

Critical Area Commission

STAFF REPORT

April 11, 2025

APPLICANT: The Town of Chesapeake Beach

PROPOSAL: Refinement - Comprehensive Review of Critical Area Program

JURISDICTION: The Town of Chesapeake Beach

COMMISSION ACTION: Concurrence with Chair's Determination of Refinement

STAFF RECOMMENDATION: Approval with Conditions

STAFF: Katie Hayden

**APPLICABLE LAW/
REGULATIONS:** Natural Resources Article 8-1809(g) and Natural Resources Article 8-1809(p)

DISCUSSION:

The Town of Chesapeake Beach, located in Calvert County, recently completed an effort to comprehensively review their Critical Area Program as is required by State Law. Chapter 290 of the Town's Code, also known as the Zoning Ordinance, contains the majority of the Town's Critical Area Program. In July of 2024, Town staff presented updates to several sections of the Zoning Ordinance to the Town's Planning & Zoning Commission. The updates were approved by the Planning & Zoning Commission before they were presented to the Board of County Commissioners for adoption. On November 21, 2024, the Town adopted Ordinance O-24-17, which repealed, replaced and amended several sections of the Town's Zoning Ordinance. The Town is now requesting that the Critical Area Commission approve the comprehensive update of their Critical Area program as reflected in the Town's updated Zoning Ordinance.

Chesapeake Beach Critical Area Overview

Chesapeake Beach's Critical Area totals 979 acres, with 476 acres designated as Resource Conservation Area (RCA), 177 acres designated as Limited Development Area (LDA), and 326 acres designated as Intensely Developed Area (IDA). Chesapeake Beach was given 100 acres of growth allocation by Calvert County on the date of original program adoption. The total growth allocation used by the Town to date is 31.63 acres. The total growth allocation remaining for the Town to date is 68.37 acres.

Comprehensive Review and Update to Chesapeake Beach's Critical Area Program

Per Natural Resources Article §8-1809(g), each local jurisdiction is required to comprehensively review and update their local Critical Area program every ten years and ensure conformance with the requirements of the Critical Area law, criteria, and regulations. The Town originally approved its Critical Area Program on November 9, 1988. This is the first time the Town is undergoing a comprehensive review of its Critical Area Program. Through Ordinance O-24-17, the Town updated sections of the Zoning Ordinance based on the most recent changes to the Critical Area law and regulations as well as the Commission's Model Ordinance for municipalities. Below is a brief list of key sections that were updated:

§290-17. Critical Area Overlay District (repealed and replaced)

- The goals and implementation of the Town's Critical Area Program and identification of the Critical Area designations (IDA, LDA, and RCA) and map;
- IDA, LDA, and RCA development standards;
- RCA uses, including the addition of solar energy generating systems in accordance with COMAR 27.01.14;
- Identification and development provisions applicable to the Buffer, Modified Buffer Areas, and Habitat Protection Areas, including updated definitions and the implementation of a fee-in-lieu for Buffer mitigation;
- Provisions pertaining to water dependent facilities;
- Provisions pertaining to development rights that predate the Critical Area Program;
- Lot consolidation and reconfiguration regulations;
- Procedures and requirements for local development projects;
- Procedures and requirements pertaining to program changes, comprehensive reviews, and zoning map amendments;
- Provisions pertaining to the enforcement of the Critical Area Program.

§290-18. Growth Allocation (repealed and replaced)

- The purpose, process, and requirements for submitting growth allocations.
- Standards and factors to be considered for growth allocations

§290-44. Critical Area Definitions (repealed and replaced)

§290-32. Board of Appeals (amended)

- Powers and duties regarding variances.
- Standards for granting Critical Area variances.
- Additional procedures for granting Critical Area variances.
- Conditions and mitigation for granted variances.
- Provisions pertaining to after-the-fact variance requests.

§290-30. Violations and Penalties (amended)

- Critical Area fines and penalties.

Aside from the Zoning Ordinance (Chapter 290), select provisions of the Town's Critical Area Program can be found within other Chapters of the Town's Code: Chapter 240 (Subdivision of Land), Chapter 132 (Fees), Chapter 149 (Floodplain Management), Chapter 217 (Sewers and Water), Chapter 236 (Stormwater Management), and Chapter 263 (Urban Forest). No changes were made to those sections of the Ordinance.

Natural Resources Inventory

COMAR 27.01.10.01 requires a jurisdiction during its comprehensive review to map or inventory (or both) habitat protection areas including threatened and endangered species habitats and species in need of conservation, anadromous fish propagation waters, plant and wildlife habitats, and locally significant habitats. The Commission coordinates with the Maryland Department of Natural Resources Wildlife and Heritage Service (DNR WHS) to provide a Natural Resources Inventory (NRI) that includes updated narratives and maps to meet this requirement. In an email provided to Commission staff on January 29, 2024, DNR WHS confirmed that no changes to the NRI are recommended for the Town of Chesapeake Beach.

Recommendation

The comprehensive update of the Chesapeake Beach Critical Area program as reflected in the Town's updated Zoning Ordinance meets the goals of the Critical Area law and standards for comprehensive review; therefore, Commission staff recommends that the Commission concur with the Chair's determination that this comprehensive review be processed as a refinement.

In order to ensure that all provisions are entirely consistent with Critical Area law and regulations including the 2024 legislative updates to Chapter 424 of the Natural Resources Article, minor revisions of the Zoning Ordinance are necessary. Therefore, Commission staff recommends that the Chair approve this refinement with the following condition:

1. Within 180 days of the date of Commission approval, the Town of Chesapeake Beach will update the approved Zoning Ordinance to meet the provisions outlined in Attachment 1 of this staff report.

Attachments

1. Proposed Revisions

ORDINANCE O- 24- 17

AN ORDINANCE
OF THE TOWN COUNCIL OF CHESAPEAKE BEACH, MARYLAND,
AMENDING THE TOWN OF CHESAPEAKE BEACH CRITICAL AREA
PROTECTION PROGRAM”

WHEREAS, Chesapeake Beach, Maryland (the “Town”) is a municipal corporation of the State of Maryland, organized and operating under a Charter adopted in 1963, in accordance with Article XI-E of the Constitution of Maryland and the Local Government Article of the Annotated Code of Maryland; and

WHEREAS, authorized by the Natural Resources Article, §8-1808.3, Annotated Code of Maryland, and COMAR 27, the Chesapeake Beach Planning and Zoning Commission (the Commission) is authorized to develop a local program for the Critical Area within its jurisdiction; and

WHEREAS, §290-29B (2) of the Zoning Ordinance for the Town of Chesapeake Beach (the Zoning Ordinance) establishes that the Commission may transmit to the Town Council proposals to amend, supplement, change, modify, or repeal the Zoning Ordinance; and

WHEREAS, during its regular meetings in 2022, 2023, and 2024, the Planning Commission investigated, considered, and deliberated revisions to the Town of Chesapeake Beach’s Critical Area Overlay and associated regulations in Chapter 290, Zoning of the Town’s Code; and

WHEREAS, the Commission conducted a public hearing on proposed text amendments on July 24, 2024 and in subsequent meetings and work sessions following a public hearing deliberated on the public comments received and considered refinements and supplements to such

Passed:
Effective:

amendments; and

WHEREAS, on July 24, 2024, the Planning Commission passed a Resolution affirming that the amendments are in the best interests of the Town of Chesapeake Beach and voting in favor to recommend that the Town Council adopt the revisions.

NOW THEREFORE, LET IT BE RESOLVED that the Commission hereby transmits the attached Critical Area Overlay and associated amendments to Chapter 290 to the Town Council with a favorable recommendation and advises their adoption.

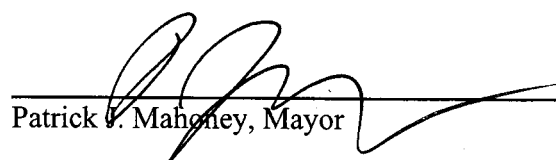
WHEREAS,

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF CHESAPEAKE BEACH:

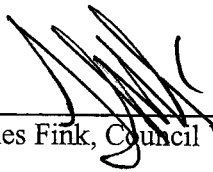
The Town Council Repeals and replaces Section 290-17, 290-18, 290-30, 290-32, 290-44 as attached.

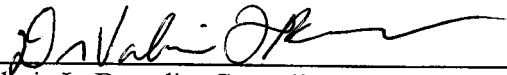
AS CERTIFIED by their signatures below, the members of the Town Council affirm that this Ordinance was introduced at the Town Council meeting held on the 22nd day of October, 2024, that a public hearing was held on the 21st day of November, 2024, and that a vote was taken in accordance with Section C-309 of the Town Charter. The vote of the Council was tallied and 6 votes of approval and 0 votes of disapproval were cast. The resulting majority of the Council approved the passage of this Ordinance this 21st day of Nov 2024. If signed by the Mayor below, the Mayor approves this Ordinance pursuant to Section C-310 of the Charter this 21st day of Nov 2024. This Ordinance shall become effective at the expiration of twenty (20) calendar days from the date of the Mayor's approval or seven (7) days after the last required publication, whichever is later, pursuant to Section C-309 of the Charter, currently published in Volume II of the Municipal Charters of Maryland.

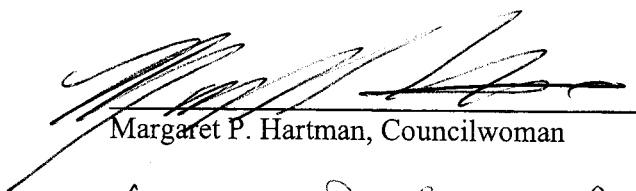
CHESAPEAKE BEACH, MARYLAND

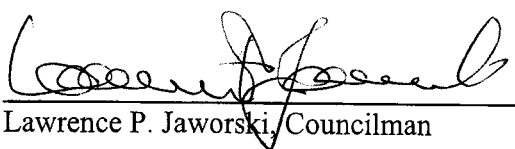

Patrick V. Mahoney, Mayor

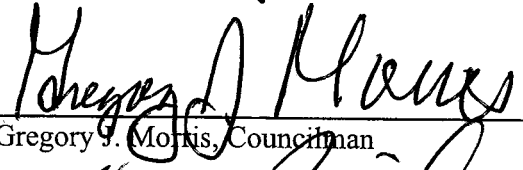
Passed:
Effective:

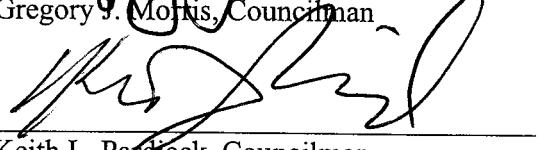


L. Charles Fink, Council Vice-President

Valerie L. Beaudin, Councilwoman

Margaret P. Hartman, Councilwoman

Lawrence P. Jaworski, Councilman

Gregory S. Morris, Councilman

Keith L. Pardieck, Councilman

Article IV Overlay and Floating Districts. §290-17 Critical Area Overlay District

A. Implementation of the Critical Area Program Purpose and Goals

(1) Goals.

The goals of the Town of Chesapeake Beach (Town) Critical Area Program are to accomplish the following:

- (a) Minimize adverse impacts on water quality that result from pollutants that are discharged from structures or run off from surrounding lands;
- (b) Conserve fish, wildlife, and plant habitat; and
- (c) Establish land use policies for development in the Critical Area which accommodate growth as well as address the environmental impacts that the number, movement, and activities of people may have on the area.

(2) Critical Area Program.

- (a) The Town of Chesapeake Beach adopted its Critical Area Program on December 1, 1985. The Chesapeake Beach Critical Area Program consists of the Chesapeake Beach Zoning Ordinance 290 (All Sections), Subdivision of Land 245, Fees 132, Floodplain Management 149, Sewers and Water 217, Stormwater Management 236, Urban Forest 263, the Official Critical Area map(s), and any other related provisions within the Town's ordinances.
- (b) 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 as minimum standards.
- (c) In the case of conflicting provisions, the stronger provision applies.

(3) Responsibilities.

The Town of Chesapeake Beach's Critical Area Program and all applicable provisions of this Ordinance shall be implemented and enforced by the Town Zoning Administrator.

- (a) The Zoning 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 the Critical Area Program be brought to the attention of any Town official, said official shall contact the Zoning Administrator.
- (c) As provided elsewhere in this Ordinance, in the review and approval of plans and applications, the local Approving Authority shall be with

either the Zoning Administrator, the Planning Commission, or the Board of Appeals, depending on the specific petition or application filed with the Town.

(4) Critical Area Overlay District Map.

- (a) The Official Critical Area Overlay District Map is maintained as part of the Official Zoning Map for the Town of Chesapeake Beach. The Official Critical Area Map delineates the extent of the Critical Area Overlay District that shall include:
 - 1. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide and all state and private wetlands designated under Title 16 of the Environment Article of the Annotated Code of Maryland; and
 - 2. 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 Environment Article of the Annotated Code of Maryland.
- (b) Within the designated Critical Area Overlay District, all land shall be assigned one of the following land classifications, based on land uses and development in existence on December 1, 1985:
 - 1. Intensely Developed Area (IDA).
 - 2. Limited Development Area (LDA).
 - 3. Resource Conservation Area (RCA).
- (c) The Critical Area Overlay District Map may be amended by the Mayor and Town Council in compliance with amendment provisions in this Ordinance the Maryland Critical Area Law, and COMAR Title 27.

(5) Applications Referred to the Critical Area Commission (CAC)

- (a) The Town of Chesapeake Beach shall send copies of applications for all developments, subdivisions, and site plans wholly or partially within the Critical Area as specified in COMAR 27.03.01.04 to the CAC for review and comment, except the following.
 - 1. A single-family dwelling unit or addition thereto
 - 2. Any structure accessory to a single-family dwelling unit
 - 3. Development in which land disturbance does not exceed fifteen thousand (15,000) square feet
 - 4. Subdivision resulting in ten (10) lots or less, or ten (10) dwelling units or less.
 - 5. Notwithstanding the above, all projects that are in the RCA or have an impact on any preservation area (as identified in §290-17 (E) Other Habitat Protection Areas of this ordinance) shall be sent to the CAC for review.
- (b) The copy of the application shall be accompanied by a completed "Project Notification Application" form downloaded from the CAC's

website.

- (c) Chesapeake Beach may not process an application which has been sent to the CAC for notification until it has received notice of receipt by the CAC or the close of the tenth business day, whichever comes first.
- (d) Any action by the Town of Chesapeake Beach in violation of these procedures shall be void.

B. Development Standards in the Critical Area.

(1) General Requirements in all Critical Area Overlay Zones.

- (a) Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in §270-17 (C), (D), and (E) of this Ordinance.
- (b) Development and redevelopment shall be subject to the water-dependent facilities requirements of §290-17 (F) Water Dependent Facilities of this Ordinance;
- (c) The Town of Chesapeake Beach 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.
- (d) Development shall comply with the following complementary State statutes and regulations, including:
 - 1. For soil erosion and sediment control, management measures shall be consistent with the requirements of Environment Article, §§4-101—4-116, Annotated Code of Maryland, and COMAR 26.17.01;
 - 2. For stormwater runoff, stormwater management measures shall be consistent with the requirements of Environment Article, §§4-201—4-215, Annotated Code of Maryland, and COMAR 26.17.02;
 - 3. 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
 - 4. Any other applicable State statute or regulation.
- (e) 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:
 - 1. For an activity or facility such as nonmaritime heavy industry:
 - a. It is located within an Intensely Developed Area;
 - b. It fully complies with all requirements under §290-17 (F) Water Dependent Facilities; and
 - c. 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
- 2. For an activity or facility such as a sanitary landfill or a solid or hazardous waste collection or disposal facility:
 - a. There is no environmentally acceptable alternative outside the Critical Area; and
 - b. The activity or facility is necessary in order to correct a water quality or wastewater management problem.
- (f) A transportation facility or a utility transmission facility or activity may not be authorized in the Critical Area, unless it is:
 - 1. A facility that serves a use identified under this Critical Area program;
 - 2. A linear regional or interstate transportation facility that must cross tidal waters; or
 - 3. A linear regional or interstate utility transmission facility that must cross tidal waters.
- (g) A permanent sludge handling, storage, or disposal activity or facility may not be authorized in the Critical Area, unless:
 - 1. The activity or facility is associated with a wastewater treatment facility; or
 - 2. 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.
- (h) 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:
 - 1. Provide maximum erosion protection;
 - 2. Minimize negative impacts on wildlife, aquatic life and their habitats; and
 - 3. Maintain hydrologic processes and water quality.
- (i) 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:
 - 1. Reduce flood frequency and severity that are attributable to development;
 - 2. Retain tree canopy so as to maintain stream water temperature within normal variation;
 - 3. Provide a natural substrate for stream beds; and
 - 4. Minimize adverse water quality and quantity impacts of stormwater.
- (j) Reasonable accommodations for the needs of individuals with disabilities.
 - 1. 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 by a preponderance of evidence the following:

- a. The alterations will benefit persons with a disability within the meaning of the Americans with Disabilities Act;
 - b. Literal enforcement of the provisions of this Ordinance would result in discrimination by virtue of such disability or deprive a disabled resident or user of the reasonable use and enjoyment of the property;
 - c. The accommodation would reduce or eliminate the discriminatory effect of the provisions of this Ordinance or restore the disabled resident's or user's reasonable use or enjoyment of the property;
 - d. The accommodation requested will not substantially impair the purpose, intent, or effect, of the provisions of this Ordinance as applied to the property; and
 - e. 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/appellant.
2. The Approving Authority 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 Approving Authority may also consider the size, location, and type of accommodation proposed and whether alternatives exist which accommodate the need with less adverse effect.
 3. The Approving Authority 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 of Chesapeake Beach's ability to restore the property should the applicant fail to do so.

