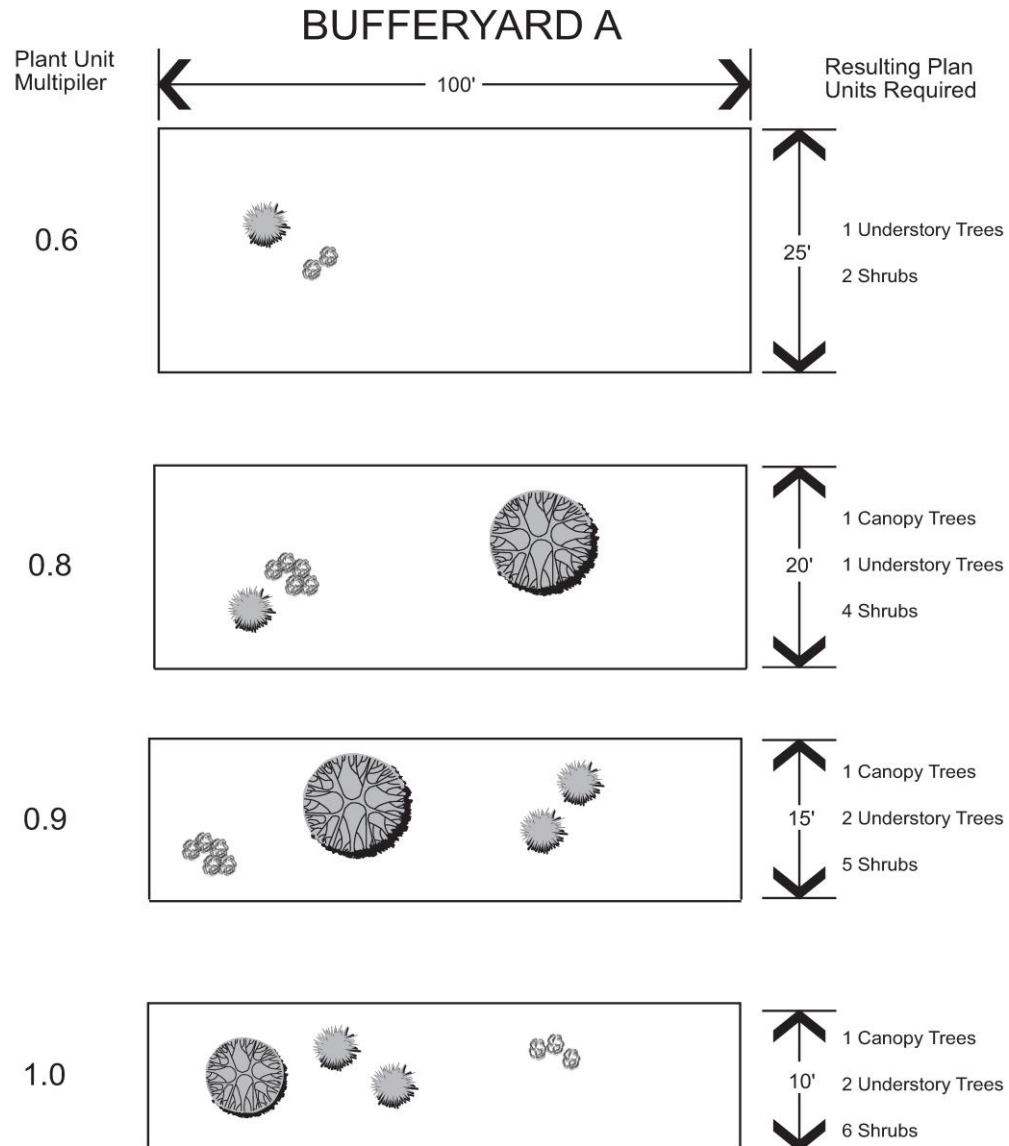
- (1) In buffer yards C and D evergreen canopy or evergreen understory trees may be substituted for deciduous canopy forest trees without limitation.
- (2) In buffer yards B evergreen canopy or evergreen understory trees may be substituted as follows:
  - (a) In the case of deciduous canopy forest trees, up to a maximum of fifty (50) percent of the total number of the deciduous canopy trees otherwise required.
  - (b) In the case of deciduous understory, without limitation.
- (3) In all buffer yards, evergreen or conifer shrubs may be substituted for deciduous shrubs without limitation.
- (4) In all buffer yards required of public service uses, the public service use may substitute evergreen canopy or evergreen understory plant materials for canopy forest trees and understory plant materials, without limitation. If the development on the adjoining use is existing, planned, or deed-restricted for solar access, understory trees may be substituted for canopy trees where canopy trees would destroy solar access. Any existing plant material which otherwise satisfies the requirements of this section may be counted toward satisfying all such requirements.

The exact placement of required plants and structures shall be the decision of each user except that the following requirements shall be satisfied:

