

**LAND DEVELOPMENT ORDINANCE
OF THE TOWN OF NEW MARKET, MARYLAND**

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March 26, 2009

LAND DEVELOPMENT ORDINANCE OF THE TOWN OF NEW MARKET, MARYLAND

ARTICLE I. GENERAL PROVISIONS

1.0 TITLE

This chapter shall be officially known as the “Land Development Ordinance of The Town of New Market.” It also may be called the Zoning Ordinance,” and is referred to throughout this document as this “Ordinance.” This Ordinance shall become effective on April 29, 2009.

2.0 APPLICABILITY

This Ordinance shall apply to the incorporated territory of New Market, Maryland, except land owned by the Town or any of its agencies, and except with respect to State-owned property when used for a public purpose. It is the intent of this Ordinance that the extent of its applicability be automatically changed in accordance with the provisions hereof or provisions of State law which may affect the applicability of this Ordinance.

3.0 PURPOSE

The provisions of this Ordinance are enacted to protect the public health, safety, and general welfare, and to implement the policies of the New Market Master Plan. The regulations are specifically intended:

- To classify, regulate, and limit the height, area, bulk, and use of buildings;
- To regulate and determine the area of front, side, and rear yards, and other space around buildings;
- To regulate and determine the use and intensity of use of land and lot areas;
- To classify, regulate and restrict the location of trades, callings, industries, commercial enterprises and the location of buildings designed for specified uses;
- To divide the entire town into districts of such number, shape, area and of such different classes as are deemed best suited to carry out these purposes;
- To fix standards to which buildings or structures therein shall conform;
- To prohibit uses, buildings, or structures incompatible with the character of such districts;
- To prevent additions to and alteration or remodeling of existing buildings or structures in such a way as to avoid the restrictions and limitations herein lawfully imposed;
- To provide for a Board of Appeals and prescribe its powers and duties;
- While accomplishing the foregoing purposes, to protect lawfully existing uses which do not conform with regulations for districts in which they are located.

The Master Plan for the Town of New Market shall serve as the basic policy guide for the administration of this Ordinance. The Master Plan serves as the statement of goals, recommendations, and policies guiding the development of the physical environment of the Town, its growth area, and any other geographic areas specifically addressed by the Master Plan. The goals, vision, recommendations, and policies of the Master Plan may be amended from time to time to meet the changing requirements of the Town and any other geographic areas addressed by the Master Plan. The basic policy guidance contained in the Master Plan includes the following:

3.1 The First Vision: New Market’s careful management and preservation of its character and historic identity is at the heart of its social and economic vitality.

3.1.1 Minimize the impact of destination and through traffic on the community.

3.1.2 Maintain and establish the physical connections needed to enhance the walking scale of the town.

3.1.3 New and renovated structures in New Market should be compatible with its historic architectural forms.

3.2 The Second Vision: New Market's prudent guidance of its geographic expansion and population growth has extended the characteristics of unity, variety, order, and balance that typify the community.

3.2.1 Expand the current growth area boundaries to better reflect property ownership patterns and potential development opportunities.

3.2.2 Encourage cooperative and coordinated planning in the New Market region for the benefit of both the town and the county

3.3.3 Provide the necessary regional public facilities and services

3.3.4 Explore a variety of methods to discourage premature development.

3.3.5 Streamline the planning process

3.3 The Third Vision: New Market's historic district is a balanced mix of residences and local-serving and regional businesses with a distinctive market niche and historic character.

3.3.1 Future use and development of the historic district should reflect the physical development and range of uses current in the Year 2000.

3.3.2 The scale and appearance of historic district businesses must strongly reflect the historic, small town atmosphere of New Market.

3.3.3 Promote complimentary commercial and light industrial development outside of the historic district.

3.4 The Fourth Vision: The natural amenities and environmental resources of the New Market region have been protected to be enjoyed by and serve generations to come.

3.4.1 The town shall protect its natural water supply, and encourage stewardship of the Chesapeake Bay and its tributary lands.