(2) Intensely Developed Areas.

All development in the Intensely Developed Area shall meet the following standards:

- (a) 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:

1. Housing density equal to or greater than four (4) dwelling units per acre;
 2. Industrial, institutional, or commercial uses are concentrated in the area; or
 3. Public sewer and water collection and distribution systems serving the area and housing density greater than three (3) dwelling units per acre;
- (b) In addition, IDAs shall be located in an area of at least twenty (20) adjacent acres unless it is the entirety of the upland area of the Town of Chesapeake Beach, or it is consistent with §290-18 Growth Allocation;
- (c) Land use activities within the IDA will be managed in accordance with the land use policies of COMAR 27.01.02.03;
- (d) Tree removal shall be subject to Chapter 263: Urban Forest.
- (e) All trees or shrubs that are removed shall be replaced at a rate of one for one or one tree per three shrubs.
- (f) Development activities shall be designed and implemented to minimize destruction of forest and woodland vegetation; and
- (g) All development and redevelopment activities over two-hundred-and-fifty (250) square feet shall include stormwater management technologies that reduce pollutant loadings by at least ten (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.
- (h) All development and redevelopment activities less than two-hundred-and-fifty (250) square feet shall include planting, stormwater redirection, and stormwater collection or other practices that improve on-site stormwater flow and retention.
- (i) No use shall be permitted in the IDA that is not permitted in the underlying zoning district.
- (3) Limited Development Areas.
- (a) 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:
1. Housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
 2. Areas not dominated by agricultural, wetland, forest, barren land,

- open water, or open space;
3. Areas meeting the conditions of Intensely Developed Area but compromising less than twenty (20) acres; or
 4. Areas having public sewer or public water, or both.
- (b) Land use activities within the LDA will be managed in accordance with the land use policies of COMAR 27.01.02.04.
- (c) If a wildlife corridor system is identified by the Department of Natural Resources on or near the site, the following practices are required:
1. The applicant shall incorporate a wildlife corridor system that connects the largest undeveloped or most vegetative tracts of land on and adjacent to the site;
 2. The Town of Chesapeake Beach shall require and approve a conservation easement, restrictive covenant, or similar instrument to ensure maintenance of the wildlife corridor;
 3. The wildlife corridor shall be preserved by a public or private group.
- (d) Development on slopes fifteen percent (15%) or greater, 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.
- (e) Except as otherwise provided in this subsection, lot coverage is limited to fifteen percent (15%) of a lot or parcel or that portion of a lot or parcel that is designated LDA.
1. 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.
 2. If a parcel or lot greater than one-half acre and less than one acre in size existed on or before December 1, 1985, then lot coverage is limited to fifteen percent (15%) of the parcel or lot.
 3. 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%).
 4. Lot coverage limits provided in (1) and (2) above may be exceeded, upon findings by the Planning Commission or its designee that the following conditions exist:
 - a. 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.
 - b. Lot coverage associated with new development activities on the property have been minimized;

- c. For a lot or parcel one-half acre or less in size, total lot coverage does not exceed the lot coverage limits in (1) by more than twenty-five percent (25%) or five hundred square feet (500 square feet), whichever is greater;
- d. 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 (2) or five thousand, four hundred and forty-five (5,445) square feet, whichever is greater;
- e. The following table summarizes the limits set forth in (a) through (d) above:

Table C.(3)(d). 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
21,781 – 36,300	5,445 SF
36,301 – 43,560	15% of parcel

- 5. If the Approving Authority makes the findings set forth in (4) above and authorizes an applicant to use the lot coverage limits set forth in that paragraph, the applicant shall:
 - a. 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
 - b. 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.
 - c. If the approving authority finds that the applicant cannot provide appropriate stormwater treatment and plantings due to site constraints, then the applicant shall pay a fee to the Town of Chesapeake Beach in lieu of performing the on-site mitigation.
- 6. For the purposes of calculating limitations on lot coverage, is as follows:
 - a. When a site is mapped entirely as LDA, lot coverage is based on the entire site area; and
 - b. When a portion of a lot or parcel is mapped as LDA, lot

coverage is based on the area of the LDA.

- (f) The alteration of forest and developed woodlands shall be restricted and mitigated as follows:
 - 1. The total acreage in forest and developed woodlands within the Town of Chesapeake Beach in the Critical Area shall be maintained or preferably increased;
 - 2. 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;
 - 3. If an applicant is authorized to clear more than twenty percent (20%) of a forest or developed woodlands on a lot or parcel, the applicant shall replace the forest or developed woodlands at 1.5 one-and-one-half times the entire areal extent of the forest or developed woodlands cleared, including the first twenty percent (20%) of the forest or developed woodlands cleared.
 - 4. An applicant may not clear more than thirty percent (30%) 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 three (3) times the areal extent of the forest or developed woodlands cleared.
- (g) If no forest exists on proposed development sites, these sites shall be planted to provide a forest or developed woodland cover of at least fifteen percent (15%). The applicant shall designate, subject to the approval of the Town of Chesapeake Beach, a new forest area on a part of the site not forested.
- (h) If the areal extent of the site limits the application of the reforestation standards in this section, the Town of Chesapeake Beach may allow an applicant to plant offsite within the LDA or RCA within the Town of Chesapeake Beach, or upon finding that offsite planting is not possible, to pay a fee in lieu of planting.
- (i) 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 the Town of Chesapeake Beach shall be posted to assure satisfactory replacement as required in (6) above and plant survival;
- (j) The applicant shall obtain a permit from the Town of Chesapeake Beach before forest or developed woodland is cleared. The clearing of forests and developed woodlands before obtaining a Town of Chesapeake Beach permit is a violation and any area cleared shall be replanted at three (3) times its areal extent;
- (k) Clearing of forest or developed woodlands that exceeds the maximum area allowed in (6) above shall be replanted at three (3) times the areal extent of the cleared forest;

- (l) All forest, including afforested areas, shall be maintained through conservation easements, restricted covenants, or other protective instruments.
 - (m) 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.
 - (n) No use shall be permitted in the LDA that is not permitted in the underlying zoning district.
- (4) Resource Conservation Areas.
- (a) 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: Density is less than one dwelling unit per five (5) acres; or Dominant land use is in agriculture, wetland, forest, barren land, surface water, or open space.
 - (b) Land use activity within the Resource Conservation Areas shall be consistent with the requirements and standards for Limited Development Areas as specified in COMAR 27.01.02.04 and this Ordinance.
 - 1. For the purposes of calculating limitations on lot coverage, the following shall apply:
 - a. When a site is mapped entirely as RCA, lot coverage is based on the entire site area; and
 - b. When a portion of a lot or parcel is mapped as RCA, lot coverage is based on the area of the RCA.
 - (c) Density
 - 1. Land within the Resource Conservation Area may be developed for residential uses at a density not to exceed one (1) dwelling unit per twenty (20) acres, except as may be further restricted by the underlying zoning district.
 - 2. The Town of Chesapeake Beach may not authorize a variance to the maximum density of one dwelling unit per twenty (20) acres. In calculating the 1-in-20 acre density of development that is permitted on a parcel located within the Resource Conservation Area, the Town:
 - a. Shall count each dwelling unit;
 - b. May permit the area of any private wetlands located on the property to be included under the following conditions:
 - i. The density of development on the upland portion of the parcel may not exceed one (1) dwelling unit per eight (8)

acres; and

- ii. The area of private wetlands shall be estimated on the basis of vegetative information as designated on the State wetlands maps or by private survey approved by the Town of Chesapeake Beach, the CAC and Maryland Department of the Environment.
- (d) Nothing in this Section shall limit the ability of a participant in any agricultural easement program to convey real property impressed with such an easement to family members provided that no such conveyance will result in a density greater than one (1) dwelling unit per twenty (20) acres, except as may be further restricted by the underlying zoning district.
- (e) RCA Uses
- 1. Existing industrial and commercial facilities, including those that directly support agriculture, forestry, aquaculture, or residential development not exceeding the 1-per-20 acre density shall be allowed in 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 §290-17 (H) and may require growth allocation.
 - 3. Additional industrial or commercial facilities shall not be located in the RCA.
 - 4. Any Institutional, Recreational, and Educational use permitted by right or special exception in the RC District shall be allowed in the RCA, limited to a lot coverage of fifteen percent (15%) of the site or twenty-thousand (20,000) square feet, whichever is less.
 - 5. A commercial, institutional, or industrial solar energy generating system may be permitted in accordance with COMAR 27.01.14.
 - 6. New commercial, industrial, and institutional uses shall not be permitted in Resource Conservation Areas, except as provided for in the Town of Chesapeake Beach's growth allocation provisions or as listed below.
 - a. A home occupation as an accessory use on a residential property and as provided for in the Town of Chesapeake Beach's Zoning Ordinance; and
 - b. Any Institutional, Recreational, and Educational use permitted by right or special exception in this Ordinance's Resource Conservation (RC) zoning district, limited to a lot coverage of fifteen percent (15%) of the site or twenty-thousand (20,000) square feet, whichever is less.
 - 7. Additional RCA may not be zoned or used for industrial, commercial, or institutional development, except as provided by

the Town of Chesapeake Beach's growth allocation provisions in §290-18 Growth Allocation.

8. No use shall be permitted in the RCA that is not permitted in the underlying zoning district.
9. Any proposed new use in the RCA or the underlying zoning district requires the review and approval of the CAC.

C. The Buffer.

(1) Applicability & Delineation.

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

- (a) A Buffer of at least one-hundred(100) feet is delineated, and expanded as described in 1(c), based on existing field conditions landward from:
 1. The mean high water line of a tidal water;
 2. The edge of each bank of a tributary stream; and
 3. The upland boundary of a tidal wetland.
- (b) Applications for a subdivision or development activity on land located within the RCA requiring site plan approval after July 1, 2008 shall include a minimum Buffer of at least one-hundred (100) feet from a tidal waterway, tidal wetlands, or a tributary stream.
- (c) The Buffer shall be expanded beyond one-hundred (100) feet as described in 1(a) above, and beyond one-hundred (100) feet as described in 1(b) above , to include the following contiguous land features:
 1. A steep slope at a rate of four (4) feet for every one percent (1%) of slope or the entire steep slope to the top of the slope, whichever is greater;
 2. A nontidal wetland to the upland boundary of the nontidal wetland;
 3. The 100-foot buffer that is associated with a Nontidal Wetland of Special State Concern, which shall be so designated and included in the list of such wetlands in COMAR §26.23.06.01; [Drafter's Note: As of January 1, 2024, no such wetland exists in Chesapeake Beach.]
 4. For an area of hydric soils or highly erodible soils, the lesser of:

- a. The landward edge of the hydric or highly erodible soils; or
- b. Three hundred feet where the expansion area includes the minimum 100-Foot Buffer.

(2) Development Activities in the Buffer.

The Town of Chesapeake Beach may authorize disturbance to the Buffer for the following activities, provided mitigation is performed in accordance with 4, Mitigation for Impacts to the Buffer, and an approved Buffer Management Plan is submitted as required per 6, Required Submittal of Buffer Management Plans:

- (a) A new development or redevelopment activity associated with a water-dependent facility as described in §290-70 (F) Water Dependent Facilities.
- (b) A shoreline stabilization measure, which shall be otherwise authorized by the State in accordance with COMAR 26.24.02, COMAR 26.24.04, and/or this ordinance.
- (c) A development or redevelopment activity approved in accordance with the variance provisions of this Ordinance.
- (d) A new development or redevelopment activity on a lot or parcel that was created before January 1, 2010 where:
 - 1. The Buffer is expanded for highly erodible soil on a slope less than fifteen percent (15%) or is expanded for a hydric soil and the expanded Buffer occupies at least seventy-five percent (75%) of the lot or parcel;
 - 2. The development or redevelopment is located in the expanded portion of the Buffer and not within the 100-foot Buffer; and
 - 3. Mitigation occurs at a 2:1 ratio based on the lot coverage of the proposed development activity that is in the expanded Buffer.
- (e) A septic system on a lot created before November 9, 1988, where mitigation is provided at a 1:1 ratio for area of canopy cleared of any forest or developed woodland.
- (f) Associated with the placement of dredged material: The Town of Chesapeake Beach may approve the placement of dredged material in the buffer, including within any portion of the Critical Area designated as a Habitat Protection Area, for the following:
 - 1. A beneficial use approved by the Maryland Board of Public Works or Department of the Environment, such as the following purposes:

- a. Backfill for a shoreline stabilization measure;
 - b. Use in a nonstructural shoreline stabilization measure, including a living shoreline;
 - c. Beach nourishment;
 - d. Restoration of an island;
 - e. The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat;
2. The placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988.

(3) Buffer Establishment.

- (a) The requirements of this regulation are applicable to:
 - (i) 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
 - (ii) The approval of a subdivision that includes a buffer to tidal waters, a tidal wetland, or a tributary stream.
- (b) If an applicant for a subdivision of a lot uses or leases the lot for an agricultural purpose, the applicant:
 - (i) In accordance with local land recordation requirements, shall record an approved buffer management plan under §290-17(C)4 Required Submittal of Buffer Management Plans; and
 - (ii) If authorized by the local jurisdiction, may delay implementation of the buffer management plan until the use of the lot is converted to a nonagricultural purpose.
- (c) The requirements of this regulation are not applicable to an in-kind replacement of a structure.
- (d) The Town of Chesapeake Beach shall require an applicant to establish the Buffer in vegetation in accordance with the table below and §290-17(C) 5 Buffer Planting Standards of this chapter and to provide a Buffer Management Plan under §290-17(C) 6 Required Submittal of Buffer Management Plans of this chapter when an applicant applies for:
 - (i) Approval of a subdivision;
 - (ii) Conversion from one land use to another land use on a lot or a parcel; or
 - (iii) Development on a lot or a parcel created before January 1, 2010.
- (e) When the buffer is not fully forested or is not fully established in

existing, naturally occurring woody or wetland vegetation, an applicant shall establish the buffer to the extent required in the following table;

Table 3.C.(5). Buffer establishment requirements.		
Development Category	Lot Created Before December 1, 1985	Lot Created After December 1, 1985
Development on a vacant lot	Establish the Buffer based on total square footage of lot coverage outside the Buffer	Fully establish the Buffer
Subdivision	Fully establish the buffer	
New lot with an existing dwelling unit	Establish the Buffer based on total square footage of lot coverage outside the Buffer	
Conversion of a land use on a parcel or lot to another land use	Fully establish the Buffer	
Addition, accessory structure, or redevelopment	Establish the Buffer based on net square footage increase in lot coverage outside the Buffer	
Substantial alteration	Establish the Buffer based on total square footage of lot coverage outside the Buffer	

- (f) The Town of Chesapeake Beach may authorize an applicant to deduct from the total establishment requirement an area of lot coverage removed from the buffer if:
 - (i) The lot coverage existed before the date of local program adoption or was allowed by the Town of Chesapeake Beach; and
 - (ii) The total area is stabilized.

(4) Mitigation for Impacts to the Buffer.