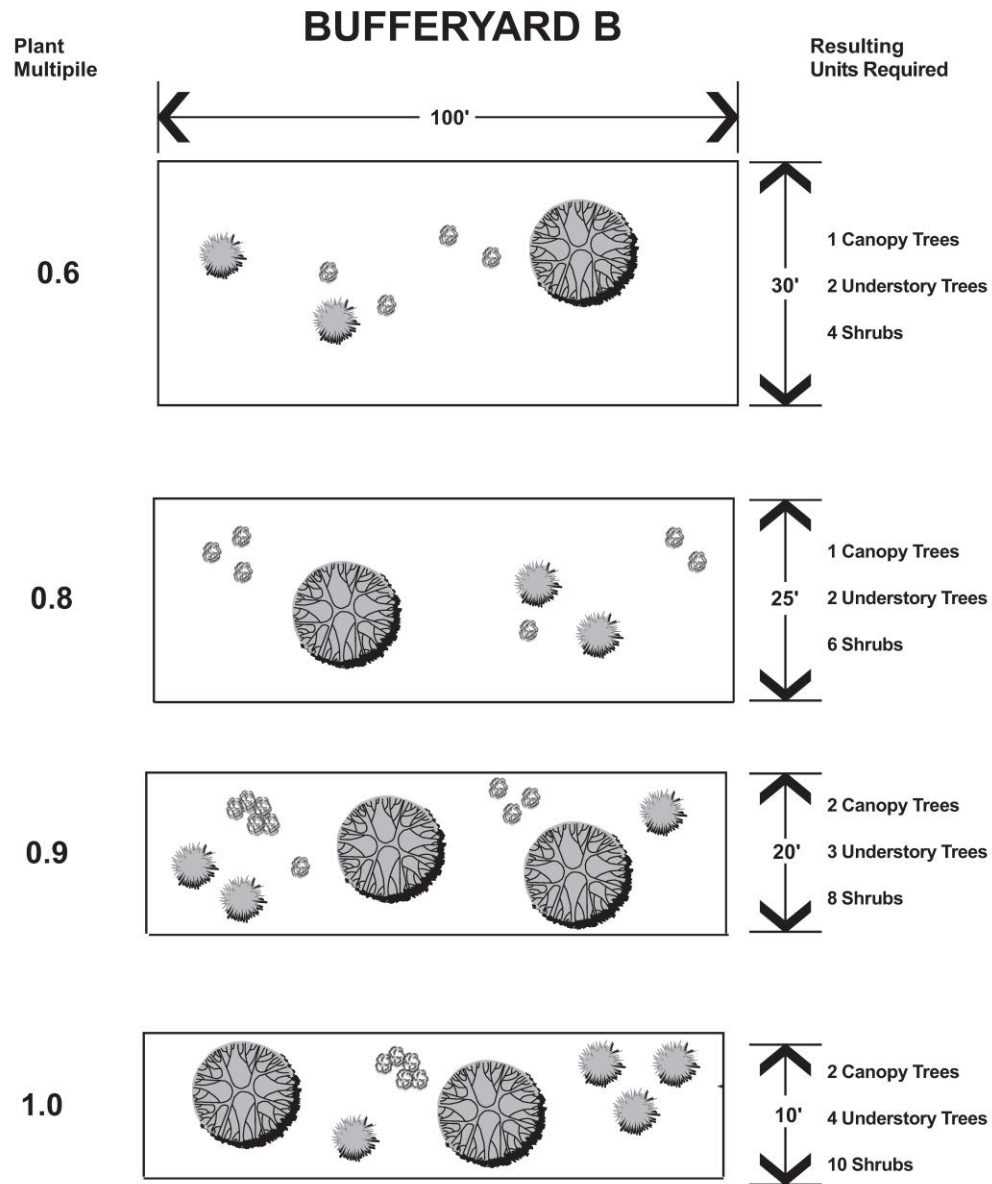
- (1) Evergreen (or conifer) class III and IV plant materials shall be planted in clusters rather than singly in order to maximize their chances of survival.
- (2) Berms (B<sub>1</sub> and B<sub>2</sub>,) required of buffer yard D options are intended to buffer more significant nuisances from adjacent uses and, additionally, to break up and absorb noise, which is achieved by the varied heights of plant materials between the masonry wall and the noise source.

All buffer yard areas shall be seeded with lawn unless ground cover is already established.