3.4.2 The town shall institute zoning practices which protect and enhance the environment.

4.0 CONSTRUCTION OF PROVISIONS

In their interpretation and application the provisions of this Ordinance shall be held to be minimum requirements adopted for the promotion of the public health, safety, morals or general welfare. Wherever the requirements of this Ordinance are at variance with the requirements of any other lawfully adopted rules, regulations, ordinances, deed restrictions or covenants, the most restrictive or that imposing the higher standards shall govern.

5.0 COMPLIANCE REQUIRED

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

5.1 Uses not permitted prohibited

For the purpose of this Ordinance, permitted uses are listed or described for the various districts. Unless the contrary is clear from the context of the lists, descriptions, or other regulations of this Ordinance, uses not specifically listed or described are prohibited.

5.2 Compliance with Code required

Nothing contained in this Ordinance shall be construed as relieving any person, firm or corporation from compliance with the provisions of the Code of the Town of New Market.

6.0 SEVERABILITY

The provisions of this, The New Market Zoning Ordinance are severable, and if any provision, word, phrase, clause, item, sentence, paragraph, section, subdivision, article, part of a section, or part of this Ordinance is held illegal, invalid, or unconstitutional, such illegality, invalidity or unconstitutionality shall not affect or impair any of the remaining provisions, words, phrases, clauses, items, sentences, paragraphs, sections, subdivisions, articles, parts of a section, or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid, or unconstitutional provision, word, phrase, clause, item, sentence, paragraph, section, subdivision, article, part of a section, or part of this Ordinance had not been included therein, and if the persons or circumstances to which the Ordinance or part thereof is inapplicable had been specifically exempted therefrom.

ARTICLE II. ADMINISTRATION AND REVIEW BODIES

1.0 ORDINANCE ADMINISTRATION AND REVIEW ROLES

The following entities shall have roles in administering the provisions of this Ordinance: Mayor and Council, Planning Commission, Board of Appeals, Historic District Commission, Architectural Review Commission, and the Zoning Administrator. Information regarding membership and operating procedures for each of these entities may be obtained from the Town Code of Ordinances.

2.0 SUMMARY TABLE OF ADMINISTRATION AND REVIEW ROLES

Table 1 summarizes the review and decision-making responsibilities of the entities that have specific roles in the administration of the procedures set forth in this Ordinance.

Table 1. Administration and Review Roles								
Procedure	Section	Mayor & Council	Planning Commission	Board of Appeals	Historic District Commission	Architectural Review Commission	Zoning Administrator	Public Notice Required
Amendment to Ordinance	III 3.0	√	√					√
Use Permits ¹	III 4.1						√	
Accessory Use Permits ¹	III 4.2				√	√	√	
Temporary Use Permits	III 4.3						√	
Building Permits ¹⁻²	III 4.4				√	√	√	
Grading Permits	III 4.5		√				√	
Subdivision Plan	III 5.0	√	√			√	√	√
Site Plan	III 6.0		√		√	√	√	√
Occupancy Permit	III 4.6						√	
Sign Permit	III 4.7				√	√	√	
Demolition Permit	III 4.8		√		√	√	√	
Special Exception	III 7.0		√	√				√
Variance	III 7.0			√				√

¹ Frederick County DUSWM will be notified as appropriate for water and sewer allocations for use permits, accessory use permits, building permits, and other permits or plans requiring water and sewer allocation.

² Building permits in Royal Oaks, Brinkley Manor, and Orchard subdivisions may be reviewed by the Planning Commission at the request of the Zoning Administrator.

Even though not referenced in Table 1, other boards, commissions, and/or committees may be asked to review some applications, including, but not limited to: site plans, subdivisions, and temporary uses.