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

- (a) All authorized development activities shall be mitigated according to COMAR 27.01.09.01-2.
- (b) All unauthorized development activities in the Buffer shall be mitigated at a ratio of 4:1 for the area of disturbance in the Buffer.
- (c) Planting for mitigation shall be planted onsite within the Buffer. If mitigation planting cannot be located within the Buffer, then the Town of Chesapeake Beach may permit planting in the following order of priority:

- (i) On-site and adjacent to the Buffer; and
 - (ii) On-site elsewhere in the Critical Area.
- (d) For the removal of a dead tree, the affected area shall be stabilized with native groundcover or other native vegetation as necessary.
- (e) The removal of a diseased, dying, invasive, or hazardous tree shall be mitigated with one tree of at 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.
- (f) The installation or cultivation of new lawn or turf in the Buffer is prohibited.
- (g) The applicant shall restore the area in the buffer that is temporarily disturbed by a development activity to pre-disturbance conditions.

(5) Buffer Planting Standards.

- (a) An applicant that is required to plant the Buffer to meet establishment or mitigation requirements shall apply the planting standards set forth in COMAR 27.01.09.01-2 and 01-4.
- (b) A variance to the Critical Area planting and mitigation standards of this Ordinance is not permitted.

(6) Required Submittal of Buffer Management Plans.

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

- (a) Any permit for a development activity that requires Buffer establishment or Buffer mitigation will not be issued until a Buffer Management Plan is approved by the Town of Chesapeake Beach.
- (b) An applicant may not obtain final approval of a subdivision application until the Buffer Management Plan has been reviewed and approved by the Town of Chesapeake Beach.
- (c) The Town of Chesapeake Beach may not approve a Buffer Management Plan unless:
 - (i) The plan clearly indicates that all planting standards under §290-17(C)(5) Buffer Planting Standards of this chapter will be met; and
 - (ii) Appropriate measures are in place for the long-term protection and maintenance of all Buffer areas.

- (d) 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:
 - (i) Completes the implementation of a Buffer Management Plan; or
 - (ii) Provides financial assurance to cover the costs for:
 - a. Materials and installation; and
 - b. 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.
- (e) Concurrent with recordation of a subdivision plat, an applicant shall record a protective easement for the Buffer.
- (f) 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.
- (g) An applicant shall post a subdivision with permanent signs prior to final recordation in accordance with COMAR 27.01.09.01-2.
- (h) Buffer management plans that includes natural regeneration shall follow the provisions of COMAR 27.01.09.01-4.
- (i) An applicant may submit a "Shoreline Stabilization Measure Buffer Management Plan" as provided on the CAC's website for any shore erosion activity authorized by Maryland Department of Environment in accordance with COMAR 26.24.04.

(7) Fees In Lieu of Planting

- (a) Fees-in-lieu shall be collected if required mitigation that cannot be satisfied fully onsite through planting or offsets at the rate per square foot of five dollars (\$5.00) for properties under forty-thousand (40,000) square feet and ten dollars (\$10.00) for properties over forty-thousand (40,000) square feet for the required mitigation that cannot be met on site.
 - (i) Fee-in-lieu monies shall be collected and held in a special fund, which may not revert to the Town's general fund;
 - (ii) A portion of fee-in-lieu money can be used for management and administrative costs; however, this cannot exceed twenty percent (20%) of the fees collected; and
 - (iii) 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 Of Chesapeake Beach and the Critical Area Commission.
- (b) The rate shall be re-evaluated and revised as needed to ensure that funds collected are sufficient to cover the cost of administering the mitigation program but do not exceed the costs of administering the mitigation program. The Town Council, in consultation with the CAC, shall reassess the rate every two years thereafter as needed.
- (c) Any Category 2 site plan that is determined to be eligible for fee-in-lieu, shall be brought before the Planning Commission for approval.
- (d) Any after-the-fact permit approval requests that have mitigation effects that cannot comply with the offset requirements must pay the fee-in-lieu in addition to any penalties assessed.

D. Modified Buffer Area (MBA).

(1) Applicability.

The following provisions apply to areas designated and mapped as Modified Buffer Areas (MBA) on the map titled Modified Buffer Area, Town of Chesapeake Beach, which is a supplement to the Town's Critical Area Map.

(2) General development standards.

- (a) Development standards in the Modified Buffer Area.
 - 1. A "Modified Buffer Area" means an area of land:
 - a. Where the 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 CAC, is shown on a map maintained on file by the local jurisdiction and is subject to modified development provisions.
 - 2. Water-polluting activities, including, but not limited to, storage of vehicles, fuel, or chemicals, shall be prohibited in the Modified Buffer Areas.

3. All uses shall be subject to the provisions established in other sections of this chapter. Development or redevelopment in a Modified Buffer Area shall be subject to all of the criteria applicable to the underlying zoning district and shall be further subject to all of the criteria applicable to the governing land use classification. Permitted uses shall also be subject to the following:
- a. Shore erosion protection measures shall be provided in accordance with the criteria set forth in the Town Critical Area Program.
 - b. Cutting or clearing of trees or removal of vegetation is allowed in the Modified Buffer Area with a Tree Replacement Plan for the following purposes only:
 - i. To prevent trees from falling and blocking streams, causing damage to dwellings or other structures, or resulting in accelerated erosion of the shore or streambank;
 - ii. In conjunction with horticultural practices used to maintain the health of individual trees;
 - iii. To provide access to private piers;
 - iv. To install or construct an approved shore erosion protection device or measure;
 - v. To protect trees from extensive pest or disease infestation; and
 - vi. To permit the development allowed described in letters i. through v. above to be constructed or installed.
 - c. The expansion or redevelopment of existing structures in the Modified Buffer Area may not increase lot coverage shoreward of the existing structure and shall not result in greater than a twenty-five-percent increase in the total site area lot coverage as existed at the time of adoption of the Town's Critical Area Protection Program. Offsetting of such increase in lot coverage, as described below, shall be required.
 - d. When a structure within the Modified Buffer Area is removed or destroyed, it may be replaced, insofar as possible, no closer than one-hundred (100) feet to the edge of tidal waters, tidal wetlands, or tributary streams. In such cases where a setback line exists as defined by structures on adjacent lots or parcels, the structure may not be replaced shoreward of that line. Any lot coverage created greater in extent to the preexisting lot

coverage within the Modified Buffer Area shall be offset as described below.

- e. New development in the Modified Buffer Area shall minimize the shoreward extent of lot coverage insofar as possible, taking into consideration existing Town yard setback requirements and other such factors. In no case may such lot coverage be extended shoreward of any setback line as defined by existing structures on adjacent lots or parcels.
- f. Definitions pertaining to implementation of Modified Buffer Area provisions. As used in this Subsection 1(a), the following terms shall have the meanings indicated:

DEVELOPMENT ACTIVITY

The construction or substantial alteration of residential, commercial, industrial, institutional, recreational or transportation facilities or structures by the proposed project. Development activities include, among other things, structures, roads, parking areas and other lot coverage, mining and related facilities, clearing, grading, and septic systems. For purposes of implementing these provisions, development activity does not include subdivision.

NEW DEVELOPMENT

A development activity that takes place on a property with A predevelopment lot coverage less than fifteen-percent (15%) as of March 15, 2003.

REDEVELOPMENT

A development activity that takes place on a property with A predevelopment lot coverage greater than fifteen-percent (15%) as of March 15, 2003.

- g. Mitigation for area of disturbance for single-family residential development.
 - i. Mitigation for the area of disturbance in the Modified Buffer Area shall be provided by planting an area of natural forest vegetation twice the size of the area of disturbance of the single-family residential development activity or redevelopment activity within the Modified Buffer Area. Previously existing and legal development on the property that is not impacted by the proposed development or redevelopment shall not be considered as part of the area

of disturbance.

- ii. The mitigation shall be planted on-site in the Buffer or off-site in the Buffer or Modified Buffer Area at another location approved by the Planning and Zoning Commission.
- iii. Table 4.B.1.c.vii.c lists the basis for determining the amount of mitigation required for selected development activities. This chart is for general guidance only and the actual amount of development mitigation required is determined on a case-by-case basis.

Table 4.B.1.c.vii.c Mitigation Requirements for Single-Family Residential Development within the MODIFIED BUFFER AREA (MBA)	
<u>Development Activity</u>	<u>Amount of Mitigation Based on</u>
Build a new house, replace a house	Square feet of development activity
Build an addition	Square feet of development activity
Add an additional floor on existing building footprint	NA
Construct a new accessory structure	Square feet of development activity
Replace or build a new deck	Square feet of development activity
Build a new patio, swimming pool	Square feet of development activity
Add an off-street parking space	Square feet of development activity
Construct a fence	NA
Build a retaining wall	Square feet of development activity
Individual tree cutting	2 trees planted for every 1 tree removed
Construct a pathway	Square feet of development activity
Notes: Mitigation requirements for single-family residential development within the one-hundred-foot Buffer on non-MBA properties are based on limits of disturbance of development activity and require a variance from the Board of Appeals. Mitigation requirements for single-family residential development within the Critical Area, but not in a MBA or one-hundred-foot Buffer, are based upon the extent of the existing forest and developed woodland cover and proposed forest clearing.	

- h. Mitigation requirements for all other types of development. All new development or redevelopment other than single-family residential in the Modified Buffer Area shall be required to

offset for such development by providing the following two forms of mitigation: planting a buffer yard as specified in Subsection 2(a)(3)[h][i] below and mitigating for the area of disturbance as set forth below in Subsection 2(a)(3)[h][ii]:

i. Buffer yard.

1. On new development sites, a buffer yard twenty (20) feet wide shall be required on the project site between the development and the water's edge or landward edge of revetment, unless a variance is obtained from the Board of Appeals. On redevelopment sites, a buffer yard fifteen (15) feet wide shall be required on the project site between the development activity and the water's edge or landward edge of revetment, unless a variance is obtained from the Board of Appeals. The buffer yard shall be at least fifteen (15) feet wide over at least seventy-five (75%) of its length.
2. The buffer yard shall be densely planted with native species such that full ground cover is achieved using guidance on plant materials provided by the Town Zoning Administrator.
3. The buffer yard shall minimally include, or a similar combination thereof, the following planting requirements per one-hundred (100) linear feet of buffer planting strip: four (4) native species canopy trees, ten (10) native species understory trees or large shrubs, twenty-five (25) native species small shrubs, and a sufficient number of native species herbaceous plants and grasses to provide complete ground cover.
4. On redevelopment sites, if existing structures or those rebuilt on an existing footprint limit the area available for planting, then appropriate modifications to the width of the planted buffer yard may be made on a case-by-case basis, but the area of buffer yard which would have been required to be planted under this section shall be included in the area proposed as an offset or for which fees-in-lieu are proposed to be paid.
5. Reasonable walkway access to the water's edge through the buffer yard shall be permitted.
6. For properties in marina use, the fifteen-foot buffer yard is required only along seventy-five (75%) of the shoreline frontage.
7. The landscaping requirements of this chapter may be

- achieved through planting in the buffer yard where such planting reasonably achieves the stated purposes of the landscaping requirements.
8. On redevelopment sites, a fifteen-foot-wide buffer yard that is established where previously the area was a developed impervious area is eligible to be counted toward meeting the two-to-one mitigation for area of disturbance specified in Subsection 2(a)(3)[h][ii], as long as the square footage of the buffer yard is at least four-hundred-and-fifty (450) square feet.
 9. A buffer yard is eligible to be counted toward meeting the buffer yard planting mitigation requirements of this subsection even if the buffer yard as proposed converts previous nonnative planted areas (such as lawns or stone shoreline protection) to the planting requirements of the buffer yard.
 10. Should the applicant provide a buffer yard meeting required planting specifications but wider than the required twenty (20) feet for new development sites and fifteen (15) feet for redevelopment sites, the area of planting exceeding any on-site mitigation requirements shall be eligible for a mitigation credit that may be sold, should the Town adopt an ordinance allowing mitigation banking.
 11. The mitigation area shall include informational or educational signage indicating that the area is a protected area for water quality and habitat conservation.
- ii. Mitigation for area of disturbance for all other development types.
1. Mitigation for the area of disturbance in the Modified Buffer Area shall be provided by planting an area of natural forest vegetation twice the size of the area of disturbance of the development activity or redevelopment activity within the Modified Buffer Area. Previously existing and legal development on the property that is not impacted by the proposed development or redevelopment shall not be considered as part of the area of disturbance.
 2. The mitigation area shall include informational or educational signage indicating that the area is a protected area for water quality and habitat

conservation.

3. The mitigation shall be planted on-site in the Buffer or off-site in the Buffer or Modified Buffer Area at another location approved by the Planning and Zoning Commission.
4. Table 4.B.1.c.viii.b lists the amount of mitigation required for selected development activities. This chart is for general guidance only and the actual amount of development mitigation required is determined on a case-by-case basis.

Table 4.B.1.c.viii.b Mitigation Requirements for All Other Development Types and Activities within the MODIFIED BUFFER AREA (MBA)	
<u>Development Activity</u>	<u>Amount of Mitigation Based on</u>
Build a new structure, replace a structure	Square feet of development activity
Build an addition	Square feet of development activity
Add an additional floor on existing building footprint	NA
Construct a new accessory structure	Square feet of development activity
Replace or build a new deck	Square feet of development activity
Build a new patio	Square feet of development activity
Expand the parking area	Square feet of development activity
Construct a fence	NA
Build a retaining wall	Square feet of development activity
Individual tree cutting	2 trees planted for every 1 tree removed
Construct a pathway	Square feet of development activity
Notes: All non-single-family development in the MBA must provide a buffer yard in addition to mitigation required by the development activity. An applicant must obtain a variance when proposing a non-single-family residential development activity that is not within the MBA but within the Critical Area or one-hundred-foot Buffer. The applicant must meet the standards found in § 290-32F of this chapter in order for the Board of Appeals to issue a variance.	

- i. Offsets. Applicants who cannot fully comply with the planting requirements in Subsections 2(a)(3)(g), 2(a)(3)(h) above may use offsets to meet a portion of the mitigation requirement. Offsets can include the removal of an equivalent area of existing lot coverage in the Buffer or Modified Buffer Area, the construction of best management practices for stormwater in

excess of those required, wetland creation or restoration, or other measures that improve water quality or habitat.

- j. Fees in lieu of planting.
 - i. Applicants who cannot comply with the planting or offset requirements shall pay into a fee-in-lieu program.
 - ii. Fees-in-lieu shall be collected at the rate per square foot of required mitigation that cannot be satisfied through planting or offsets shall be five (\$5.00) for properties under forty-thousand (40,000) square feet and ten (\$10.00) for properties over forty-thousand (40,000) square feet for the required mitigation that cannot be met onsite.
 - iii. The rate shall be re-evaluated and revised as needed to ensure that funds collected are sufficient to cover the cost of administering the mitigation program but do not exceed the costs of administering the mitigation program. The Town Council, in consultation with the CAC, shall reassess the rate every two years thereafter as needed.
 - iv. Any Category 2 site plan that is determined to be eligible for fee-in-lieu, shall be brought before the Planning Commission for approval.
 - v. Any after-the-fact permit approval requests that have mitigation effects that cannot comply with the offset requirements must pay the fee-in-lieu in addition to any penalties assessed.
- k. Any required on-site or off-site buffer yard mitigation area, limits of disturbance mitigation area, or offset area or structure must be protected from future development through an easement, development agreement, plat notes or other instrument and recorded among the land records of Calvert County.
- l. Alternative provisions for meeting the mitigation requirements may be used, provided the Planning and Zoning Commission and the CAC approve them and find that they meet the goals of the Critical Area regulations.

E. Other 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 Ordinance.

(a) In addition to the Buffer, other Habitat Protection Areas include:

1. Threatened and Endangered Species and Species in Need of Conservation;
2. Plant and Wildlife Habitat Protection Areas; including:
 - a. Colonial waterbird nesting sites;
 - b. Historic waterfowl staging and concentration areas in tidal waters, tributary streams or tidal and nontidal wetlands;
 - c. Existing riparian forests;
 - d. Forest areas utilized as breeding areas by forest interior dwelling birds and other wildlife species;
 - e. Other plant and wildlife habitats determined to be of local significance; and
 - f. Natural Heritage Areas; and
 - g. Anadromous Fish Propagation Waters

(b) Maps identifying these specific Habitat Protection Areas are maintained by the Maryland Department of Natural Resources (MD-DNR) Wildlife and Heritage Division, The Town of Chesapeake Beach, and the Government of Calvert County. These areas include but are not limited to:

1. The 202.7 acre Forest Interior Dwelling Species (FIDS) habitat adjacent to Fishing Creek and Richfield Station Subdivision
2. Randle Cliff Natural Heritage Area
3. Forest Conservation Act Easement Areas;
 - a. Richfield Station Subdivision
 - b. Forest Conservation Areas in Chesapeake Village Subdivision
 - c. Thomas Parran Jr. Property
4. Lynwood T. Kellam Memorial Park
5. Any other area meeting the qualifications of 1(a), above found on the most recent mapping provided by MD-DNR Wildlife and Heritage Division

(2) Standards.