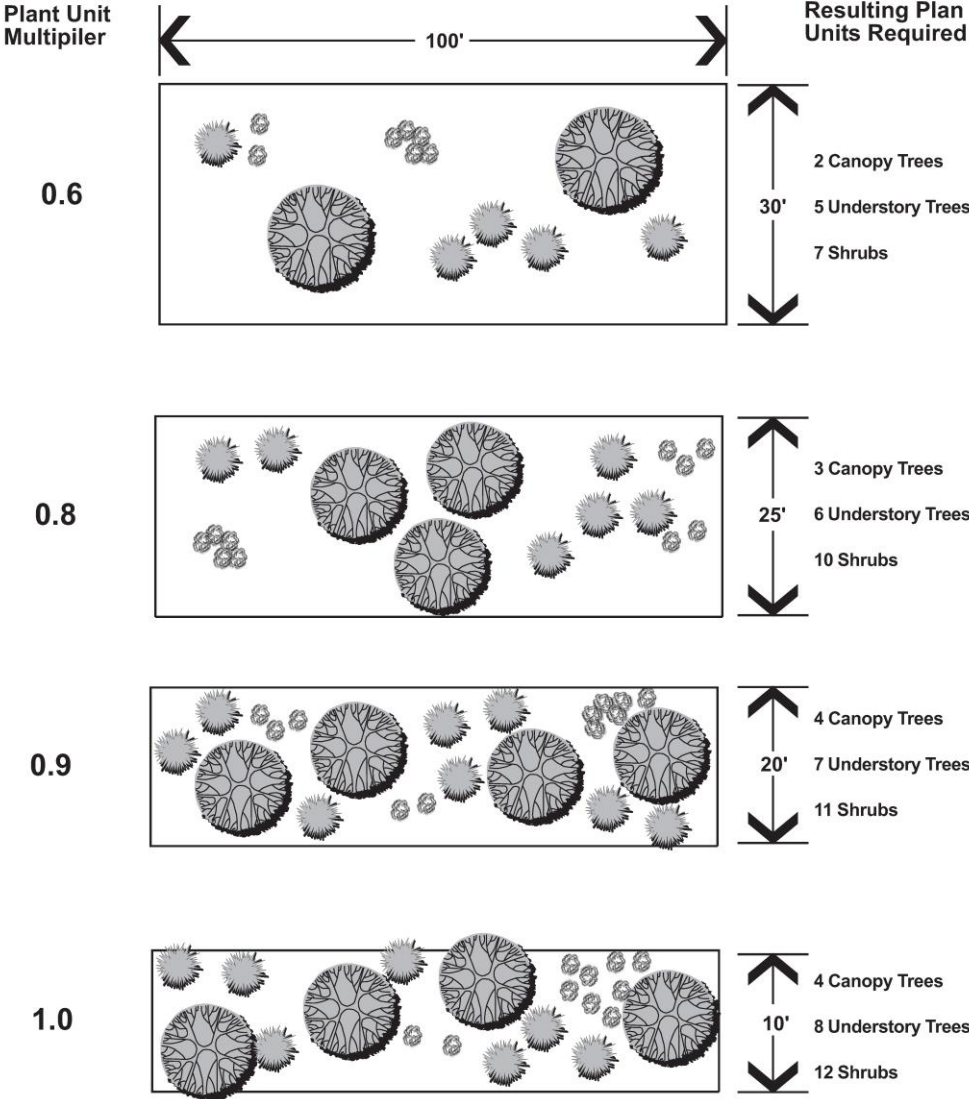


**Buffer yard A Illustration**

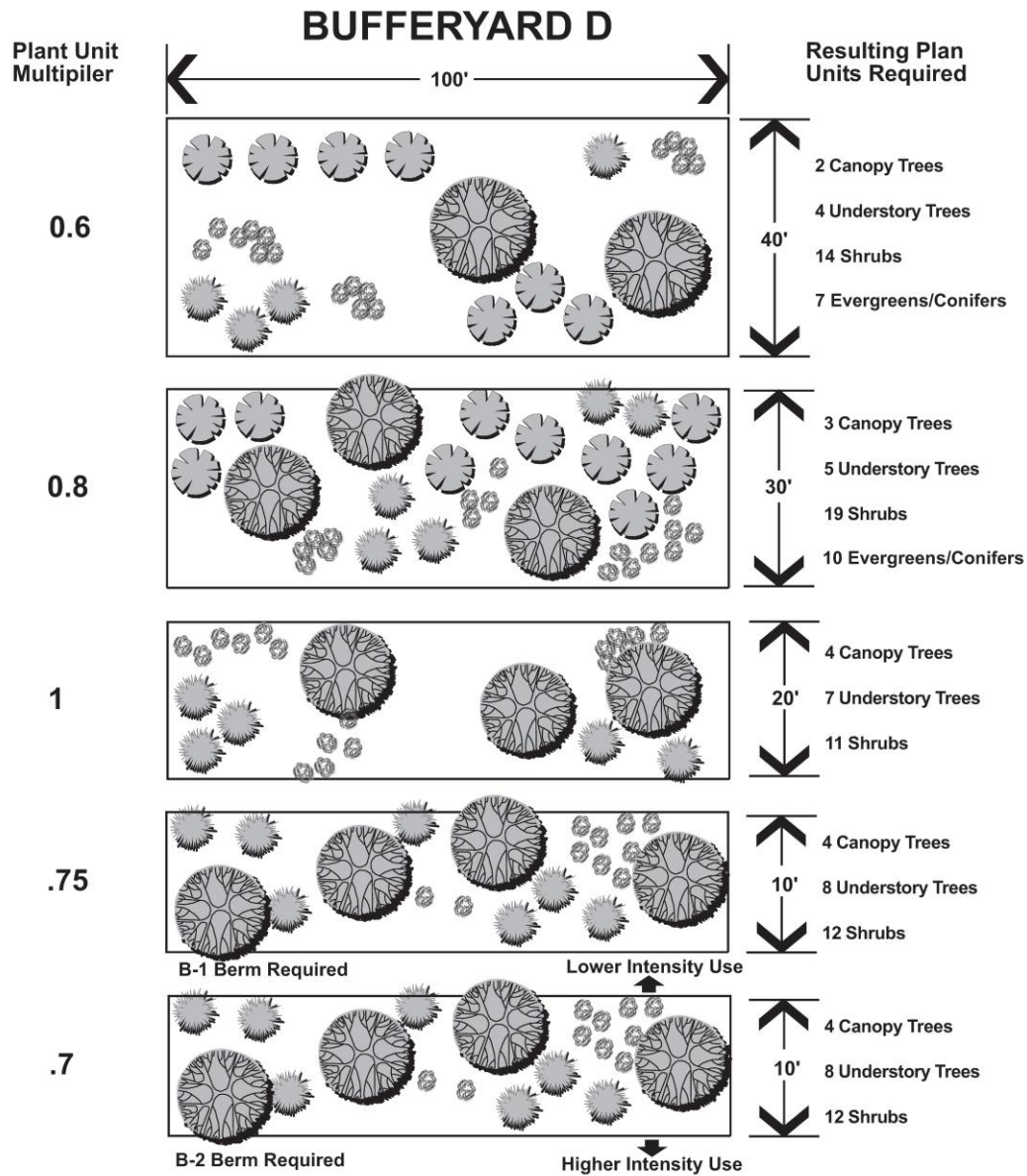


### **Buffer yard B Illustration**

# **BUFFERYARD C**



### **Buffer yard C Illustration**

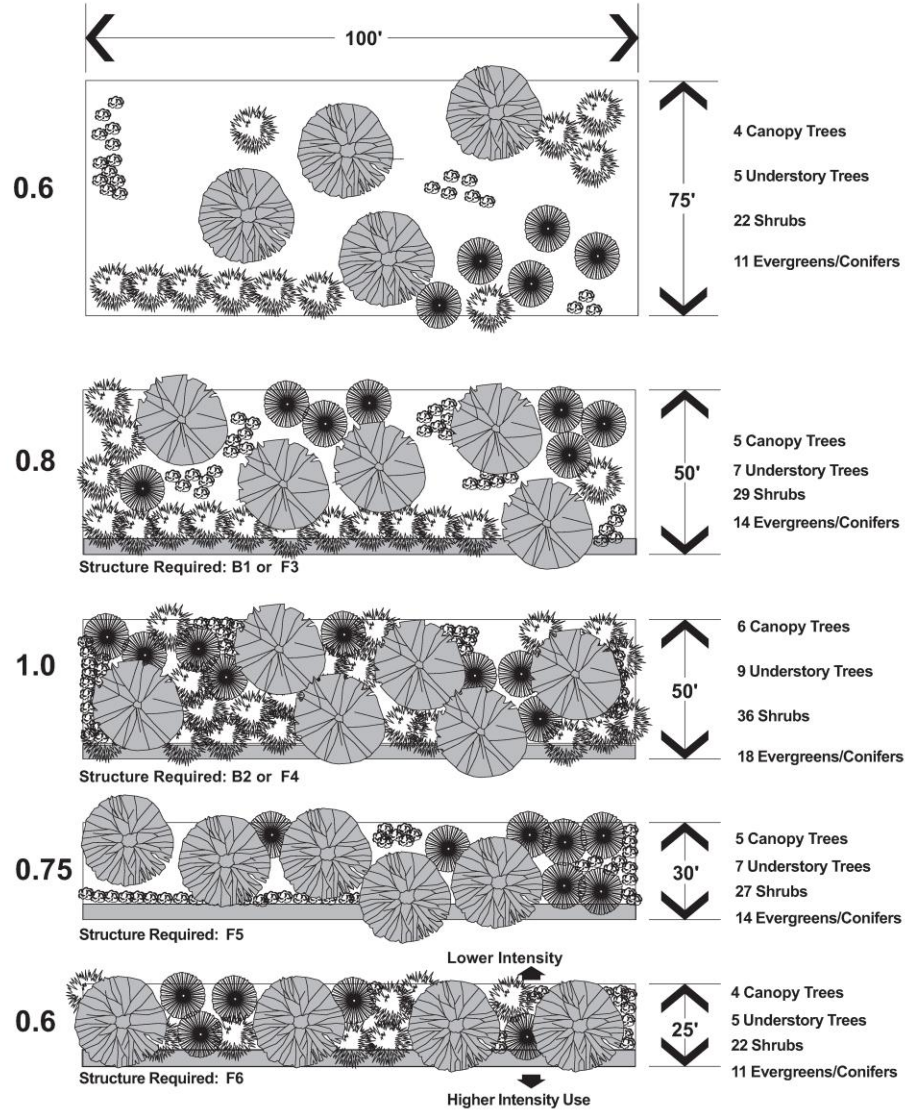


## Buffer yard D Illustration

Plant  
Multiple

## BUFFERYARD E

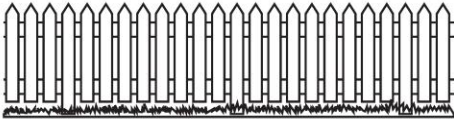
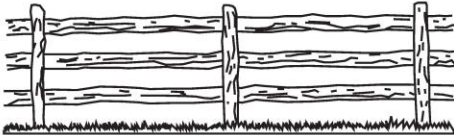
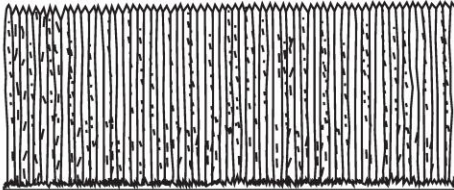
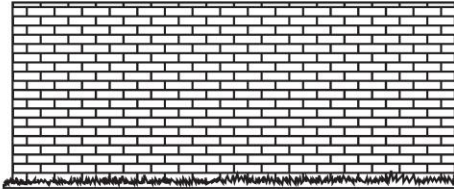
Resulting  
Units Required





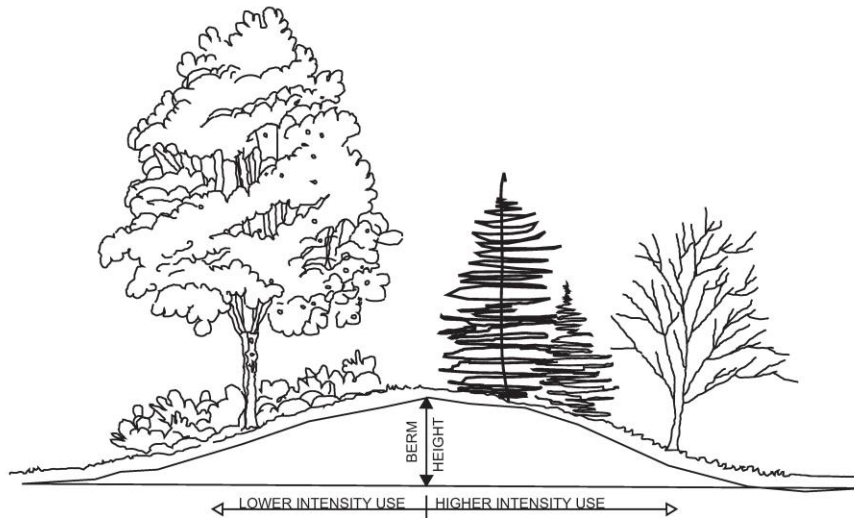
## Buffer yard E Illustration

FENCES

SYMBOL	HEIGHT	FENCES
F1	44"	 Wood
F2	48"	 Wood Rail
F3	6'	 Wood Stockade
F4	7'	
F5	6'	 Masonry Wall (Poured Concrete, Cement Block, Brick, etc.)
F6	7'	

## Buffer yard Structures Illustration

# BERMS



Symbol  
B1  
B2

Height  
4'  
6'

Material  
Earth  
Earth

## **Buffer yard Berms Illustration**

## **PART II Landscape Guidelines**

### **B-3: Guide for Protecting Existing Trees**

The Millington Zoning Ordinance provides for the retention and protection of large trees when land is developed. To better ensure the survival of existing trees, the developer should heed the following guidelines:

- (1) Protect trees with fencing and armoring during the entire construction period. The fence should enclose an area 10 feet square with the tree at the center.
- (2) Avoid compaction of the soil around existing trees due to heavy equipment. Do not pile dirt or other materials beneath the crown of the tree.
- (3) Keep fires or other sources of extreme heat well clear of existing trees.
- (4) Repair damaged roots and branches immediately. Exposed roots should be covered with topsoil. Severed limbs and roots should be painted. Wherever roots are destroyed, a proportional amount of branches must be pruned so the tree doesn't transpire more water than it takes in. Injured trees must be thoroughly watered during the ensuing growing year.
- (5) Prune all existing trees that will be surrounded by paving to prevent dehydration.