3.0 MAYOR AND COUNCIL

It is the intent of this Ordinance that the duties of the Mayor and Council in connection with this Ordinance shall not include hearing and deciding questions of interpretation and enforcement that may arise. The procedure for deciding such questions shall be as stated in this Ordinance. Under this Ordinance, the Mayor and Council shall have only the duties of considering and adopting or rejecting proposed text and map amendments or the repeal, in whole or in part, of this Ordinance, as provided by law, and of establishing a schedule of fees and charges.

4.0 PLANNING COMMISSION

4.1 Composition, Appointment, and Removal

4.1.1 There is hereby established the Planning Commission of the Town of New Market. The Planning Commission shall consist of seven members, appointed by the Mayor, and the Town Council.

4.1.2 All members shall be residents of the Town of New Market.

4.1.3 The term of office of each member is five years or until the member's successor takes office. The terms of the members shall be staggered.

4.1.4 If, prior to the scheduled end of their term of office, a member ceases to be a resident of New Market, that member's seat will become vacant.

4.1.5 Vacancies shall be filled by the Mayor and the Town Council, whether for the unexpired term of any member whose seat becomes vacant or for the regularly scheduled end of a member's term of office.

4.1.6 After a public hearing before the Town Council, members may be removed by the Town Council from office for inefficiency, neglect of duty, or malfeasance in office.

4.2 Officers

4.2.1 The Planning Commission shall elect at its first meeting in each calendar year a Chairperson and Vice Chairperson from among the appointed members, each to serve for one year or until their successors are elected.

4.2.2 In the event of a vacancy in either of said offices, a successor shall be elected by the Planning Commission from among its members to serve for the unexpired term of the vacated office.

4.2.3 In the absence of the Chairperson, the Vice Chairperson shall act as Chairperson.

4.3 General Powers and Duties

The Planning Commission shall have the following powers and duties:

4.3.1 To review, evaluate, and approve or disapprove proposed plans for subdivisions and site plans in accordance with this Ordinance.

4.3.2 To review and make recommendations to the New Market Town Council regarding:

a. Proposed changes or amendments to the New Market Master Plan;

b. Proposed changes or amendments to the Land Development Ordinance;

c. Proposed zoning and land use map amendments;

d. Proposed acquisition and development of lands for open space or recreation purposes in the Town of New Market;

- e. Proposed changes in land use or development in the Town of New Market arising from local, State, or Federal programs or policies;
- f. Such duties as may have been or may be assigned to it under the New Market Town Code;
- g. Such duties as may be or have been assigned to it in the Annotated Code of Maryland;
- h. Any other matter which the Town Council of New Market may ask the Planning Commission to consider.

4.3.3 To review and make recommendations to the Board of Appeals regarding requests for Special Exceptions from the Zoning Ordinance.

4.4 Meetings

- 4.4.1 Meetings of the Planning Commission shall be held once each month or at the call of the Chairperson, and at such other times as the Planning Commission may determine.
- 4.4.2 The presence of three unrecused members of the Planning Commission shall constitute a quorum for the conduct of business.
- 4.4.3 An affirmative vote of a majority of those present shall be required to effect a decision or recommendation of the Planning Commission.

4.5 Rules of Procedure

- 4.5.1 The meetings of the Planning Commission shall be open to the public, to the extent required by the Maryland Open Meetings Act, but the Commission may limit active public participation in its administrative functions.
- 4.5.2 When appropriate, the Planning Commission may adjourn to Executive Session, but only in accordance with the Maryland Open Meetings Act.
- 4.5.3 All requests for actions or decisions by the Planning Commission on matters within its jurisdiction shall be submitted in writing, including the appropriate applications and fees, prior to the monthly meeting of the Commission at which the request is intended to be considered.
- 4.5.4 At the meeting of the Planning Commission, any interested person shall have the right to submit, in accordance with established rules, oral or written testimony or comment.
- 4.5.5 The Planning Commission shall adopt rules for transacting business and shall keep records of its resolutions, transactions, findings and determinations. Such rules, and the records of the resolutions, transactions, findings, and determinations of the Planning Commission shall be open to the public.
- 4.5.6 The Planning Commission shall have the authority to directly consult legal counsel, when necessary, before rendering any decision or making any recommendation.