- (a) An applicant for a development activity proposed for a site within the Critical Area that is in or within 50 feet of 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 Service (USFWS), for

comment and technical advice. Based on the Department's recommendations, additional research and site analysis may be required to identify the location of threatened and endangered species and species in need of conservation on a site.

- (b) If the presence of any 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.
 - 1. If potential Forest Interior Dwelling Species (FIDS) habitat is identified, the proposed development shall conform to the CAC's FIDS Guidance Manual, dated June 2000 and as updated.
 - 2. 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
- (c) The specific protection and conservation measures recommended by DNR, WHS and USFWS shall be included on the site plan and shall be considered conditions of approval for the project.

F. Water Dependent Facilities.

(1) Applicability.

- (a) The provisions of this section 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.
- (b) The provisions of this section 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 §290-17 F(6) Community Piers and Other Community Boat-Docking and Storage Facilities of this or, a non-water-dependent project covered under COMAR 27.01.13.
- (c) The requirements of COMAR 27.01.02 apply to this Chapter.

(2) General Criteria.

- (a) The following standards shall apply to new or expanded development activities associated with water-dependent facilities:
- (b) 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.

1. New or expanded development activities may be permitted in the Buffer in the Intensely Developed Area and Limited Development Area provided it is shown:
 - a. That the facility or activity is 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.
- (c) Except as otherwise authorized in this section, a water-dependent facility or activity is prohibited in the Buffer of the Resource Conservation Area.
- (d) 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:
 1. A beneficial use approved by the Board of Public Works or the Department of the Environment, such as:
 - a. Backfill for a shoreline stabilization measure;
 - b. Use in a nonstructural shoreline stabilization measure, including a living shoreline;
 - c. Beach nourishment;
 - d. Restoration of an island;
 - e. The creation, restoration, or enhancement of a wetland, or a fish, wildlife, or plant habitat; or
 - f. Any other approved beneficial use; or
 2. Placement in an area that was approved for the disposal of channel maintenance dredged material before June 11, 1988; and
- (3) General Requirements for the location of Water-Dependent Facilities or Activities.

- (a) The Town of Chesapeake Beach shall evaluate on a case-by-case basis all proposals for expansion of existing or new water-dependent facilities and 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.
- (b) The following siting factors shall be considered when evaluating proposals for new or expanded water-dependent facilities:
 - 1. 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:
 - a. Alteration of an existing water circulation pattern or salinity regime;
 - b. Adequacy of area flushing characteristics;
 - c. Necessity of, and proximity to, a dredging operation; and
 - d. Interference with the natural transport of sand;
 - 2. Disturbance to:
 - a. An oyster harvest area, as defined in COMAR 08.02.04.11;
 - b. An area covered in a current aquaculture lease, as defined in Natural Resources Article, §4-11A-01, Annotated Code of Maryland;
 - c. A harvest reserve area, as designated under Natural Resources Article, §4-1009.1, Annotated Code of Maryland;
 - d. An oyster sanctuary, as established in COMAR 08.02.04.15A; and
 - e. Any other shellfish located in a shellfish area regulated by the Department of Natural Resources.
 - 3. Avoidance of disturbance to water quality and aquatic or terrestrial habitat resulting from the method or manner of dredging; and
 - 4. The avoidance or, if unavoidable, the minimization of:
 - a. Disturbance to:
 - i. A wetland;
 - ii. Submerged aquatic vegetation;
 - iii. A habitat of threatened or endangered species or species in need of conservation;
 - iv. 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

- v. 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;
- vi. 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.

(4) 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 subject to the provisions set forth in that Chapter.

(5) Commercial Marinas and Other Water-Dependent Commercial Maritime Facilities and Activities.

- (a) In addition to meeting the requirements of §290-17 F(2) and §290-17 F(3);
 - 1. A new or expanded commercial marina or related commercial maritime facility or activity may be permitted in the Buffer Area of an IDA or LDA;
 - 2. The owner and operator of a commercial marina and related commercial maritime facility or activity shall demonstrate to the Approving Authority that the marina or facility complies with the requirements of COMAR 26.08.04.09, and, as applicable, COMAR 26.24.04.03; and the stormwater, wastewater, noncontact cooling water discharge, and any other applicable requirements of The Department of the Environment.
 - 3. Shall meet all other requirements of Water-Dependent facilities as described in this section.

(6) Community Piers and Other Community Boat-Docking and Storage Facilities.

- (a) In addition to meeting the requirements of §290-17 F(2) and §290-17 F(3), new or expanded community pier or other community boat-docking and storage facilities may be permitted in the Buffer if:
 - 1. The pier or facility is community-owned and established and operated for the benefit of the residents of a platted and recorded riparian subdivision;
 - 2. The pier or facility is associated with a residential project approved

by the Town of Chesapeake Beach for the Critical Area and consistent with all State requirements and program requirements for the Critical Area;

3. The owner or operator of the pier or facility:
 - a. Does not offer food, fuel, or other goods and services for sale in the buffer or on the community pier; and
 - b. As applicable, complies with the requirements of COMAR 26.24.04.03;
 4. Disturbance to the Buffer is the minimum necessary to provide a single point of access to the pier or facility; and
 - a. If community piers are provided as part of a new residential project, private piers in the development are not allowed.
- (b) The number of slips authorized at a pier or facility shall be the lesser of (a) or (b) below:
1. One slip for each fifty (50) feet of shoreline in a residential project in the Intensely Developed and Limited Development Areas, and one slip for each three-hundred (300) feet of shoreline in a residential project in the Resource Conservation Area; or
 2. 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

- (7) Public Beaches and Other Public Water-Oriented Recreation or Education Areas or Activities including public piers.
- (a) In addition to meeting the requirements of §290-17 F(2) and §290-17 F(3), public beaches and piers or other public water-oriented recreation or education areas or activities may be permitted in the Buffer of:
 1. An Intensely Developed Area; or
 2. A Limited Development Area or a Resource Conservation Area provided that:
 - a. Adequate sanitary facilities exist;
 - b. Sanitary and service facilities are, to the extent possible,

located outside the Buffer;

3. Permeable surfaces are used to the extent practicable, if no degradation of groundwater would likely result; and
 - a. Disturbance to natural vegetation is first avoided or, if unavoidable, minimized.

- (b) Areas for public passive outdoor recreation, such as nature study, and hiking, hunting, and 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.

(8) Research-Associated and Education-Associated Water-Dependent Facilities or Activities.

- (a) In addition to meeting the requirements of §290-17 F(2) and §290-17 F(3) a research-associated water-dependent facility or activity or an education-associated water-dependent facility or activity may be permitted in the Buffer of an IDA, LDA, or RCA, if any associated nonwater-dependent project or activity is located outside the Buffer to the extent possible.

(9) Aquaculture and Fishery Facilities and Activities: Water Quality Restoration.

- (a) 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
 - (i) A facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.

G. Grandfathering.

(1) Continuation of existing uses.

- (a) The continuation, but not necessarily the intensification or expansion, of any use in existence on December 1, 1985 may be permitted, unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal ordinances.
 - (b) If any existing use or structure does not conform with the provisions of this Ordinance pertaining to the Critical Area, its intensification or expansion shall be restricted in the same manner provided for in

Section 290-28, Nonconforming Uses, of this Ordinance except that any allowable intensification or expansion may be permitted only in accordance with the variance procedures in Section 290-32.

(2) Residential density on grandfathered lots

Except as otherwise provided for, or restricted by this Ordinance, 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) Any land on which development activity has progressed to the point of pouring of foundation footings or the installation of structural members;
- (b) A legal parcel of land, not being part of a recorded or approved subdivision that was recorded as of December 1, 1985;
- (c) Land that received a building permit subsequent to December 1, 1985, but prior to November 9, 1988.
- (d) Land that was subdivided into recorded, legally buildable lots, where the subdivision received final approval between June 1, 1984 and December 1, 1985; and
- (e) 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.

(3) Implementation.

- (a) 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.
- (b) Nothing in this section may be interpreted as altering any requirements of this ordinance related to water-dependent facilities or habitat protection areas.

H. Lot Consolidation and Reconfiguration.

(1) Applicability.

The provisions of this part 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:

- (a) Those for which a Critical Area variance is sought or has been issued; and
- (b) Those located in the Resource Conservation Area and are less than twenty (20) acres in size.

(2) Procedure.

An applicant seeking a parcel or lot consolidation or reconfiguration shall provide the information required in COMAR 27.01.02.08.E to the Town of Chesapeake Beach.

- (a) The Town of Chesapeake Beach may not approve a proposed parcel or lot consolidation or reconfiguration without making written findings in accordance with COMAR 27.01.02.08.F.
- (b) The Town of Chesapeake Beach shall issue a final written decision or order granting or denying an application for a consolidation or reconfiguration.
 - 1. After a final written decision or order is issued, the Town of Chesapeake Beach shall send a copy of the decision or order and a copy of any approved development plan to the CAC within ten (10) business days.
- (c) The Town of Chesapeake Beach 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.

I. Local Development Projects

(1) Applicability.

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

(2) Procedures.

- (a) If the project meets the provisions of this Ordinance and is minor development, the Zoning Administrator shall prepare a consistency report and submit a copy of the report with relevant plans and information about the project to the CAC per the requirements of

COMAR 27.02.02.

- (b) If the project does not meet the provisions of this Ordinance, The Town of Chesapeake Beach shall seek conditional approval by the CAC per the requirements of COMAR 27.02.06.
 - (c) The Town of Chesapeake Beach shall submit information as required in the CAC's Local Project Submittal Instructions and Application Checklist.
- (3) Notice and posting requirements for projects reviewed and approved by the Chesapeake Bay Critical Area Commission.
- (a) 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 Chesapeake Beach and evidence that those requirements have been met shall be included as part of the submittal to the Critical Area Commission.

J. Program Changes

(1) Program Changes

The Town Council may from time to time, with the approval of the Critical Area Commission, amend the land use management classification of properties in the Critical Area District; exempt certain portions of the Critical Area District from the requirements relating to the buffer and all buffer areas, or exclude portions of the Town's Critical Area from the Critical Area District. In addition, The Town Council shall review and propose any necessary amendments to The Critical Area District, as required, and to the land use management classifications at least every four years.

- (a) All such amendments to The Critical Area District shall first be approved by the Critical Area Commission as provided in § 8-1809 of The Natural Resources Article, Annotated Code of Maryland. The procedures and standards for Critical Area Commission approval of proposed amendments are those as set forth in § 8-1809 of The Natural Resources Article, Annotated Code Of Maryland.

(2) Comprehensive Review

The Town of Chesapeake Beach will review its entire program and propose any necessary amendments to its entire program, including this Ordinance, at least every six years in accordance with Natural Resources Article, §8-1809(G).

(3) Zoning Map Amendments

Except for program amendments or program refinements developed during a six-year comprehensive review, a Zoning Map amendment for The Critical Area Overlay may only be granted by the Town of Chesapeake Beach 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 as shown on the adopted Critical Area Overlay Map; or
- (b) The use of growth allocation in accordance with the growth allocation provisions of this ordinance is proposed.

(4) Adoption Of A Program Amendment Or Refinement.

If approved by The Critical Area Commission, the Town of Chesapeake Beach shall incorporate a program amendment or refinement into its adopted Critical Area Program, including any conditions of approval, within one-hundred-and-twenty (120) days of receiving notice from the Chairman of the CAC.

K. Enforcement.

(1) Consistency.

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

(2) Violations.

- (a) No person shall violate any provision of this Zoning 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.
- (b) Noncompliance with any permit or order issued by the Town of Chesapeake Beach related to the critical area shall be a violation of this Ordinance and shall be enforced as provided herein.
- (c) Violations of Critical Area Regulations are subject to §290-30 (C) of the Zoning Ordinance.
- (d) In addition to any other penalty applicable under this ordinance, every violation of a provision of the Natural Resources Article, Title 8, Subtitle 18, or the Critical Area Provisions of the Ordinance shall be punishable by a civil penalty of up to ten-thousand dollars (\$10,000) per calendar day.

(3) Responsible Persons.

- (a) The following persons may each be held jointly or severally responsible for a violation:
 - 1. any 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.

(4) Required Enforcement Action.

When the Town of Chesapeake Beach identifies a violation of this Ordinance, it shall take enforcement action, including:

- (a) Citing the violation;
- (b) Issuing abatement, restoration, and mitigation orders as necessary to:
 - 1. Stop unauthorized activity; and
 - 2. Restore and stabilize the site to its condition prior to the violation or to a condition that provides the same water quality and habitat benefits;
- (c) Requiring 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; and
- (d) Assessing an administrative fine or pursuing a civil penalty in accordance with §290-30, Violations and Penalties.

(5) Restoration and Mitigation

- (a) 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.
- (b) For restoration or mitigation that exceeds one-thousand (1,000) square feet or involves expenses exceeding one-thousand dollars (\$1,000), the Town of Chesapeake Beach shall collect a performance bond or other financial security.

- (c) If restoration or mitigation involves planting, a performance bond shall be held for at least two (2) years after the date the plantings were installed to ensure plant survival.
- (d) A property owner may request the Town of Chesapeake Beach to schedule inspections as necessary to ensure compliance and the return of the bond or other financial security.

(6) Right to Enter Property:

Except as otherwise authorized and in accordance with the procedures specified herein, the Town of Chesapeake Beach or its 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. The Town 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.

(7) Administrative and Civil Penalties:

Please see Article VII Administration, 290-30. Violations and Penalties (C) Critical Area Fines and Penalties

(8) Cumulative Remedies:

Please see Article VII Administration, 290-30. Violations and Penalties (C) Critical Area Fines and Penalties

(9) Variances pursuant to a violation:

Please see Article VIII: Planning Commission and Board of Appeals, 290-32. Board of Appeals (F) Powers And Duties Regarding Variances

(10) Permits pursuant to a violation:

The Town may not issue any permit, approval, variance, or special exception, unless the person seeking the permit has:

- (a) Fully paid all administrative, civil, or criminal penalties as set forth in Article VII Administration, 290-30. Violations And Penalties (C) Critical Area fines and penalties;
- (b) 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;

- (c) Performed the abatement measures in the approved plan in accordance with the Town's regulations; and
- (d) Unless an extension of time is approved by the Town because of adverse planting conditions, within ninety-days (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.

(11) Appeals:

Please see Article VIII: Planning Commission and Board of Appeals, 290-32. Board of Appeals

(12) Additional Enforcement Authorities.

- (a) The Town of Chesapeake Beach is authorized to pursue violations in Circuit Court or District Court in accordance with Natural Resources Article §8-1815(A)(2).
- (b) The Town of Chesapeake Beach 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 The Town of Chesapeake Beach 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

Article IV Overlay and Floating Districts. §290-18 Growth Allocation

A. Definition.

1. "Consistent with" means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan: (i). Policies; (ii) Timing of the implementation of the plan, of development, and of rezoning; (iii). Development patterns;(iv).Land uses; and (v). Densities or intensities.

B. Growth allocation acreage and deduction.

1. Growth allocation available to the Town of Chesapeake Beach includes
 - a. An area equal to five (5) percent of the RCA acreage located within Chesapeake Beach and;
 - b. Growth allocation available to Chesapeake Beach as provided for by Calvert County.
2. The Town of Chesapeake Beach shall deduct acreage from its growth allocation reserves in accordance with COMAR 27.01.02.06-4.
3. The Town of Chesapeake Beach's original growth allocation is one-hundred-and-forty-one (141) acres. The town's current growth allocation remaining as of the date of adoption of this Ordinance [REDACTED], is fifty-eight-and-thirty-seven-hundredths (58.37) acres.
4. A local jurisdiction shall deduct acreage from its growth allocation reserves in accordance with COMAR 27.01.02.06-4.

C. Purpose.

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

D. Process.

1. An applicant shall submit to the Zoning Administrator a complete application for growth allocation that complies with the submittal and environmental report requirements of COMAR 27.01.02.06-1—.06-2.
2. All applications for growth area classification and growth allocation will be reviewed at one time in each calendar year. The application for growth allocation shall be reviewed by the Planning Commission, who shall

transmit a recommendation to the Mayor and Town Council.