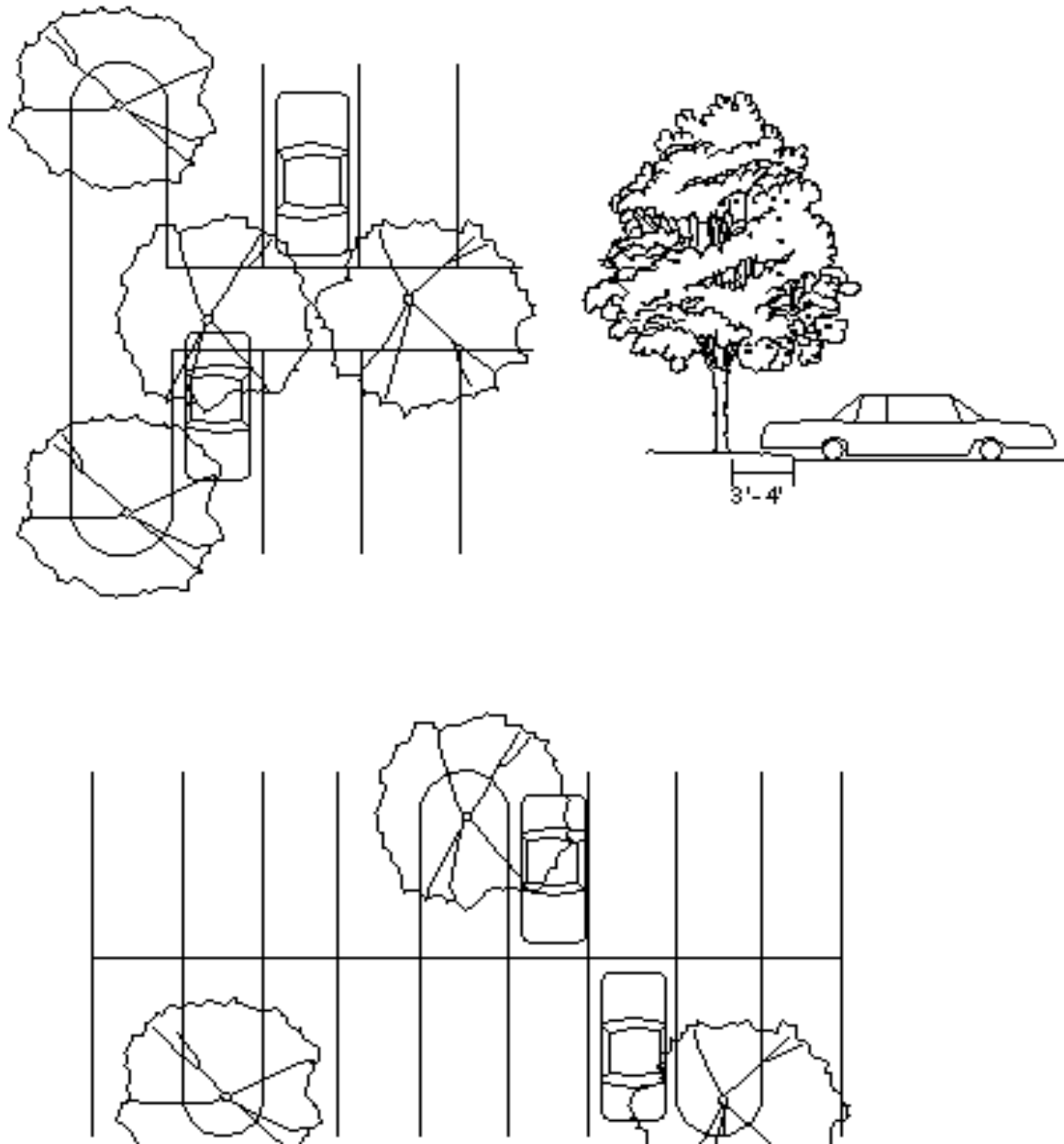
### **B-4: Standard for Street and Parking Lot Trees**

Trees planted in compliance with the parking lot landscape requirements shall have most or all of the following qualities.

- (1) Hardiness
  - (a) Resistance to extreme temperatures.
  - (b) Resistance to drought.
  - (c) Resistance to storm damage.
  - (d) Resistance to air pollution.
  - (e) Ability to survive physical damage from human activity.
- (2) Life Cycle
  - (a) Moderate to rapid rate of growth.
  - (b) Long life.
- (3) Foliage and Branching
  - (a) Tendency to branch high above the ground.
  - (b) Wide spreading habit.
  - (c) Relatively dense foliage for maximum shading.
- (4) Maintenance

- (a) Resistance to pests.
- (b) Resistance to plant diseases.
- (c) Little or no pruning requirements.
- (d) No significant litter problems.

### B-5: Typical Parking Lot Planting Islands



### B-6: Guide for Planting Trees

The trees recommended in Section B-9 have minimal maintenance requirements. However, all trees must receive a certain degree of care, especially during and immediately after planting. To protect an investment in new trees, the developer should ensure that the following guidelines are followed when planting:

**Selection.** Select trees well adapted to the microclimates of individual planting sites. A poor tree match dooms the tree from the start no matter how much care is taken in planting.

**Planting Times.** The best time for planting is early spring and early fall. Trees planted in the summer run the risk of dehydration.

**Drainage.** Prior to planting, test soil drainage. If water does not drain out of a sample planting hole within a few hours, consider installing drainage in the bottom of the hole to drain away excess water. Also consider raising or berming the planting site, or adding



several inches of good quality topsoil in the planting hole and the surrounding area, but do not simply amend the soil in the planting hole - water movement will be detrimentally altered. If none of the above is possible, select a more water tolerant tree species (red maple, sycamore, bald cypress, willow oak river birch, etc. - avoid trees like dogwoods that don't like "wet feet").

**The Planting Hole.** The planting hole that is dug should be wide and shallow. A flat, pancake-shaped hole that approximates the shallow, horizontal root growth that the tree will produce is recommended. In average soil, dig the hole only as deep as the root ball, and in heavy clay soil, to enhance drainage, dig the hole an inch or two shallow. Loose soil should not be put beneath the root ball in order to avoid having the tree end up planted too deep as the soil beneath it settles or compacts. The exposed top of the ball can be covered with mulch. Whenever possible, hole walls should gradually taper up to grade, rather than being straight, to more closely approximate where root growth will occur.

**Soil Additives.** Adding water-absorbing polymers (hydrogels, super slurpers, etc.) to the backfill soil has not proven beneficial in the majority of the landscape research that has been conducted with regard to tree planting. The same is true to adding organic amendments (peatmoss, compost, etc.). In general the only substitute for backfilling with the existing soil, unamended, is backfilling with better quality topsoil.

**Planting Near Sidewalks, Driveways, and Other Areas.** Plant all trees at least 3 1/2 feet from the end of head-in parking spaces to prevent damage from car overhangs. When planting near sidewalks, driveways and other areas where tree root surfacing can cause damage or be a maintenance problem, consider installing one of the physical root redirecting barriers being marketed, or try the herbicide treated landscape fabric now available for this purpose (Biobarrier). No long term research has yet been published on the use of these tree redirecting materials, so their long term effect on trees is not yet known.