5.0 HISTORIC DISTRICT COMMISSION (See also ARTICLE IV. DISTRICT REGULATIONS, Section 13)

5.1 The preservation of sites, structures, and districts of historical, archeological, or architectural significance together with their appurtenances and environmental settings is a public purpose in New Market. It is the further purpose of this article to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of New Market by preserving sites, structures, or districts which reflect elements of cultural, social, economic, political, archeological, or architectural history; to strengthen the local economy; to stabilize and improve property values of such sites, structures, or districts; to foster civic beauty; and to promote the preservation and appreciation of such sites, structures, and districts for the education and welfare of the residents of New Market.

5.2 Before the construction, alteration, reconstruction, moving, or demolition is undertaken of a designated landmark, site, or structure, or site or structure within a designated district, if an exterior change is involved which would affect the historic, archeological, or architectural significance of a designated landmark, site, or structure, or structure within a designated district, any portion of which is visible or intended to be visible from a public way, the person, individual, firm, or corporation proposing to make the construction or change shall file an application for a Certificate of Appropriateness with the Commission for permission to construct, alter, reconstruct, move, or demolish the landmark, site, or structure. Every application shall

be referred to and considered by the Commission and accepted or rejected by the Commission. An application which is identical to a rejected application may not be resubmitted within a period of one year after the rejection. No Certificate of Appropriateness shall be granted until the Commission has acted thereon as hereinafter provided.

5.3 The Historic District Commission shall consist of five members appointed by the [Mayor and Council]. A majority of the members of the Commission shall be residents of the Town. Each member shall possess a demonstrated special interest, specific knowledge, or professional or academic training in such fields as history, architecture, architectural history, planning, archeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design, or related disciplines. Nonresident appointees to the Commission must possess professional or academic qualifications as further defined in paragraph C of this subsection (Note: desired but not required by state law). At least two (2) members of the Commission shall possess professional or academic training in one or more of the above-listed fields in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61 (Note: for Certified Local Government (CLG) commissions only or those commissions planning to apply for CLG status in the near future).

6.0 ARCHITECTURAL REVIEW COMMISSION (See also ARTICLE IV. DISTRICT REGULATIONS, Section 14)

6.1 The objective of the Architectural Review Commission is to provide a rational system for evaluating, protecting and enhancing the historic heritage of New Market. The preservation of the historic character of the Town will provide economic benefits such as stabilizing and increasing property values as well as to promote cultural and aesthetic values to foster civic beauty and pride.

6.2 Architectural Review District. The areas subject to ARD are defined as those areas which are annexed into the incorporated limits of the Town and those areas designated as entryways to the Historic District including all those properties within the Residential Merchant District and Mixed Residential Service District that are not within the New Market Historical District. The annexation agreement between the property owner and the Town, will state the acknowledgment of the property owner to comply with all regulations set forth by the ARC.

6.3 Before the construction, alteration, reconstruction, moving or demolition of any structure or appurtenance is made within the Architectural Review District, if any changes are involved which would affect the exterior appearance of a structure or appurtenance visible or intended to be visible from an adjacent public way in the Architectural Review District, the applicant proposing to make the construction or change shall file with the Commission an application for permission to build, alter, reconstruct, move, demolish or make the addition. The term appurtenance shall include trees, landscaping, or other natural features. Every application shall be referred to and considered by the Architectural Review Commission and accepted or rejected by it. No permit for any such change may be granted until the Commission has acted thereon as hereinafter provided.