3. The application for growth allocation shall be approved by the Mayor and Town Council prior to submission to the CAC.
4. The application for growth allocation shall be approved by the CAC before any site development plan, subdivision plan, or zoning permit application is submitted to the Planning Commission or Zoning Administrator for review.
5. The Town Council shall hold a public hearing on the proposed development and the growth area classification after approval by the Critical Area Commission. The hearing shall include the following:
 - a. Presentation of the project by the applicant;
 - b. Review comments and recommendations;
 - c. Critical Area Commission approval of map amendments and state and county comments, if any; and
 - d. Public comments.
6. The Town Council will then make the final decision on the projects that will be awarded growth allocation and will be granted the growth area classification.

E. Requirements.

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

1. A new Intensely Developed Area shall be at least twenty (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 CAC for growth allocation approval.
3. As part of a growth allocation approved by the CAC, the following shall be enforced as applicable:
 - a. A buffer management plan;
 - b. A habitat protection plan; and

- c. Other applicable conditions of approval as determined by the CAC at the time of project approval.

F. Standards.

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

1. A new Intensely Developed Area shall only be located in a Limited Development Area or adjacent to an existing Intensely Developed Area.
2. A new Limited Development Area shall only be located adjacent to an existing Limited Development Area or an Intensely Developed Area.
3. A new Limited Development Area or Intensely Developed Area 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 minimizes impacts to water quality;
4. New intensely developed areas shall only be located where they minimize their impacts to the defined land uses of the resource conservation area (RCA);
5. A new Intensely Developed Area or a Limited Development Area in a Resource Conservation Area shall be located at least three-hundred (300) feet beyond the landward edge of tidal wetlands or tidal waters unless Chesapeake Beach proposes, and the CAC approves, alternative measures for enhancement of water quality and habitat that provide greater benefits to the resources; and
6. New Intensely Developed or Limited Development Areas to be located in Resource Conservation Areas shall conform to all criteria of the Town of Chesapeake Beach for such areas, shall be so designated on the Chesapeake Beach Critical Area Maps and shall constitute an amendment to this Ordinance subject to review and approval by the Mayor and Town Council and the CAC as provided herein.

G. Additional Factors.

In reviewing map amendments or refinements involving the use of growth allocation, both the Planning Commission and Mayor and Town Council in their respective reviews of an application, shall consider the following factors and shall provide to the CAC all information and documentation that considers these factors:

1. Consistency with the Town of Chesapeake Beach's adopted 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 Limited Development Area, 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 Intensely Developed Area, whether the development is:
 - a. To be served by a public wastewater system;
 - b. Have an allowed average density of at least three-and-one-half (3.5) units per acre as calculated under State Finance and Procurement Article, §5-7B-03(h), Annotated Code of Maryland;
 - c. If greater than twenty (20) acres, to be located in a designated Priority Funding Area; and
 - d. To have a demonstrable economic benefit.
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, if applicable;
7. Environmental impacts associated with wastewater and stormwater management practices and wastewater and stormwater discharges to tidal waters, tidal wetlands, and tributary streams; and
8. Environmental impacts, including risk of severe flooding, associated with location in a coastal hazard area or attributable to the proposed development.

Article XI Definitions. §290-44 Critical Area Definitions

The following words have the following meanings for purposes of implementing the Critical Area Program:

1. "Abatement" means the act of putting an end to a land alteration or development activity or reducing the degree or intensity of the alteration or activity.
2. "Accessory structure" means 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.
3. "Addition" means newly constructed area that increases the size of a structure.
4. "Affected land" means the land from which the mineral is removed by surface mining, and all other land area in which the natural surface has been disturbed as a result of or incidental to the surface mining activities of the permittee, including private ways and roads appurtenant to the area, land excavations, workings, refuse piles, spoil piles, and tailings.
5. "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.
6. Agricultural Best Management Practice.
 - a. "Agricultural best management practice" means 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.
 - b. "Agricultural best management practice" 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.
 - c. "Agricultural best management practice" does not include a shoreline erosion control measure authorized by the Department of the Environment under COMAR 26.24.04.
7. Agriculture.
 - a. "Agriculture" means an activity related to the production or management of livestock, crops, vegetation, or soil.
 - b. "Agriculture" includes:
 - i. Tillage, harvest, fertilization, pest management, cropping, pasturing, or production of an agricultural product, including livestock, poultry, plants, trees, sod, food, feed, and fiber; and
 - ii. An activity that directly contributes to the production, conversion, processing, storage, or sale of agricultural products primarily generated on-site.
8. "Agricultural easement" means a non-possessory interest in land which restricts the conversion of use of the land, preventing non-agricultural uses.
9. "Anadromous fish" means fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.
10. "Anadromous fish propagation waters" means those streams that are tributary to

the Chesapeake Bay and Atlantic Coastal bays where spawning of anadromous species of fish (e.g., rockfish, yellow perch, white perch, shad, and river herring) occurs or has occurred. The streams are identified by the Department of Natural Resources.

11. "Aquaculture" means the commercial rearing of fish or aquatic plants for sale, trade, barter, or shipment.
12. "Barren land" means unmanaged land having sparse vegetation.
13. "Bona fide intrafamily transfer" means a transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.
14. "Borrow pit" means an area from which soil or other unconsolidated materials are removed to be used, without further processing, as fill for activities such as landscaping, building construction, or highway construction and maintenance.
15. Buffer.
 - a. "Buffer" means an area that:
 - i. Based on conditions present at the time of development, is immediately landward from mean high water of tidal waters, the edge of each bank of a tributary stream, or the landward boundary of a tidal wetland; and
 - ii. Exists or may be established in natural vegetation to protect a stream, tidal wetland, tidal waters, or terrestrial environment from human disturbance.
 - b. "Buffer" includes an area of:
 - i. At least 100 feet, even if that area was previously disturbed by human activity; and
 - ii. Expansion for contiguous areas, including a steep slope, hydric soil, highly erodible soil, nontidal wetland, or a Nontidal Wetland of Special State Concern as defined in COMAR 26.23.01.01.
16. Buffer Management Plan.
 - a. "Buffer Management Plan" means a narrative, graphic description, or plan of the Buffer that is necessary when an applicant proposes a development activity that will:
 - i. Affect a portion of the Buffer;
 - ii. Alter Buffer vegetation; or
 - iii. Require the establishment of a portion of the Buffer in vegetation.
 - b. "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.
17. "Bufferyard" means an area at least 25 feet wide, located between development activity and tidal waters, tidal wetlands, or a tributary stream, 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.
18. "CAC" means the Critical Area Commission for the Chesapeake and Atlantic Coastal Bays.
19. "Canopy tree" means a tree that, when mature, reaches a height of at least 35 feet.
20. "Clearcutting" means 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.

21. "Cluster development" means 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.
22. Colonial Nesting Water Bird.
 - a. "Colonial nesting water bird" means a species of bird that, for the purpose of nesting, congregates, or colonizes, in relatively few areas.
 - b. "Colonial nesting water bird" includes egrets, glossy ibises, herons, and terns.
23. "COMAR" means the Code of Maryland Regulations, as from time to time amended, including any successor provisions.
24. "Commercial harvesting" means 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.
25. Community pier.
 - a. "Community pier" means a boat docking facility associated with a subdivision or similar residential area, or with condominiums, apartments or other multiple family dwelling units.
 - b. "Community pier" does not include a private pier or a mooring.
26. "Comprehensive or master plan" means 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 board, agency or office.
27. Conforming.
 - a. "Conforming" means a parcel or lot that meets all Critical Area requirements.
 - b. "Conforming" does not include a parcel or lot:
 - i. For which a Critical Area variance is sought or has been issued; or
 - ii. That is located in the Resource Conservation Area and is less than twenty acres.
28. "Conservation easement" means 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.
29. "Consistent with" means that a standard or factor will further, and not be contrary to, the following items in the comprehensive plan:
 - a. Policies;
 - i. Timing of the implementation of the plan, of development, and of rezoning;
 - ii. Development patterns;
 - iii. Land uses; and
 - iv. Densities or intensities.
30. Consolidation.
 - a. "Consolidation" means a combination of any legal parcels of land or recorded, legally buildable lots into fewer parcels or lots.
 - b. "Consolidation" includes any term used by a local jurisdiction for a

development application that proposes to combine legal parcels of land or recorded, legally buildable lots into fewer parcels or lots than the number that existed before the application, such as a subdivision, lot line abandonment, boundary line adjustment, replatting request, or lot line adjustment.

31. Critical Area.

- a. "Critical Area" means the Chesapeake Bay Critical Area and the Atlantic Coastal Bays Critical Area except areas excluded under Natural Resources Article, §8-1807(d), Annotated Code of Maryland.
 - b. "Critical Area" includes:
 - i. The initial planning area of the Chesapeake Bay Critical Area consisting of all waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article;
 - ii. The initial planning area of the Atlantic Coastal Bays Critical Area consisting of all waters of and lands under the coastal bays and their tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 16 of the Environment Article;
 - iii. Except in accordance with (iv), all water and land 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 Environment Article; (iv) All water and land areas within 1,000 feet beyond the landward boundaries of State or private wetlands as shown on the Statewide Base Map in accordance with Ch. 119, Acts of 2008, where the process of transition from reliance on the State wetlands maps to the Statewide base maps has occurred and these maps were approved by the Commission; and
 - iv. Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Natural Resources Article, §8-1807, Annotated Code of Maryland.
32. "Deduction" means the total number of growth allocation acres that are necessary for approval of a growth allocation project and, after approval by the Commission, are subtracted from the growth allocation reserves of the local jurisdiction in which the project is located.
33. "Density" means the number of dwelling units per acre within a defined and measurable area.
34. "Developed woodlands" means an area of trees or of trees and natural vegetation that is interspersed with residential, commercial, industrial or recreational development.
35. "Developer" means 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.
36. "Development" means any activity that materially affects the condition or use of dry land, land under water, or any structure. "Development" includes redevelopment.
37. "Development activity" means human activity that results in disturbance to land,

natural vegetation, or a structure.

38. "Disturbance" means an alteration or change to the land. It includes any amount of clearing, grading, or construction activity. Disturbance does not include does not include gardening or maintenance of an existing grass lawn.
39. "Dwelling unit" means 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.
40. "Ecosystem" means a more or less self-contained biological community together with the physical environment in which the community's organisms occur.
41. "Endangered species" means a species of flora or fauna whose continued viability is determined to be in jeopardy, in accordance with the provisions 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.
42. "Establishment" means the planting or regeneration of native vegetation throughout the Buffer.
43. "Excess stormwater runoff" means all increases in stormwater resulting from:
 - a. An increase in the lot coverage on the site, including all additions to buildings, roads, and parking lots;
 - b. Changes in permeability caused by compaction during construction or modifications in contours, including the filling or drainage of small depression areas;
 - c. Alteration of drainageways or regrading of slopes;
 - d. Destruction of forest; or
 - e. Installation of collection systems to intercept street flows or to replace swales or other drainageways.
44. "Financial assurance" means a performance bond, letter of credit, cash deposit, insurance policy, or other instrument of security acceptable to the County.
45. Fishery Activity.
 - a. "Fishery activity" means a commercial water-dependent fishery operation, including a structure for the packing, processing, canning, or freezing of finfish, crustaceans, or mollusks.
 - b. "Fishery activity" includes a location where an activity related to a commercial water-dependent fishery operation occurs, such as wholesale and retail sale, product storage, crab shedding, off-loading, shellfish culture, or a shore-based facility necessary for an aquaculture operation.
46. Forest.
 - a. "Forest" means a biological community dominated by trees and other woody plants covering a land area of 10,000 square feet or greater.
 - b. "Forest" includes:
 - i. 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
 - ii. Forest areas that have been cut, but not cleared.
 - c. Forest does not include orchards.

47. "Forest Interior Dwelling Birds" means species of birds that require relatively large forested tracts in order to breed successfully, such as various species of flycatchers, warblers, vireos, and woodpeckers.
48. "Forest management" means the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, water transpiration, wildlife habitat, etc.
49. "Forest practice" means the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.
50. "Fully established" means 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.
51. "Grandfathered parcel" or "Grandfathered lot" means a parcel of land that was created or a lot created through the subdivision process and recorded as a legally buildable lot prior to December 1, 1985.
52. "Growth allocation" means the number of acres of land in the Critical Area that the County may use, or allocate to municipal jurisdictions to 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 County at the time the Critical Area Commission approved the County's original Critical Area Program, not including tidal wetlands or land owned by the federal government.
53. "Growth allocation envelope" means 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.
54. Habitat Protection Area
 - a. "Habitat protection area" means an area that is designated for protection:
 - i. Under Natural Resources Article, §8-1806, Annotated Code of Maryland, regulations adopted under that authority, or a local program; or
 - ii. By the Secretary of Natural Resources.
 - b. "Habitat protection area" includes:
 - i. The Buffer as described in COMAR 27.01.01.01B(8);
 - ii. A nontidal wetland as defined in COMAR 26.24.01.02B;
 - iii. A habitat of a threatened species as defined in COMAR 27.01.09.03A;
 - iv. A habitat of an endangered species as defined in COMAR 27.01.09.03A;
 - v. A habitat of a species in need of conservation as defined in COMAR 27.01.09.03A;
 - vi. A plant habitat as defined in COMAR 27.01.09.04A;
 - vii. A wildlife habitat as defined in COMAR 27.01.09.04A; and
 - viii. Anadromous fish propagation waters as defined in COMAR 27.01.09.05A.
55. "Habitat Protection Plan" means 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.

56. Hazardous Tree.

a. "Hazardous tree" means:

- i. 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
- ii. 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.

b. "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:

- i. With routine and proper arboricultural practices, such as regular watering, application of fertilizer or mulch, and pruning; or
- ii. By relocation of property that is likely to be damaged.

57. "Highly erodible soils" means 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.

58. "Home improvement" means 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 icemaker 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.

59. "Hydric soils" means soils that are wet frequently enough to periodically produce anaerobic conditions, thereby influencing the species composition of growth, or both, of plants on those soils.

60. "Hydrophytic vegetation" means 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).

61. "Immediate family" means a father, mother, son, daughter, grandfather, grandmother, grandson, granddaughter or sibling.

62. "In-kind replacement" means 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.
63. "Intensely Developed Area" means 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.
 64. "Intrafamily transfer" means a transfer to a member of the owner's immediate family of a portion of the owner's property for the purpose of establishing a residence for that family member.
 65. "Invasive species" means a type of plant that is non-native to the ecosystem under consideration and whose introduction causes, or is likely to cause, economic or environmental harm or harm to human health.
 66. "K Factor" means the soil erodibility factor in the Universal Soil Loss Equation. It is a quantitative value, that is experimentally determined.
 67. "Land-based aquaculture" means the raising of fish or shellfish in any natural or man-made, enclosed or impounded, water body.
 68. "Land clearing" means any activity that removes the vegetative ground cover.
 69. "Landforms" means feature of the earth's surface created by natural causes.
 70. "Landward edge" means the limit of a site feature that is farthest away from a tidal water, tidal wetland, or tributary stream.
 71. "Large shrub" means a shrub that, when mature, reaches a height of at least six feet.
 72. "Legally developed" means 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.
 73. "Limit of disturbance" means the area of a development or redevelopment activity that includes temporary disturbance and permanent disturbance.
 74. Limited development area.
 - a. "Limited development area" means an area:
 - i. That is developed in low or moderate intensity uses and contains areas of natural plant and animal habitat: and
 - ii. Where the quantity of runoff has not been substantially altered or impaired.
 - b. "Limited development area" includes an area:
 - i. With a housing density ranging from one dwelling unit per five acres up to four dwelling units per acre;
 - ii. With a public water or sewer system;
 - iii. That is not dominated by agricultural land, wetland, forest, barren land, surface water, or open space; or
 - iv. That is less than 20 acres and otherwise qualifies as an intensely developed area under the definition in this Chapter.
 75. "Living shoreline" means 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.