**Balled and Burlapped Trees.** When planting balled and burlapped trees, closely inspect the material used to wrap the root ball. Many synthetic materials (nylons, etc.) are being used, as well as burlaps treated to retard their degradation. When in doubt as to whether or not these materials will degrade underground, do not leave them intact. Remove the pinning nails or lacing, and roll back the top several inches. Make vertical slits in several places around the ball. You do not want a wrapping material that won't degrade to restrict root growth.

**Wire Baskets.** Research has shown that the wire baskets used to protect root balls, whether galvanized or not, are degrading only very slowly underground due to low oxygen. No long term root girding or damage has been found, however, so it does not appear that the baskets need to be removed. If the top loops of the wire basket will be at ground level or slightly above, it will be advisable to remove this section to keep equipment from hanging up in the loops.

**Ropes.** Be sure to remove all ropes, whether jute or nylon, that have been tied around the trunk. Again, degradation is slow or nonexistent, resulting in trunks being girded.

**Containers.** Be sure to remove all plastic containers from the root balls of container-grown or containerized trees. If trees have been grown or potted into fiber pots, break away the top several inches of the fiber pot. Many fiber pots are being coated with extra materials to extend their shelf life, but this can slow degradation below ground and retard root extension.

**Root Care in Container Plants.** When a container is removed, if roots are found circling around the outside of the root ball, cut them in a few places to remove the possibility of the curling root eventually girdling the trunk. Select trees grown in pots with vertical ribs rather than ones with straight walls or horizontal ribs as the vertical ribs help reduce root circling.

**Fertilizer.** Fertilizer can be added to the backfill if it is a slow-release form - Osmocote, Woodace briquettes, tree spikes, etc. The caution in the past against adding fertilizers at planting time was a result of not having slow-release fertilizers available - agronomic fertilizers that were and still can be used in landscaping have the potential to burn and should not be added.

**Watering.** Good follow-up watering is important to help establish a tree's root system. Several water reservoir devices are available but may be too expensive or cumbersome to justify using.

**Mulching.** Trees should be mulched, but not over mulched, when planted. Two or three inches of organic mulches, such as shredded or chunk pine bark, or inorganic mulches, such as volcanic rock, is adequate. Keep mulches from touching the trunks of trees. With organic mulches, excessive mulch piled against tree trunks can hold too much moisture against the bark and lead to disease problems. It also may become a habitat for rodents that will feed on the bark. With inorganic mulches, if the tree is in a windy location and the trunk moves considerably, the bark may become abraded by the inorganic mulch.

**Landscape Fabrics for Weed Control.** The use of black plastic beneath mulch around trees is not recommended because air and water exchange is blocked. For added weed control try one of the landscape fabrics that has proven more weed root penetration resistant (Dalen's Weed-X, DeWitt's Pro 5, Weed Barrier, etc.) but do not pile too much mulch (not over two inches) atop the fabric or weeds will simply grow in the mulch layer.

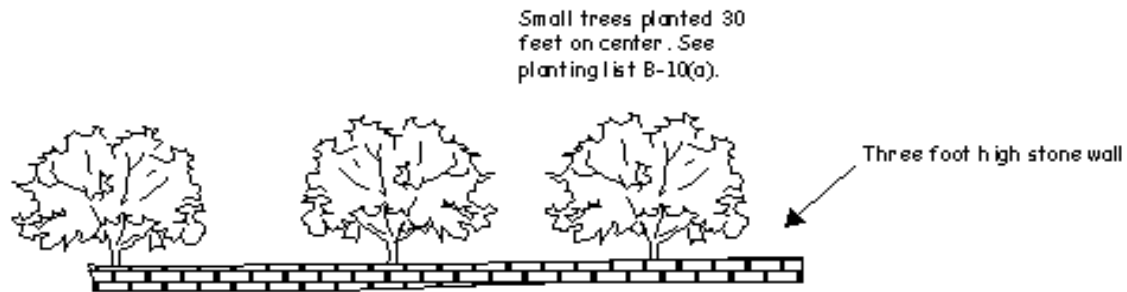
**Tree Staking.** Don't automatically stake all trees, especially small ones. If a tree is in a windy location, or has a crown, stake for a maximum of one year. Try to stake so that the tree has a slight amount of flex rather than being held rigidly in place. Use guying or attaching material that will not damage the bark. If the stakes are to be left in place longer than one year to serve as a barrier against equipment, be sure to remove the guying to prevent trunk girdling. A variety of protective devices are available for trunk protection if that is an important consideration.

**Tree Wraps.** The use of tree wraps and other protection materials that are applied directly to the trunk is currently under investigation. If a material is applied (paper, fabric, burlap, strips, etc.), remove it after one year. If materials are wrapped onto the trunk, wrap from the base of the tree upward so that water is shed off the wrap, not funneled under it.

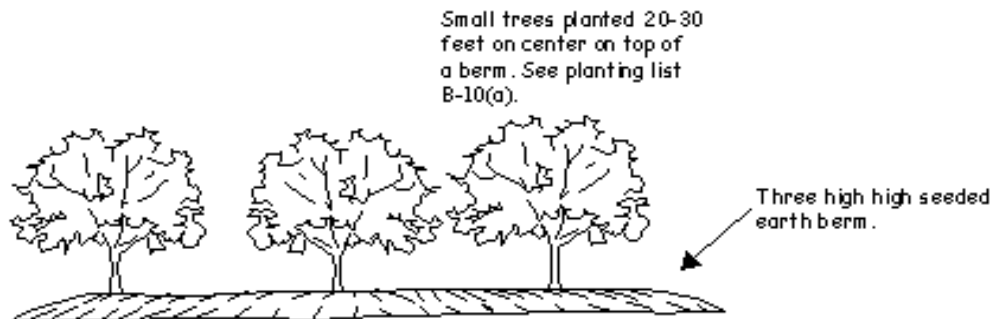
**Tags and Labels.** Remove tags and labels from the trees to prevent them from girdling the trunk.

**Post-planting Care.** Conscientious post planting care, especially watering, structural pruning and fertilizing, is a must for street and parking lot trees.