6.4 The Architectural Review Commission shall have a membership of five persons, all of whom are qualified by interest and agree to serve on this Commission a majority of whom are residents of the Town of New Market. At least one shall be a member of the Town Planning Commission. The Commissioners shall be appointed for terms of three years, except that in making the initial appointments, some appointments shall be established for less than three years and shall not expire at the same time. Members of the Commission are eligible for reappointment. Any vacancy shall be filled by the Mayor and confirmed by a majority of the Town Council. All Commissioners shall serve without compensation although they may be paid expenses if such expenses are approved by the Town Council. Commissioners may be removed by the Town Council for inefficiency, neglect of duty or malfeasance in office, provided the council shall file a written statement of reasons for such removal and a public hearing shall be held before any Commissioners may be removed from office.

7.0 BOARD OF APPEALS

7.1 The Board of Appeals shall have the following powers:

7.1.1 To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative officer or body in the enforcement of this Ordinance or the provisions of Article 66B of the Annotated Code of Maryland.

7.1.2 To hear and decide special exceptions to the terms of this Ordinance upon which such Board is required to pass hereunder.

7.1.3 To authorize on appeal in specific cases a variance from the terms of this Ordinance.

7.1.4 In exercising its powers, the Board may, in conformity with the provisions of Article 66B of the Annotated Code of Maryland and this Zoning Ordinance, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may issue a new order, requirement, decision or determination. The Board shall have all of the powers of the administrative official or body from whose decision the appeal is taken.

7.2 Appointment, Removal and Compensation.

7.2.1 The Board of Appeals shall consist of three (3) members, all of whom shall be taxpayers and residents of the Town of New Market. The terms of office of the members of the Board shall be three (3) years

7.2.2 Members of the Board shall be appointed by the Mayor, confirmed by the Town Council and removable for cause, upon written charges, and after public hearing. Vacancies shall be filled by appointment for the unexpired term only. Members of the Board shall serve without compensation. The initial appointments to the Board of Appeals shall be for terms of one (1), two (2), and three (3) years. Thereafter, reappointment shall be for three (3) years. The terms of the Board shall not expire simultaneously.

7.2.3 Chairman, and Other Officers. The members of the Board shall select one of them as chairman and such officers in addition as they determine. Such officers shall serve one (1) year and until their successors have been selected and qualified.

7.2.4 Alternate Member; Temporary Alternate. The Town Council shall designate one alternate member for the Board of Appeals who may sit on the Board of Appeals when any other member of the Board is absent. When the alternate member is absent, the Town Council may designate a temporary alternate.

7.3 Rules; Meetings; Oaths; Witnesses; Records.

The Board of Appeals shall adopt rules in accordance with the provisions of Article 66B of the Annotated Code of Maryland. Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings and deliberations of the Board shall be open to the public. The Board shall make a transcript of all proceedings, showing the vote of each member upon each question, or, if absent or failing to vote, indicating such fact, which shall be immediately filed in the office of the Board and shall be a public record.

8.0 ZONING ADMINISTRATOR

8.1 The office of Zoning Administrator is hereby established. It shall be the duty of the Zoning Administrator to administer and cause the enforcement of the provisions of this Ordinance with its administrative provisions. The Zoning Administrator and, if necessary, his designee shall be appointed by the Mayor, confirmed by the Council by majority vote, and neither shall be a resident or taxpayer of the Town of New Market. The Zoning Administrator shall serve at the pleasure of the Mayor and Council and shall receive such compensation as determined by the Town Council.

8.2 The Zoning Administrator or his or her designee is hereby authorized to enter upon any property in the Town of New Market for the purpose of enforcing and implementing this Ordinance.

8.3 If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, the Zoning Administrator shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. The Zoning Administrator shall order:

8.3.1 Discontinuance of illegal use of land, buildings, or structures;

8.3.2 Removal of illegal buildings or structures or of additions, alterations, or structural changes thereto;

8.3.3 Discontinuance of any illegal work being done; and

8.3.4 Shall take any other action authorized by this Ordinance to ensure compliance with or to prevent violation of its provisions.

8.4 It is the intent of this Ordinance that all questions of interpretation and enforcement shall be first presented to the Zoning Administrator, and that such questions shall be presented to the Board of Appeals only on appeal from the decision of the Zoning Administrator, and that recourse from the decisions of the Board of Appeals shall be to the courts, as provided by law and particularly by Article 66B, §4.08 of the Annotated Code of Maryland.