76. "Local significance" means 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 County; and is not considered to be major development as defined in this chapter.
77. "Locally significant habitat" means 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.
78. Lot coverage.
- a. "Lot coverage" means the percentage of a total lot or parcel that is:
 - i. Occupied by a structure, accessory structure, parking area, driveway, walkway, or roadway; or
 - ii. Covered with gravel, stone, shell, impermeable decking, a paver, permeable pavement, or other any manmade material.
 - b. "Lot coverage" includes the ground area covered or occupied by a stairway or impermeable deck.
 - c. "Lot coverage" does not include:
 - i. A fence or wall that is less than one foot in width that has not been constructed with a footer;
 - ii. A walkway in the Buffer or expanded Buffer, including a stairway, that provides direct access to a community or private pier;
 - iii. A wood mulch pathway; or
 - iv. A deck with gaps to allow water to pass freely.
79. "Major Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under Chapter ~~290~~ of this Ordinance.
80. "Major development" means 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.
81. Marina.
- a. "Marina" means a commercial facility for the mooring, berthing, storing, or securing of vessels.
 - b. "Marina" does not include a community pier, a private pier, or any other noncommercial facility for the docking or storage of vessels.
82. "Mean High Water Line" (MHWL) means the average level of high tides at a given location.
83. "Minerals" means any solid material, aggregate, or substance of commercial value, whether consolidated or loose, found in natural deposits on or in the earth, including clay, diatomaceous earth, gravel, marl, metallic ores, sand, shell, soil, and

- stone. The term does not include coal.
84. "Minor Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under Chapter ~~290~~ of this Ordinance.
85. "Mitigation" means an action taken to compensate for adverse impacts to the environment resulting from a development activity or a change in land use or intensity.
86. Modified Buffer Area.
- a. "Modified buffer area" means an area of land:
 - i. 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
 - ii. 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.
 - b. "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.
87. "Native plant" means a species that is indigenous to the physiographic area in Maryland where the planting is proposed.
88. "Natural features" means 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.
89. "Natural forest vegetation" means vegetation consisting of canopy trees, understory 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.
90. "Natural Heritage Area" means 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.
91. "Natural parks" means areas of natural habitat that provide opportunities for those recreational activities that are compatible with the maintenance of natural conditions.
92. "Natural regeneration" means 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.
93. "Natural vegetation" means those plant communities that develop in the absence of human activities.
94. "Nature-dominated" means a condition where landforms or biological communities, or both, have developed by natural processes in the absence of human activities.
95. "New development" means, that for purposes of implementing specific provisions of this ordinance, new development (as opposed to redevelopment) is 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.

96. "Nonpoint source pollution" means pollution generated by diffuse land use activities rather than from an identifiable or discrete facility. It is conveyed to waterways through natural processes, such as rainfall, storm runoff, or ground water seepage rather than by deliberate discharge. Nonpoint source pollution is not generally corrected by "end-of-pipe" treatment, but rather, by changes in land management practices.
97. "Nontidal wetlands" means:
- a. An area that is inundated or saturated by surface water or ground water 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;
 - b. Is determined according to the Federal Manual;
 - c. Does not include tidal wetlands regulated under Title 16 of the Environment Article of the Annotated Code of Maryland.
98. Nonwater-dependent project.*
- a. "Nonwater-dependent project" means 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.
 - b. "Nonwater-dependent project" includes:
 - i. A dwelling unit on a pier;
 - ii. A restaurant, a shop, an office, or any other commercial building or use on a pier;
 - iii. A temporary or permanent roof or covering on a pier;
 - iv. A pier used to support a nonwater-dependent use; and
 - v. A small-scale renewable energy system on a pier, including:
 1. A solar energy system and its photovoltaic cells, solar panels, or other necessary equipment;
 2. A geothermal energy system and its geothermal heat exchanger or other necessary equipment; and
 3. A wind energy system and its wind turbine, tower, base, or other necessary equipment.
 - c. "Non-water dependent project" does not include:
 - i. A fuel pump or other fuel-dispensing equipment on a pier;
 - ii. A sanitary sewage pump or other wastewater removal equipment on a pier; or
 - iii. 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.
99. "Offsets" means structures or actions that compensate for undesirable impacts.
100. "Open space" means land and water areas retained in an essentially undeveloped state.
101. "Overburden" means the strata or material overlying a mineral deposit, or in between mineral deposits in its natural state, and before its removal by surface mining.

102. Permanent Disturbance.
- a. "Permanent disturbance" means a material, enduring change in the topography, landscape, or structure that occurs as part of a development or redevelopment activity.
 - b. "Permanent disturbance" includes:
 - i. Construction or installation of any material that will result in lot coverage;
 - ii. Construction of a deck;
 - iii. Except under §B(133)(b) of this regulation, grading;
 - iv. Except under §B(133)(b)(ii) of this regulation, clearing of a tree, forest, or developed woodland; and
 - v. A septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required.
 - c. "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
103. "Person" means an individual, partnership, corporation, contractor, property owner, or any other person or entity.
104. "Physiographic features" means the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.
105. Pier.
- a. "Pier" means any pier, wharf, dock, walkway, bulkhead, breakwater, piles or other similar structure.
 - b. "Pier" does not include any structure on pilings or stilts that was originally constructed beyond the landward boundaries of State or private wetlands.
106. "Plant habitat" means a community of plants commonly identifiable by the composition of its vegetation and its physiographic characteristics.
107. "Port" means a facility or area established or designated by the State or local jurisdiction for the purpose of waterborne commerce.
108. "Principal structure" means the primary or predominant structure on any lot or parcel. For residential parcels or lots, the principal structure is the primary dwelling.
109. "Private harvesting" means the cutting and removal of trees for personal use.
110. "Program amendment" means any change or proposed change to an adopted program that is not determined by the Chairman of the Critical Area Commission to be a Program refinement.
111. "Program refinement" means any change or proposed change to an adopted program that the Chairman of the Critical Area Commission determines will result in a use of land or water in the Chesapeake Bay Critical Area or Atlantic Coastal Bays Critical Area in a manner consistent with the adopted Program, or that will not significantly affect the use of land or water in the Critical Area. Program 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;
 - b. A change to a local ordinance or code that clarifies an existing provision; and
 - c. 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.

112. "Project approvals" means the approval of development, other than development by the State or local government, in the Critical Area by the appropriate local approval authority. The term includes approval of subdivision plats and site plans; inclusion of areas within floating zones; issuance of variances, special exceptions, and conditional use permits; and issuance of zoning permits. The term does not include building permits.
113. "Property owner" means a person holding title to a property or two or more persons holding title to a property under any form of joint ownership.
114. "Public water-oriented recreation" means shore-dependent recreation facilities or activities provided by public agencies that are available to the general public.
115. "Reclamation" means the reasonable rehabilitation of the affected land for useful purposes and the protection of the natural resources of the surrounding areas, including ponds.
116. Reconfiguration.
 - a. "Reconfiguration" means a change of the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lots.
 - b. "Reconfiguration" includes any term used by a local jurisdiction for a development application that proposes to change the arrangement of the existing lot or parcel lines of any legal parcel of land or recorded, legally buildable lot that existed before the application, such as a subdivision, lot line adjustment, boundary line adjustment, replatting request, or a revision of acreage to increase density.
117. "Redevelopment" means the process of developing land which is or has been developed. For purposes of implementing specific 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.
118. "Reforestation" means the establishment of a forest through artificial reproduction or natural regeneration.
119. "Resource Conservation Area" means 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.
120. "Resource utilization activities" means any and all activities associated with the utilization of natural resources such as agriculture, forestry, surface mining, aquaculture, and fisheries activities.
121. "Restoration" means 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.
122. "Riparian habitat" means a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.
123. "Road" means 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 driveway.
124. "Seasonally flooded water regime" means 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.

- 125. "Selection" means the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.
- 126. "Shore erosion protection works" means those structures or measures constructed or installed to prevent or minimize erosion of the shoreline in the Critical Area.
- 127. "Significantly eroding areas" means areas that erode two feet or more per year.
- 128. "Simplified Buffer Management Plan" means a type of Buffer Management Plan and all supporting documentation required under Chapter ~~290~~ of this Ordinance.
- 129. "Small shrub" means a shrub that, when mature, reaches a height of up to six feet.
- 130. "Soil conservation and water quality plan" means an agricultural plan approved by a local soil conservation district to minimize soil erosion and the movement of sediment, animal waste, nutrients, or agricultural chemicals into waters of the State.
- 131. "Species in need of conservation" means a species of fauna determined by the Secretary of Natural Resources to be in need of conservation measures for its continued ability to sustain itself successfully, in accordance with the provisions of:
 - a. Natural Resources Article, Title 4, Subtitle 2A, or Title 10, Subtitle 2A, Annotated Code of Maryland; or
 - b. COMAR 08.03.08.
- 132. "Spoil pile" means the overburden and reject materials as piled or deposited in surface mining.
- 133. "Steep slopes" means slopes of 15 percent or greater incline.
- 134. Structure.
 - a. "Structure" means building or construction materials, or a combination of those materials, that are purposely assembled or joined together on or over land or water.
 - b. "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.
- 135. "Substantial alteration" means any repair, reconstruction, or improvement of a principal structure, with a proposed total footprint is at least 50 percent greater than that of the structure that is the subject of the application.
- 136. "Supplemental planting plan" means 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.
- 137. Surface Mining.
 - a. "Surface mining" means:
 - i. The breaking of surface soil located in the Critical Area in order to extract or remove a mineral;
 - ii. An activity or process that is part of the method of extraction or removal of a mineral from its original location in the Critical Area; and
 - iii. The extraction or removal of sand, gravel, rock, stone, earth, or fill from a borrow pit for the purpose of constructing a road or another public facility.
 - b. "Surface mining" includes:
 - i. An activity related to the processing of a mineral at the site of

- extraction or removal;
 - ii. Extraction or removal of overburden and mining of a limited amount of a mineral when done for the purpose of prospecting, to the extent necessary, for the purpose of determining the location, quantity, or quality of a natural deposit; and
 - iii. A mining activity.
 - c. "Surface mining" does not include an activity or process that is excluded under the provisions of Environment Article, §15-807, Annotated Code of Maryland, or COMAR 26.21.01.08.
138. Temporary Disturbance.
- a. "Temporary disturbance" means a short-term change in the landscape that occurs as part of a development or redevelopment activity.
 - b. "Temporary disturbance" includes:
 - i. Storage of materials that are necessary for the completion of the development or redevelopment activity;
 - ii. 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;
 - iii. 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
 - iv. 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.
 - c. "Temporary disturbance" does not include:
 - i. A septic system in a forest or developed woodland on a lot created before local program approval, if clearing is required; and
 - ii. A violation.
139. "Threatened species" means a species of flora or fauna that appears likely within the foreseeable future to become endangered, including a species determined to be a threatened species in accordance with the provisions 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.
140. "Topography" means the existing configuration of the earth's surface including the relative relief, elevation, and position of land features.
141. "Transitional habitat" means 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.
142. "Transportation facilities" means anything that is built, installed, or established to provide a means of transport from one place to another.
143. "Tree" means a large, woody plant having 1 or several self-supporting stems or trunks and numerous branches that reach a height of at least 20 feet at maturity.
144. "Tributary stream" means a perennial stream or intermittent stream within the Critical Area that has been identified by site inspection or in accordance with local

program procedures approved by the Critical Area Commission.

145. "Understory" means the layer of forest vegetation typically located underneath the forest canopy.
146. "Understory tree" means a tree that, when mature, reaches a height of 12 and 35 feet.
147. "Unwarranted hardship" means that without a variance, an applicant shall be denied reasonable and significant use of the entire parcel or lot for which the variance is requested."
148. "Upland boundary" means the landward edge of a tidal wetland or nontidal wetland.
149. "Utility transmission facilities" means fixed structures that convey or distribute resources, wastes, or both, including but not limited to electrical lines, water conduits and sewer lines.
150. "Vessel" means every description of watercraft, including an ice boat but not including a seaplane, that it used or capable of being used as a means of transportation on water or ice. Vessel includes the motor, spars, sails, and accessories of a vessel.
151. Wash Plant.
 - a. "Wash plant" means a facility where sand or gravel is washed during processing.
 - b. "Wash plant" includes a stockpile, a wash pond, and related washing equipment.
152. Water-dependent facility or activity.
 - a. "Water-dependent facility or activity" means a structure or activity that, by reason of its intrinsic nature or operation or because of its association with an industrial, maritime, recreational, educational, aquaculture, or fishery activity, is dependent on the water and requires location al or near the shoreline or in the buffer.
 - b. "Water-dependent facility or activity" includes:
 - i. A port;
 - ii. An intake or outfall structure;
 - iii. A marina, another boat-docking facility, or a structure or activity that is essential to the operation of the water-dependent facility, structure, or activity;
 - iv. A fuel pump or other fuel-dispensing equipment on a pier, a sanitary sewage pump or other wastewater removal equipment on a pier, and an office on a pier for managing marina operations, such as monitoring vessel traffic, registering vessels, providing docking services, and housing electrical or emergency equipment related to marina operations;
 - v. A public beach and any other public water-oriented recreation area; and
 - vi. Any other water-dependent facility or activity that supports water quality restoration in the Chesapeake Bay, the Atlantic Coastal Bays, or their watersheds.
153. "Waterfowl" means a species of birds that frequents and often swims in water, nests and raises its young near water, and derive at least part of its food from aquatic plants and animals.
154. "Waterfowl staging and concentration area" means 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.

155. "Wildlife corridor" means a strip of land having vegetation that provides habitat and safe passageway for wildlife.
156. "Wildlife habitat" means a plant community and physiographic features that provide food, water, cover, nesting, and foraging or feeding condition necessary to maintain a population of animals in the Critical Area, as described in COMAR 27.01.09.04.

Article VIII: Planning Commission and Board of Appeals, §290-32. Board of Appeals

- A. Establishment of Board. In order that the objectives of this chapter may be more fully and equitably achieved and a means for competent interpretation of this chapter provided, there is established a Board of Appeals ("the Board") for the Town.
- B. Membership and terms of office. The Board shall consist of five members. The terms of office of the members shall be three years. Members shall be appointed by the Mayor, confirmed by the Town Council, and removable for cause upon written charges and after a public hearing. The Mayor shall designate one alternate member for the Board, who may be empowered to sit on the Board in the absence of any member of the Board.
- C. Procedures, meetings, records, and decisions. [Amended 2-16-2006 by Ord. No. O-06-2]
 - 1. Procedures. The Board shall elect a Chairman from its membership, shall appoint a Secretary, and shall prescribe rules in accordance with the provisions of the Land Use Article, Title 4, Zoning, Subtitle 3, Board of Appeals, of the Annotated Code of Maryland and this chapter for the conduct of its affairs. [Amended 11-20-2014 by Ord. No. O-14-18]
 - 2. Meetings. Meetings of the Board shall be held at the call of the Chair and at other times determined by the Board. At each regular meeting of the Board, the Board shall conduct hearings on those applications scheduled to be heard in accordance with Subsection D. The Board is not required to meet if no applications are pending prior to the due date for submission. The Chairperson or the Chairperson's designee may administer oaths and compel the attendance of witnesses. All meetings of the Board shall be open to the public, unless closed pursuant to the Maryland Open Meetings Act or closed for executive session to deliberate on the matter. All votes on questions of procedure or on the merits of the case shall at all times be open to the public. Three members present shall constitute a quorum. [Amended 11-20-2014 by Ord. No. O-14-18]
 - 3. Records and decisions. The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Board and shall be a public record. All actions or decisions of the Board shall be taken by resolution in which three members, present during the

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proceedings, must concur. Each resolution shall contain a statement of the grounds and any findings forming the basis of such action or decision. The Board shall notify the Mayor and Town Council, Planning Commission, and Zoning Administrator of all decisions and resolutions.

4. Testimony offered by nonapplicants. Testimony provided by any person who is not an applicant, or expert offered by the applicant as part of applicant's presentation, or agent of the applicant shall be provided in accordance with this Subsection C(4). All persons wishing to testify must first sign in on a form to be provided by the Clerk to the Board. Said form shall provide the name, address and phone number of the person who wishes to testify. In addition, the form shall provide an election, to be made by the person wishing to testify, as to whether the person wishes to waive being treated as a party to the proceeding under Maryland law, entitling him or her to notice of any subsequent judicial action in the Circuit Court with respect to the proceeding and that a waiver of his or her status as a party will mean that he or she will not get notice of any subsequent judicial action related to the proceeding. If the person indicates that he or she wishes to waive being treated as a party to the proceeding, the Board shall not thereafter treat the person as a party to the proceeding. Nothing in this Subsection C(4) prevents the Board from accepting into the record correspondence or other documents submitted for inclusion in the record without personal testimony, so long as the person submitting such correspondence or documents provides his or her name and address. Parties submitting correspondence or documents but not attending the hearing to testify shall be considered parties to the proceeding.
- D. Receipt of applications, notice of hearings. Applicants for a special exception, or variance, and persons appealing an alleged error of the Zoning Administrator or the Planning and Zoning Commission, acting in an administrative capacity, may be accepted at any time and shall be scheduled for the earliest regularly scheduled board meeting, or sooner if such meeting is called by the chairman, following the fifteen-day period for public notification provided in Subsection D(1) below. All required elements of the application, including any required comment letters from other agencies (including the Critical Area Commission) must be submitted with the application for a hearing to be scheduled. Upon a hearing being scheduled, notice of the hearing shall be as follows: [Amended 2-16-2006 by Ord. No. O-06-2; 1-15-2015 by Ord. No. O-14-21]
 1. At least 15 days prior to the date fixed for the public hearing, notice containing the name of the applicant or appellant, the date, time and place fixed for the hearing, and a brief statement of the substance of the application or appeal

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shall be advertised in at least one newspaper of general circulation within the Town.