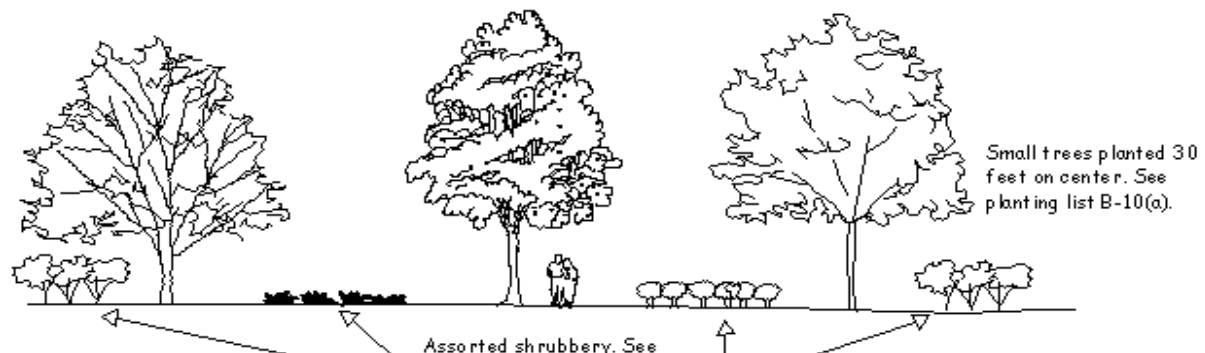
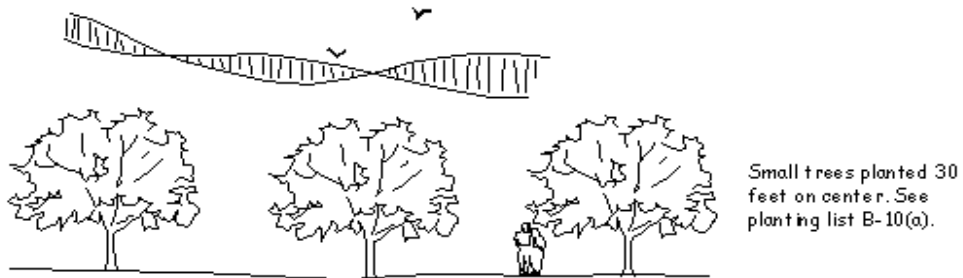
### B-7: Typical Opaque Screens



### B-8: Typical Semi-Opaque Screens



## B-9: Typical Broken Screens



## **B-10: Guide for Planting Shrubs**

Shrubs planted for screening purposes should be given a proper culture and sufficient room in which to grow. Many of the guidelines for tree planting listed in Section B-4 also apply to shrubs. However, because specific requirements vary considerably between shrub types, this appendix does not attempt to generalize the needs of all shrubs. For detailed planting information on individual species, refer to:

*Manual of Woody Landscape Plants* by Michael Dirr

## **B-11: Lists of Recommended Trees and Shrubs**

The following lists indicate plantings which will meet the screening and shading requirements of Article XVII of The Town of Willards Zoning Code. The lists are by no means comprehensive and are intended merely to suggest the types of flora which would be appropriate for screening and shading purposes. Plants were selected for inclusion on these lists according to four principal criteria; (i) general suitability for the climate and soil conditions of this area, (ii) ease of maintenance, (iii) tolerance of urban conditions, and (iv) availability from area nurseries. When selecting new plantings for a particular site, a developer should first consider the types of plants which are thriving on or near that site. However, if an introduced species has proven highly effective for screening or shading in this area, it too may be a proper selection.

Sections B-10 through B-15 contain descriptions of some of the trees and shrubs listed here.

### **(a) Small Trees for Partial Screening**

- |                         |                             |
|-------------------------|-----------------------------|
| (1) River Birch         | (8) American Holly          |
| (2) American Hornbeam   | (9) Golden Rain Tree        |
| (3) Eastern Redbud      | (10) Crape Myrtle           |
| (4) Flowering Dogwood   | (11) Sourwood               |
| (5) Washington Hawthorn | (12) Caroline Cherry-Laurel |
| (6) Russian Olive       | (13) Callery Pear           |
| (7) Mountain Silverbell |                             |

### **(b) Large Trees for Evergreen Screening**

- (1) Deodar Cedar
- (2) Southern Magnolia

(3) Carolina Hemlock

(c) Large Trees for Shading

- |                       |                        |
|-----------------------|------------------------|
| (1) Norway Maple      | (7) Sycamore           |
| (2) Red Maple         | (8) Eastern Red Oak    |
| (3) Ginkgo            | (9) Willow Oak         |
| (4) Honey locust      | (10) Scarlet Oak       |
| (5) Sweet Gum         | (11) Laurel Oak        |
| (6) London Plane-Tree | (12) Littleleaf Linden |

(d) Small Shrubs for Evergreen Screening

- |                          |                             |
|--------------------------|-----------------------------|
| (1) Glossy Abelia        | (6) Convex a Japanese Holly |
| (2) Warty Barberry       | (7) India Hawthorn          |
| (3) Wintergreen Barberry | (8) Azaleas/Rhododendrons   |
| (4) Dwarf Horned Holly   | (9) Japanese Yew            |
| (5) Little Holly         |                             |

(e) Large Shrubs for Evergreen Screening

- |                         |                          |
|-------------------------|--------------------------|
| (1) Hedge Bamboo        | (6) Japanese Privet      |
| (2) Thorny Elaeagnus    | (7) Fortune Tea Olive    |
| (3) Burford Holly       | (8) Red Photinia         |
| (4) Yaupon Holly        | (9) Laurentinus Viburnum |
| (5) Laurel or Sweet Bay |                          |

(f) Assorted Shrubs for Broken Screens

- |                       |                        |
|-----------------------|------------------------|
| (1) Japanese Barberry | (7) Drooping Leucothoe |
| (2) Fringe tree       | (8) Winter Honeysuckle |

(3) Border Forsythia

(4) Vernal Witch Hazel

(5) Common Witch Hazel

(6) Pfitzer Juniper

(9) Star Magnolia

(10) Northern Bayberry

(11) Judd Viburnum

(12) Double file Viburnum



### **B-12: Small Trees for Partial Screening**

The following trees are recommended for use in all types of screens. Though smaller than the trees listed in planting lists B-11 and B-12, each of these trees will reach a height of at least 20 feet.