ARTICLE III. REVIEW AND APPROVAL PROCEDURES

1.0 GENERAL REVIEW AND APPROVAL PROCEDURES

1.1 Authority to File Applications

1.1.1 Unless otherwise specified in this Ordinance, applications for review and approval may be initiated by: (1) an owner or a contract purchaser of the property that is the subject of the application; or (2) the owner's authorized agents;

1.1.2 When an authorized agent or contract purchaser files an application under this Ordinance on behalf of a property owner, the agent shall provide the Town with written documentation that the owner of the property has authorized the filing of the application.

1.1.3 When a review or decision-making body initiates action under this Ordinance, it does so without prejudice toward the outcome.

1.2 Form of Application

Applications authorized under this Ordinance shall be submitted in such form and in number as may be required by Zoning Administrator or the Zoning Administrator's designee.

1.3 Fees

1.3.1 A schedule of fees, charges and expenses shall be established by the Mayor and Council. The Planning Commission may, from time to time, recommend changes in the fee schedule.

1.3.2 The payment, in advance, of the appropriate fee to the Administrator shall be deemed a condition precedent to the acceptance and consideration of permits, appeals, or amendments. Fees shall be refunded on request if an application is withdrawn before Town review has begun.

1.3.3 The fees payable to the Town upon filing an application to the Historic District Commission and/or the Architectural Review Commission shall be as established from time to time by resolution of the legislative body of the Town.

1.3.4 The fees payable to the Town upon filing of an appeal to the Board of Appeals shall be as established from time to time by resolution of the legislative body of the Town.

1.3.5 A filing fee shall be charged for processing an application for a text amendment, a map amendment or the establishment of a Planned Unit Development, which shall be paid at the time of application. The amount of the filing fee shall be established from time to time by resolution of the legislative body of the Town.

1.4 Application Completeness

An application will be considered complete if it is submitted in the required form, includes all required information, including all supporting materials specified by the official responsible for accepting the application, and is accompanied by the applicable fee. The Zoning Administrator or his or her designee shall make a determination of application completeness. If an application is determined to be incomplete, the Zoning Administrator shall provide notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected in a future re-submittal. An application that is determined to be incomplete may or may not retain its same processing cycle.

1.5 Pre-Application Conferences

The purpose of a pre-application conference is to familiarize the applicant and the Town staff with the applicable provisions of this Ordinance that are required to permit the proposed development. This conference should be held prior to the initial creation of a site plan or subdivision plan, if applicable, to ensure that the plan will address all applicable requirements of this Ordinance.

1.5.1 Applicability

a. A pre-application conference is required prior to submittal of the following types of applications:

- (1) Special exceptions
- (2) Subdivisions
- (3) Site plans
- (4) Variances

b. A pre-application conference is optional in the discretion of the Zoning Administrator prior to submission of any other application under this Ordinance.

1.5.2 Initiation of Pre-Application Conference. Any potential applicant may request a pre-application conference with the Zoning Administrator or designee. Prior to the pre-application conference, the applicant shall provide to the Zoning Administrator a description of the character, location, and magnitude of the proposed development or relief, together with any other supporting documents such as maps, drawings, models, and the type of development permit or relief sought.

1.6 Notice Requirements

All notices required under this Ordinance shall comply with Article 66B of the Annotated Code of Maryland. In addition, all notices may, unless otherwise specified in this Ordinance: (1) identify the date, time, and place of the public hearing, (2) if applicable, describe the property involved in the application by street address or by legal description and nearest cross street; (3) describe the nature, scope, and purpose of the proposed action; (4) indicate that interested parties may appear at the hearing and speak on the matter; and (5) indicate where additional information on the matter may be obtained.