2. Post, in a conspicuous place on the property involved, a notice of pending action containing the same information as in Subsection D(1) above, such posting to take place at least 15 days prior to the date fixed for the public hearing.
3. Give written notice of the time and place of such hearing sent by registered mail to the applicant or appellant and to the owners of property contiguous to and immediately across the street from the property affected.
4. Upon receipt of an application, for a special exception, interpretation, or variance, the Secretary of the Board shall transmit a copy of said application to the Planning Commission, together with a notice of the aforesaid hearing.

E. Powers and duties regarding interpretation. Upon appeal from a decision of the Administrator or the Planning and Zoning Commission when the Commission is acting in an administrative capacity as defined by Maryland law, the Board shall decide any question: [Amended 3-8-2006 by Ord. No. O-06-6]

1. Involving the interpretation of any provisions of this chapter, including a determination of the exact location of any district boundary if there is uncertainty with respect thereto; and
2. Where it is alleged there is an error in any order, requirement, decision or determination, including any order requiring an alleged violation to stop, cease, and desist, made by the Administrator in the enforcement of this chapter or by the Planning and Zoning Commission.

F. Powers and duties regarding variances.

1. Upon appeal from a decision by the Administrator, the Board shall have the power to vary or adapt the strict application of any of the requirements of this chapter in the case of exceptionally irregular, narrow, shallow, or steep lots, or other exceptional physical conditions whereby such strict application would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of land or building. In addition, due to the special features of a site or other circumstances where a literal enforcement of provisions relating to the Critical Area District would result in unwarranted hardship to a property owner, the Board of Appeals may grant a variance from the provisions of this chapter or Chapter 245, Subdivision of Land, applicable to the Critical Area District.
2. In general, the power to authorize a variance from the terms of this chapter shall be sparingly exercised and only under peculiar and exceptional circumstances.
3. Conditions.
 - a. No variance in the strict application of the provisions of this chapter shall be granted by the Board unless the Board finds that the following requirements and standards are satisfied:
 - i. That the granting of the variance shall be in harmony with the general purpose and intent of this chapter, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.
 - ii. That the granting of the variance will not permit the existence within a district of any use which is not permitted in that district.
 - iii. That there are special circumstances or conditions fully described in the findings, applying to the land or buildings for which the variance is sought, which circumstances or conditions are peculiar to such land or buildings and do not apply generally to land or buildings in the neighborhood, and that said circumstances or conditions are such that strict interpretation of the provisions of this chapter would deprive the applicant of the reasonable use of such land or building.
 - iv. That there exists unnecessary hardship. If the hardship is general, that is, shared generally by land or buildings in the neighborhood, relief shall be properly obtained only by legislative

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action or by court review of an attack on the validity of the ordinance.

- v. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose.
 - vi. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded. Furthermore, the hardship complained of cannot be self-created; it cannot be claimed by one who purchases with or without the knowledge of restrictions; it must result from the application of the ordinance; it must be suffered directly by the property in question; and evidence of greater profitability and of variances granted under similar circumstances shall not be considered.
4. A variance from the provisions of this chapter relating to the Critical Area District shall not be granted unless, in addition to meeting the requirements of Subsection F(3) above, the decision is based on all of the following criteria STANDARDS being met: [Amended 5-11-2005 by Ord. No. O-05-4]
- a. ~~That special conditions or circumstances exist that are peculiar to the land or structure within the Town's Critical Area District that would result in an unwarranted hardship to the applicant. "Unwarranted hardship" means that, without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.~~ IN CONSIDERING AN APPLICATION FOR A VARIANCE, THE TOWN SHALL PRESUME THAT THE SPECIFIC DEVELOPMENT ACTIVITY IN THE CRITICAL AREA, THAT IS SUBJECT TO THE APPLICATION AND FOR WHICH A VARIANCE IS REQUIRED, DOES NOT CONFORM WITH THE GENERAL PURPOSE AND INTENT OF NATURAL RESOURCES ARTICLE, TITLE 8 SUBTITLE 18, COMAR TITLE 27, AND THE REQUIREMENTS OF THIS ORDINANCE.
 - b. UNWARRANTED HARDSHIP MEANS THAT WITHOUT A VARIANCE, AN APPLICANT WOULD BE DENIED REASONABLE AND SIGNIFICANT USE OF THE ENTIRE PARCEL OR LOT FOR WHICH THE VARIANCE IS REQUESTED.
 - c. THE PROVISIONS FOR GRANTING A VARIANCE SHALL INCLUDE WRITTEN FINDINGS BASED ON COMPETENT AND SUBSTANTIAL EVIDENCE THAT THE APPLICANT HAS OVERCOME THE

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PRESUMPTION ESTABLISHED UNDER SECTION F(4) ABOVE AND THAT EACH OF THE FOLLOWING STANDARDS ARE MET:

- i. DUE TO SPECIAL FEATURES OF THE SITE OR SPECIAL CONDITIONS OR CIRCUMSTANCES PECULIAR TO THE LAND OR STRUCTURE INVOLVED, ~~That a literal interpretation~~ ENFORCEMENT OF PROVISIONS AND REQUIREMENTS OF the Town's local Critical Area Program and this chapter WOULD RESULT IN UNWARRANTED HARDSHIP; ~~will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area District.~~
 - ii. A LITERAL INTERPRETATION OF THE PROVISIONS OF THIS ORDINANCE WILL DEPRIVE THE APPLICANT THE USE OF LAND OR A STRUCTURE PERMITTED TO OTHERS IN ACCORDANCE WITH THE PROVISIONS OF THIS CRITICAL AREA ORDINANCE;
 - iii. That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Critical Area District IN ACCORDANCE WITH THE PROVISIONS OF THE TOWN'S CRITICAL AREA OVERLAY.
 - iv. THE VARIANCE REQUEST IS NOT BASED UPON CONDITIONS OR CIRCUMSTANCES WHICH ARE THE RESULT OF ACTIONS BY THE APPLICANT
 - v. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area District,
 - vi. That the granting of the variance will be in harmony with the general spirit and intent of the Town Critical Area Protection Program, this chapter, Maryland's Critical Area law, and COMAR TITLE 27, SUBTITLE 1 regulations.
5. A variance from the following provisions of this chapter relating to the Critical Area District shall be subject to the following additional procedures and standards:[Amended 5-11-2005 by Ord. No. O-05-4]
- a. 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

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PARTICIPATE AS A PARTY IN A LOCAL ADMINISTRATIVE
PROCEEDING.

- b. A completed VARIANCE application form must be submitted to the Town, with a copy to the Critical Area Commission, that demonstrates the applicability of the criteria in Subsection F(4) above. The Board shall conduct a public hearing in accordance with Subsection D hereof only after receiving Critical Area Commission staff response to the application, which response shall be automatically admitted as part of the record.
- c. ~~In considering an application for a variance, the Board shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of Natural Resources Article, Title 8, Subtitle 18, COMAR Title 27, and the requirements of the Town's Local Critical Area Protection Program.~~ If the variance request is based on conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, the Board ~~may~~ **SHALL** consider that fact, **AND WHETHER THE APPLICATION HAS MET THE REQUIREMENTS OF SECTION(F)(7) BELOW.**
- d. **THE REQUEST DOES NOT ARISE FROM ANY CONFORMING OR NON-CONFORMING CONDITION ON ANY NEIGHBORING PROPERTY;**
- e. An applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection F(5)(d) above.
- f. Based on competent and substantial evidence, the Board shall make written findings as to whether the applicant has overcome the presumption of nonconformance established in Subsection F(5)(d) above.
- g. **AFTER HEARING AN APPLICATION FOR A CRITICAL AREA VARIANCE, THE BOARD OF APPEALS SHALL MAKE WRITTEN FINDINGS REFLECTING ANALYSIS OF EACH STANDARD REQUIRED BY SECTION F(3) AND F(4).** With due regard for the person's experience, technical competence, and specialized

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knowledge, the written findings may be based on evidence introduced and testimony presented by:

- i. The applicant;
- ii. The Town staff or any other government agency; or
- iii. Any other person or source deemed appropriate by the Board.

h. THE TOWN OF CHESAPEAKE BEACH SHALL NOTIFY THE CRITICAL AREA COMMISSION OF ITS FINDINGS AND DECISION TO GRANT OR DENY THE VARIANCE REQUEST BY PROVIDING A COPY OF THE DECISION TO THE CRITICAL AREA COMMISSION WITHIN TEN (10) DAYS AFTER THE WRITTEN DECISION IS ISSUED.

6. In granting the variance, the Board may prescribe such conditions and safeguards as it deems appropriate that comply with the intent of this chapter as a whole and the Town of Chesapeake Beach Critical Area Program. Violations of such conditions and safeguards, when made part of the terms under which the variance is granted, shall be deemed a violation of this chapter and punishable in accordance with the provisions for violations.

7. 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 THIS ORDINANCE IS MAINTAINED INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- a. ADVERSE IMPACTS RESULTING FROM THE GRANTING OF THE VARIANCE SHALL BE MITIGATED AS RECOMMENDED BY THE ZONING ADMINISTRATOR, BUT NOT LESS THAN BY PLANTING ON THE SITE PER SQUARE FOOT OF THE VARIANCE GRANTED AT NO LESS THAN A THREE TO ONE BASIS.
- 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.

8. AFTER-THE-FACT REQUESTS

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- a. THE TOWN OF CHESAPEAKE BEACH 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 TOWN HAS:
 - i. ISSUED A NOTICE OF VIOLATION; AND
 - ii. ASSESSED AN ADMINISTRATIVE OR CIVIL PENALTY FOR THE VIOLATION.
- b. THE TOWN OF CHESAPEAKE BEACH MAY NOT ISSUE A PERMIT, APPROVAL, VARIANCE, OR SPECIAL EXCEPTION TO LEGALIZE A VIOLATION OF THIS ORDINANCE UNLESS AN APPLICANT HAS:
 - i. FULLY PAID ALL ADMINISTRATIVE, CIVIL AND CRIMINAL PENALTIES IMPOSED UNDER NATURAL RESOURCES ARTICLE, §8-1808(C)(L), ANNOTATED CODE OF MARYLAND;
 - ii. 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
 - iii. PERFORMED THE ABATEMENT MEASURES IN THE APPROVED PLAN IN ACCORDANCE WITH THE LOCAL CRITICAL AREA ORDINANCE.
- c. IF THE BOARD DENIES THE REQUESTED AFTER-THE-FACT VARIANCE, THEN THE TOWN SHALL:
 - i. ORDER REMOVAL OR RELOCATION OF ANY STRUCTURE; AND
 - ii. ORDER RESTORATION OF THE AFFECTED RESOURCES.

9. 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 THIS ORDINANCE IS MAINTAINED INCLUDING, BUT NOT LIMITED TO THE FOLLOWING:

- a. ADVERSE IMPACTS RESULTING FROM THE GRANTING OF THE VARIANCE SHALL BE MITIGATED AS RECOMMENDED BY THE CHESAPEAKE BEACH PLANNING & ZONING COMMISSION. THE MITIGATION SHALL BE ACCOMPLISHED AS FOLLOWS; THE

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PLANTING MUST BE AT NO LESS THAN A THREE TO ONE BASIS
ON THE SITE PER SQUARE FOOT OF THE VARIANCE GRANTED.

- 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.
- G. Actions of the Board in exercising powers concerning appeals. In exercising the
above-mentioned powers concerning appeals, the Board may, in conformity with law
and the provisions of this chapter, 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 officer from whom the appeal is taken.
- H. Time limitations on Board approvals. A decision of the Board permitting the erection
or alteration of a building shall be valid for a period of one year, unless a zoning
permit for such erection or alteration is obtained within this period and the erection or
alteration proceeds to completion in accordance with the terms of the decision. No
decision of the Board permitting the use of a building or land shall be valid for a
period longer than one year, unless such use is established within said period;
except that, where such use is dependent upon the erection or alteration of a
building, such order shall continue in force and effect if a zoning permit for such
erection or alteration is obtained within said period, and such erection or alteration
proceeds to completion in accordance with the terms of the decision.
- I. Who may appeal to the Board. Appeals to the Board may be taken by any person
aggrieved or by any officer, department, board, or bureau of the Town affected by
any decisions of the Administrator.
- J. Rules and procedures for filing interpretation and variance appeals and special
exception applications.
 - 1. General rules and procedures for appeals and applications.
 - a. Any appeal shall be made by filing the same with the Administrator
within 30 days after the date of the Administrator's decision.
 - b. All appeals and applications made to the Board shall be in writing on
standard forms prescribed by the Board.
 - c. All appeals and applications shall refer to the specific provisions of the
ordinance involved.

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- d. All appeals and applications shall set forth names and addresses of all adjoining property owners, including those across the streets from the subject property.
 - e. Variance appeals and special exception applications may not be filed which request the identical relief, related to the same property (regardless of who filed the appeal or application), which was requested in a previous appeal or application, if the previous appeal or application was filed within the previous 365 days. Upon good cause shown, the Board of Appeals may waive the time limitation of this Subsection J(1)(e) upon a written request submitted with a new application, so long as all applicable fees are paid for the new application. Fees collected for the new application shall not be refundable if the Board of Appeals turns down the request for a waiver.
- 2. Interpretation appeals. Appeals concerning the interpretation of any provisions of this chapter shall ~~precisely~~exactly set forth the interpretation that is claimed.
 - 3. Variance appeals. Appeals for variance from the strict application of this chapter shall include the zoning permit application denied by the Administrator, together with a statement with any supporting data regarding the requirements listed in Subsection F.
 - 4. Special exception applications. Applications for special exceptions shall include a zoning permit application with all information required therein and a statement, with any supporting data, regarding the merits of the proposed use at the proposed location and how the proposal complies with the general and specific requirements of this chapter.
- K. Review by the Planning Commission on applications for special exceptions, variances and interpretations. The Board may request an advisory opinion from the Planning Commission. If an advisory opinion is requested from the Commission regarding special exceptions, variances and interpretations, the opinion shall be rendered within 30 days after submission to the Commission.
 - L. Decisions by the Board. Decisions by the Board on special exceptions, variances, and interpretation appeals shall be rendered within 120 calendar days of the hearing on said exception, variance or interpretation, unless a later date is mutually agreed upon by the Board and applicant.
 - M. Appeal to court. Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer of the Town, or any officer, department,

board, bureau of the Town, may appeal the same to the Circuit Court of Calvert County.

1. THE TOWN OF CHESAPEAKE BEACH MAY NOT ISSUE A PERMIT, OR ANY OTHER TYPE OF AUTHORIZATION, UNTIL THE APPLICABLE 30-DAY APPEAL PERIOD HAS EXPIRED.

- N. Annual review of rules and procedures. The Board of Appeals, during its first scheduled meeting in January, shall annually review its rules and procedures and may amend them as necessary.

Article VII: Administration, §290-30 Violations and penalties.

A. Fines and penalties.

(1) Except for violations of §§ 290-17 and 290-18 of Article IV of this chapter, which relate to the Critical Area, the violation of all provisions of this chapter shall constitute a municipal infraction and the penalties for violating said provisions shall be provided by this section. All citations for violations subject to this section shall be issued by the Zoning Administrator, in accordance with the provisions of Article 23A, § 3, of the Annotated Code of Maryland. A person shall HAVE BEEN FOUND TO violate the provisions of this chapter if THEY ARE the owner of a property upon which a condition exists that is in violation of this chapter or if the person participates in acts which violate this chapter (whether as a PROPERTY owner, tenant, contractor, SUB-CONTRACTOR, or agent of the PROPERTY owner, OR ANY OTHER PERSON WHO HAS COMMITTED , ASSISTED, OR PARTICIPATED IN THE VIOLATION), but excludes those acting in an official capacity on behalf of the Town. EACH PERSON VIOLATING THIS CHAPTER MAY BE SUBJECT TO THE FINES JOINTLY OR SEVERALLY.