- (1) River Birch (**Betula nigra**). Height 20-40 feet; Spread: 8-16 feet. The River Birch is a native tree which usually grows along stream banks. In landscape design, it is adaptable to either high or low locations but still requires a lot of moisture. This tree has an interesting papery bark and a graceful branching habit. It has no special pest or maintenance problems.
- (2) American Hornbeam (**Carpinus Carolina**). Height 20-30 feet; Spread: 15-20 feet. This native tree has a natural yet refined appearance. It is slow growing, but at maturity it serves as an excellent small shade tree. Its fluted muscular trunk is an interesting feature. In the wild, the American Hornbeam is common in moist rich soil, yet, when used in landscape design, it is soil tolerant and does not require an unusual amount of water. It has no pests and no special maintenance problems.

### **B-13: Large Trees for Evergreen Screening**

The following trees are ideal for screening large scale areas such as shopping centers and industrial sites. They are also effective in combination with other smaller screening plants. Both are moderate to fast growers. They are not considered to be shade trees.

- (1) Deodar Cedar (**Cedrus deodara**). Height: 40-150 feet; Spread: 30 feet +. The Deodar Cedar is a useful and attractive evergreen. It should be allowed plenty of room in order to assume its beautiful natural form. Its pendulous branches should be allowed to touch the ground. It prefers relatively dry soils, grows rapidly, and is easy to maintain. "True Cedars" such as the Deodar are not native to North America, but they have become quite popular in the South as a landscape tree.
- (2) Southern Magnolia (**Magnolia grandiflora**). Height: 40-60 feet; Spread: 25 feet +. Magnolias are striking trees which serve well as screens when their branches are allowed to grow to the ground. Generally, this tree does well in city conditions, but it should be planted in quite rich acidic soils and it requires a lot of moisture. Furthermore, magnolias require ample space for growth. If planted in full sunlight, they will grow rapidly. Because it drops large waxy leaves, seed pods, and flowers, the magnolia may present a litter problem.

### **B-14: Large Trees for Shading**

The following trees may be used for screening, but they are recommended especially for shading streets and parking lots. Unless otherwise noted, they will grow rapidly. Each species will attain a mature spread of at least 30 feet.

- (1) Red Maple (**Acer rubrum**). Height: 40-50 feet; Spread 25 feet +. This tree is an example of a maple which is not recommended where there will be high concentrations of air pollution. However, with its excellent shading characteristics and beautiful colors, it should not be ignored. This tree grows rapidly, but, unlike the Norway Maple, it does not become brittle with age. The Red Maple is a native tree which is usually found in moist, even swampy areas, but it adapts well to a variety of situations. Although subject to maple insects and diseases,

it is usually a long-lived tree.

- (2) Honey locust (**Gleditsia triacanthos**). Height: 50-75 feet; Spread: 25 feet +. It's open, spreading form and feathery leaves may give the Honey locust a frail appearance, but it is fact a quite sturdy tree, notable for its resistance to storm damage. It is a native tree which is drought resistant and adaptable to city conditions. Grass and shrubs thrive beneath a Honey locust because it casts light shade. This tree is especially useful for its ability to be transplanted at a relatively advanced age. Accordingly, it may be used for immediate effect in a landscape design. The Honey locust has its pests and diseases, but it is fairly hardy. Thornless and fruitless varieties such as "Moraine" are recommended.

#### **B-15: Small Shrubs for Evergreen Screening**

The following shrubs are recommended for informal (unclipped) hedges or screens. Each species grows to a height of less than six feet; therefore, these shrubs are appropriate for semi-opaque screens.

- (1) Glossy Abelia (**Abelia grandiflora**). Height: 4-6 feet; Spread: 3-5 feet. Abelia is quite common in local nurseries and tends to be less expensive than other shrubs on this list. It bears pale pink flowers throughout the summer. Although it has proven quite popular for informal hedges, it has several drawbacks. Abelia should be pruned and thinned to maintain its best form. It may drop its leaves due to low temperatures, lack of pruning, or starvation.
- (2) Warty Barberry (**Berberis verruculosa**). Height: 3-4 feet; Spread: 3-4 feet. Barberries as a group have proven to be excellent hedge plants. With their dense, spiny limbs, they are effective barriers in public places. The Warty Barberry is a shrub with a neat, compact habit. It is soil tolerant and has no special maintenance requirements. It grows slowly, but it will reach a height of three to four feet within five years.

#### **B-16: Large Shrubs for Evergreen Screening**

The following shrubs are recommended for high hedges or screens. Each species grows to a height of more than six feet; therefore, these shrubs are appropriate for opaque screens.

- (1) Hedge Bamboo (**Bambusa multiplex**). Height: 10-12 feet; Spread: 4-6 feet. Hedge Bamboo grows rapidly yet is more easily confined to a limited area than most types of bamboo. It is adaptable to a variety of situations but requires plenty of water. For best effect as a screen, Hedge Bamboo should be stagger planted.
- (2) Thorny Elaeagnus (**Elaeagnus pungens**). Height: 8-10 feet; Spread: 6-10 feet. This shrub tolerates many adverse conditions. It will grow rapidly in relatively infertile, dry soils. Its dense thorny branches form an excellent natural hedge. It is one of the most common evergreen shrubs in the south.

### **B-17: Assorted Shrubs for Broken Screens**

The following is a sampling of shrubbery that would be appropriate in a broken screen. Because many of these plants are deciduous, they are not suitable for opaque and semi-opaque screens. (Note: Many of the evergreen shrubs described in planting lists B-13 and B-14 are also suitable for broken screens).

- (1) Japanese Barberry (**Berberis thunbergii**). Height: 3-5 feet; Spread: 3-5 feet. This extremely common deciduous shrub is considered to be one of the toughest members of the Barberry family. It survives drought, poor soil, exposure, and the worst city conditions. With its many thorns, the Japanese Barberry is often used as an impenetrable barrier, but it is attractive enough to stand alone as a specimen plant. It requires no special maintenance and, when planted singly, needs no pruning.
- (2) Fringe tree (**Chioanthus virginicus**). Height: 10-30 feet; Spread: 8-10 feet. The Fringe tree is known for its profusion of beautiful flowers. It is considered to be one of the most striking native American shrubs. It is relatively difficult to transplant but once established it does well in cities as it endures heavy smoke and dust. The mature Fringe tree's only drawback is that its leaves appear rather late in spring.