(2) The violation of any provision of ANY SECTION OF CHAPTER 290: ZONING SHALL BE SUBJECT TO THE FOLLOWING FINES:

- (a) FOR ANY VIOLATION THAT IMPACTS AN AREA SMALLER THAN 100 SQUARE FEET: \$500.
- (b) FOR ANY VIOLATION THAT IMPACTS AN AREA GREATER THAN 100 SQUARE FEET: \$1,000.
- (c) FOR ANY VIOLATION THAT IMPACTS A STEEP SLOPE AS DEFINED IN THIS ORDINANCE: \$1,000
- (d) The violation of any provision of this chapter for which a penalty is not OTHERWISE provided shall be subject to a fine NOT LESS THAN \$500 AND NOT GREATER THAN \$1,000.

~~(3) Violations of the following provisions shall subject the violator to the following fines:~~

~~Section Violated~~	~~Fine~~
§ 290-3D	\$500
§ 290-11	\$400
§ 290-12C(2)	\$400
§ 290-19G	\$300
§ 290-20A(4)	\$500
§ 290-22B	\$500
§ 290-22E	\$500

~~§ 290-26B(8)~~ \$1,000
~~§ 290-28C~~ \$500

(43) Whenever a person violates the provisions of this chapter, the Administrator SHALL notify the person in writing of the violation. The Administrator may provide said notice in addition to the citations for a municipal infraction provided for in Subsection A(1) or the Administrator may provide the notice of violation prior to issuing a citation. The notice shall state the nature of the violation, the code section being violated, and state that the failure to commence the correction of the violation or violations may result in legal action, the person being cited for a municipal infraction, or any other form of remedy authorized by this chapter and the laws of Maryland. If the person given notice of a violation under this Subsection A(3)(4) fails to commence the correction or abatement of all violations within 15 days, and/or fails to complete the correction or abatement of the violations within 30 days, then each day that the violation continues thereafter shall constitute a separate offense, punishable by a fine as set forth in Subsection A(2)-~~or (3)~~.

(54) Nothing in this Subsection A shall be construed as a predicate or condition to the Town exercising the remedies provided for in Subsection B or C. The imposition of fines or the giving of a notice of violation provided by this Subsection A shall not be construed as a replacement of, or waiver of, the right of the Town to exercise or institute actions to seek the remedies provided for in Subsection B or C.

B. Remedies. In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of this chapter, the appropriate authorities of the Town of Chesapeake Beach, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use; to restrain, correct, or abate such violation; to prevent any illegal act, conduct, business, or use in or about such premises. The rights and remedies provided in this chapter are cumulative and are in addition to all other remedies provided by law.

C. Critical Area fines and penalties. [Added 5-11-2005 by Ord. No. O-05-5]

(1) VIOLATIONS OF THE CRITICAL AREA PROVISIONS (290-17 & 18) ARE SUBJECT TO SECTION 290-17 PART 13: ENFORCEMENT. INCLUDING RESTORATION AND MITIGATION OF THE VIOLATION.

(2) THE VIOLATION OF ANY PROVISION OF ANY SECTION OF CHAPTER 290-17 and 18: CRITICAL AREA SHALL BE SUBJECT TO THE FOLLOWING FINES:

(a) FOR ANY VIOLATION THAT IMPACTS AN AREA SMALLER THAN 100 SQUARE FEET: \$500.

- (b) FOR ANY VIOLATION THAT IMPACTS AN AREA GREATER THAN 100 SQUARE FEET: \$1,000.
 - (c) NOTWITHSTANDING (1) OR (2) FOR ANY VIOLATION THAT IMPACTS A STEEP SLOPE AS DEFINED IN THIS ORDINANCE: \$1,000
 - (d) NOTWITHSTANDING (1) OR (2) FOR ANY VIOLATION IN THE 100-FOOT BUFFER: \$800
 - (e) THE VIOLATION OF ANY PROVISION OF THIS CHAPTER FOR WHICH A PENALTY IS NOT OTHERWISE PROVIDED SHALL BE SUBJECT TO A FINE NOT LESS THAN \$500 AND NOT GREATER THAN \$1,000.
- (3) EACH VIOLATION OF THIS SECTION SHALL BE ASSESSED SEPARATELY AND CUMULATIVELY.
- (4) IF A PERSON GIVEN NOTICE OF A VIOLATION OF CRITICAL AREA PROVISIONS OF 290-17 & 290-18 FAILS TO COMMENCE THE CORRECTION OR ABATEMENT OF ALL VIOLATIONS WITHIN 15 DAYS, AND/OR FAILS TO COMPLETE THE CORRECTION OR ABATEMENT OF THE VIOLATIONS WITHIN 30 DAYS, THEN EACH DAY THAT THE VIOLATION CONTINUES THEREAFTER SHALL CONSTITUTE A SEPARATE OFFENSE, PUNISHABLE BY A FINE AS SET FORTH IN SUBSECTION A(2) ~~OR (3)~~.

(D) IN ADDITION TO ANY OTHER PENALTY APPLICABLE UNDER THIS ORDINANCE, EVERY VIOLATION OF A PROVISION OF THE NATURAL RESOURCES ARTICLE, TITLE 8, SUBTITLE 18, OR THE CRITICAL AREA PROVISIONS (290-17 & 18) OF THE ORDINANCE SHALL BE PUNISHABLE BY A CIVIL PENALTY OF UP TO \$10,000 PER CALENDAR DAY.

~~(1) Except as set forth in Subsection C(2) through (9) hereof, the violation of any provision of § 290-17, Critical Area Overlay District, and § 290-18, Growth Allocation Floating Districts, of Article IV of this chapter shall be a civil code violation and, upon conviction thereof, the offender shall be subject to a fine in the amount of \$100.~~

~~(2) Any person or persons who engage in development within the Buffer without a valid zoning permit, and who is in violation of § 290-17D(1) of this chapter, shall be guilty of a civil code violation. If the person or persons violating § 290-17D(1) undertook acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$600. If the person or persons violating § 290-17D(1) undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$3,000.~~

~~(3) Any person or persons who remove vegetation and/or trees within the Buffer without a valid zoning permit, and who is in violation of § 290-17D(5) of this chapter, shall be guilty of a civil code violation. If the person or persons violating § 290-17D(5) undertook~~

~~acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$1,000. If the person or persons violating § 290-17D(5) undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$5,000. If the area from which vegetation was removed exceeds 100 square feet, there shall be a rebuttable presumption that the violation was intentional and willful.~~

~~(4) Any person or persons who alter the slope of the land surface within the Buffer, without a valid grading permit and who is in violation of § 290-17D(5) of this chapter, shall be guilty of a civil code violation. If the person or persons violating § 290-17D(5) undertook acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$1,000. If the person or persons violating § 290-17D(5) undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$5,000. If the area of slope which was altered exceeds 100 square feet, there shall be a rebuttable presumption that the violation was intentional and willful.~~

~~(5) Any person or persons who violate the provisions of § 290-17G(1), Development Standards in Buffer Exemption Area, of this chapter and who does so without a valid zoning permit, shall be guilty of a civil code violation. If the person or persons violating § 290-17G(1) undertook acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$200. If the person or persons violating § 290-17G(1) undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$1,000.~~

~~(6) Any person or persons who cut or clear trees in a forest or developed woodland (as defined in § 290-44) in a Limited Development Area (LDA) in violation of the provisions of § 290-17J(2)(h)[6][b] of this chapter, and does so without a valid grading plan and/or permit, shall be guilty of a civil code violation. If the person or persons violating § 290-17J(2)(h)[6][b] undertook acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$600. If the person or persons violating § 290-17J(2)(h)[6][b] undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$3,000. All fines imposed in this Subsection B(6) are in supplementation of the mitigation requirements of § 290-17J(2)(h)[6][b] and shall not be inferred as a substitute for the mitigation requirements contained therein.~~

~~(7) Any person or persons who engages in development on slopes greater than 15% in a Limited Development Area (LDA) in violation of the provisions of § 290-17J(2)(h)[7] of this chapter, and who does so without a valid grading plan and/or permit, shall be guilty of a civil code violation. If the person or persons violating § 290-17J(2)(h)[7] undertook acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$600. If the person or persons violating § 290-17J(2)(h)[7] undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$3,000. If the area of slope which was altered exceeds 200 square feet, there shall be a rebuttable presumption that the violation was intentional and willful.~~

~~(8) Any person or persons who cut or clear trees in a forest or developed woodland (as defined in § 290-44) in a Resource Conservation Area (RCA) in violation of the provisions of § 290-17J(3) of this chapter to the extent said section adopts by reference § 290-17J(2)(h)[6][b] as being applicable to RCA Districts, and does so without a valid grading permit, shall be guilty of a civil code violation. If the person or persons violating § 290-17J(3) undertook acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$1,000. If the person or persons violating § 290-17J(3) undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$5,000. All fines imposed in this Subsection B(8) are in supplementation of the mitigation requirements of § 290-17J(2)(h)[6][b] and shall not be inferred as a substitute for the mitigation requirements contained therein.~~

~~(9) Any person or persons who engage in development on slopes greater than 15% in a Resource Conservation Area (RCA) in violation of the provisions of § 290-17J(3) of this chapter to the extent said section adopts by reference § 290-17J(2)(h)[7] as being applicable to the RCA Districts, and does so without a valid grading plan and/or permit, shall be guilty of a civil code violation. If the person or persons violating § 290-17J(3) undertook acts which demonstrate that the violation was a mistake or unintentional violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$1,000. If the person or persons violating § 290-17J(3) undertook acts which demonstrate that the violation was an intentional, willful violation, then, upon conviction thereof, the offender shall be subject to a fine in the amount of \$5,000. If the area of slope which was altered exceeds 200 square feet, there shall be a rebuttable presumption that the violation was intentional and willful.~~

~~(10) Any person or persons who engage in a civil code violation described in Subsection B(1) through (9) above, and said violation(s) occurs after a refusal by the Administrator to issue a permit for the specific actions taken, or which occur in violation of a stop-work~~

~~order or cease and desist order issued by the Administrator, shall, upon conviction thereof, be subject to a fine in the amount of \$10,000, regardless of whether the actions are a mistake, unintentional, intentional or willful.~~

~~(11) The imposition of fines for civil code infractions shall be supplemental to, and not as a substitute for, any and all development requirements imposed by this chapter, including but not limited to any requirements for afforestation, reforestation, mitigation, planting, construction of stormwater management facilities, and site design limitations, including such requirements as are imposed only upon a violation of the provisions of this chapter.~~

~~(12) In addition to the civil penalties set forth in Subsection B(1) through (10), and not as a substitution for said civil penalties, the Administrator may seek the abatement of the conditions which are the basis of the violation. If required, an order of abatement shall require the restoration of the disturbed area to the conditions existing prior to the offending disturbance and may include an order for the removal of any structures within said area. Any abatement shall be undertaken in a manner which is consistent with the critical area requirements of the Natural Resources Article of the Annotated Code of Maryland, COMAR, and the Town's Local Critical Area Program found in this chapter.~~

Attachment 1. Proposed Revisions to the Town of Chesapeake Beach Zoning Ordinance **(Chapter 290)**

Commission staff's recommended revisions to the Town of Chesapeake Beach's Zoning Ordinance are numbered below. These minor changes and clarifications are necessary to bring the Town of Chesapeake Beach's Critical Area Program into full consistency with the Critical Area law and regulations as of October 1, 2024 (updates to Chapter 424 of the Natural Resources Article under House Bill 233). All text in underline should be added; all text in ~~striketrough~~ should be deleted.

1. §290-17: Critical Area Overlay District: Include the following additional language:
 - a. On page 1, Part A. (1) Goals:
 - (d) 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
 - (e) Ensure an equitable distribution of the burdens and benefits of development, mitigation, restoration, conservation and adaptation to climate change with the Critical Area.
 - b. Starting on page 7, Part B. (3) Limited Development Areas (e), 7. For development that uses pervious materials that have been approved by the Commission as part of a local program, the limits established in item (e)4., of this subsection may be exceeded by up to 500 square feet using the following pervious materials: (i) Permeable pavers; or (ii) Pervious Concrete.
 - c. Replace Part B. (4) Resource Conservation Areas (c) 2. b. on page 10 with the following:
 - b. May only permit the area of any private wetlands located on the property to be included under the following conditions:
 - i. When using transfer of development rights;
 - ii. The density of development on the upland portion of the parcel may not exceed one (1) dwelling unit per eight (8) acres; and
 - iii. the area of private wetlands shall be field delineated when certifying development rights for transfer.
 - d. Amend Part J. (2) Comprehensive Review on page 35 as follows:

"(1) The Town of Chesapeake Beach will review its entire program and propose any necessary amendments to its entire program, including this Ordinance, at least every ~~six~~ ten years in accordance with Natural Resources Article, §8-1809(G).

(2) The Town of Chesapeake Beach shall notify the Commission in writing if it requires a one (1) year extension to the ten-year deadline of [insert date]

(3) Shall notify the Commission in writing, within 60 days after the completion of its review, in accordance with all requirements established in Natural Resources Article, §8-1809(g)."
 - e. Replace Part J. (3) Zoning Map Amendments on page 35 – 36 as follows:

"Except for program amendments or program refinements developed during a six-year comprehensive review, a Zoning Map amendment for The Critical Area Overlay may only be granted by the Town of Chesapeake Beach 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 as shown on the adopted Critical Area Overlay Map; or~~

~~(b) The use of growth allocation in accordance with the growth allocation provisions of this ordinance is proposed.”~~

“(a) The Town of Chesapeake Beach may grant a zoning map amendment in the Critical Area if the map amendment:

1. Is wholly consistent with the Critical Area land classification; or

2. If not consistent with the Critical Area land classification:

a. Proposes the use of a part of the remaining growth allocation; or

b. Proposes to change the Critical Area land classification from either an IDA to an LDA or an RCA, or from an LDA to an RCA.

(b) The Town of Chesapeake Beach may grant a change to the Critical Area land classification on proof of mistake if the proposed Critical Area classification:

1. Conforms to the State Critical Area mapping criteria based on land uses in existence either:

a. As of December 1, 1985 if part of the originally mapped Critical Area; or

b. As of the date the land was included in the Critical Area due to a Critical Area boundary remapping effort;

2. Follow’s the Town of Chesapeake Beach’s documented mapping methodology for Critical Area classification at the time of mapping; and

3. Is consistent with the purposes, policies, and goals of the Critical Area law and regulations.”

2. §290-18: Growth Allocation

a. Part B. Growth allocation acreage and deduction on page 40, amend as follows: “3. "The Town of Chesapeake Beach's original growth allocation is ~~one hundred and forty one (141)~~ 100 acres. The town's current growth allocation remaining as of the date of adoption of this Ordinance is ~~fifty eight and thirty seven hundredths (58.37)~~ 68.37 acres."

b. Part F. Standards on page 42: 7. Locate new intensely developed areas and limited development areas outside of areas vulnerable to climate change as identified by the Town of Chesapeake Beach, unless the Town of Chesapeake Beach 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.

c. Part G. Additional Factors on page 42: 9. Environmental impacts on underserved or overburdened communities.

3. §290-44: Critical Area Definitions

- a. Add the following definitions:
 - i. “Climate resiliency” means 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 surge, precipitation-induced flooding, and other extreme weather events.
 - ii. “Overburdened community” has the meaning stated in §1-701 of the Environment Article.
 - iii. “Underserved community” has the meaning stated in §1-701 of the Environment Article.
- b. Amend the definition of “lot coverage” (#78) on page 9 as follows:
 - a. ii. “Covered with gravel, stone, shell, ~~impermeable~~ decking, a paver, permeable pavement, or other any manmade material.”
 - c. iv. ~~“A deck with gaps to allow water to pass freely~~ permeable deck.”
- c. Amend the definition of “Dwelling unit” (#39) on page 5 as follows: “39. “Dwelling unit” means 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.”
- d. Definition of “Project approvals” (#112) on page 13: “Project approvals” means the approval of development, other than development by the State or local government, in the 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.
- e. Add the definition of “Disturbance” as defined below in COMAR 27.01.01.01:
 - i. Disturbance
 - “Disturbance” means any alteration or change to the land.
 - “Disturbance” includes any amount of cutting, clearing, grading, or construction activity.
 - “Disturbance” does not include gardening or maintenance of an existing grass lawn.

4. §290-32: Board of Appeals

- a. Regarding Part F. Powers and duties regarding variances starting on page 4, move (5)(d) to (4)(d).