1.7 Public Hearing Procedures

1.7.1 Public Hearings Generally

a. When the Zoning Administrator has determined that an application is complete and that a public hearing is required by this Ordinance, the Zoning Administrator shall schedule a date, time, and place for the required hearing, and shall ensure that all notices are provided.

b. Any person may appear at the public hearing and submit evidence in explanation, opposition or rebuttal, either individually or as a representative of an organization.

c. Each person who appears at a public hearing shall identify himself or herself and his persons appearing as witnesses who present evidence or testimony.

f. In a public hearing, the body conducting the hearing may exclude any testimony, evidence, or questioning that it finds to be incompetent, irrelevant, immaterial, or unduly repetitious. Hearsay may be admitted in the discretion of the body. The weight to be given the evidence is to be determined in the discretion of the body. The presiding officer shall make rulings on the admissibility of evidence.

g. At any time upon reasonable request, any person may examine the application and materials submitted in support of or in opposition to an application for development approval.

1.8 Conditions of Approval

Some procedures set forth in this Ordinance authorize the decision-making body to impose such conditions upon the premises benefited by the approval as may be necessary to reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the Master Plan and this Ordinance. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development. Where conditions are designed or intended to mitigate potential adverse effects, the conditions imposed shall bear a reasonable relationship to the adverse effect or effects to be mitigated. In no case shall a condition of approval be less restrictive than the requirements of this Ordinance.

2.0 OFFICIAL ZONING MAP

2.1 Official Zoning Map. The incorporated areas of the Town are hereby divided into zones as shown on the Official Zoning Map, which, together with all explanatory matter thereon, is hereby adopted and incorporated by reference and declared to be a part of this Ordinance.

2.1.1 The Official Zoning Map shall be adopted along with this Ordinance and included with the Ordinance in the minutes of the proceedings of the Town as they are regularly kept by the Clerk.

2.1.2 If, in accordance with the provisions of this Ordinance and Article 66B of the Annotated Code of Maryland, changes are made in zone boundaries or other matters portrayed on the Official Zoning Map, such changes shall be reflected in the minutes of the proceedings of the Town as they are regularly kept by the Clerk. These changes shall, from time to time, be drafted onto the Official Zoning Map.

2.1.3 No changes of any nature shall be made in the Official Zoning Map or information shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance.

2.1.4 Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the Town Clerk, shall be the final authority on the current zoning status of land in the Town.

2.2 Replacement of Official Zoning Map

2.2.1 In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Town Council may, by resolution, adopt a new Official Zoning Map, which shall supersede the prior Official Zoning Map.

2.2.2 The new Official Zoning Map shall correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original zoning Ordinance or any subsequent amendment thereof.

2.3 Interpretation of boundaries

Where uncertainty exists as to the boundaries of zones as shown on the Official Zoning Map, the following rules shall apply:

2.3.1 Boundaries indicated as approximately following the center lines of streets, highways, or alleys shall be construed to follow such center lines.

2.3.2 Boundaries indicated as approximately following platted lot lines shall be construed as following such lot lines.

2.3.4 Boundaries indicated as approximately following Town limits shall be construed as following Town limits.

2.3.4 Boundaries indicated as following railroad lines shall be construed to be midway between the main tracks.

2.3.5 Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shorelines shall be construed as moving with the actual shoreline; boundaries indicated as approximately following the center lines of streams, rivers, canals, lakes or other bodies of water shall be construed to follow such center lines.

2.3.6 Boundaries indicated as parallel to or extensions of features indicated in 2.3.1 through 2.3.5 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.

2.3.7 Where a lot is divided by one or more zone boundary lines, each of said divisions of the lot shall be subject to the regulations of the District in which it is located.

2.3.8 Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by 2.3.1 through 2.3.5 above, the Board of Appeals shall interpret the zone boundaries.

3.0 AMENDMENTS TO THE LAND DEVELOPMENT ORDINANCE AND MAP

3.1 The Town Council may from time to time amend, supplement, change, modify, or repeal by ordinance the boundaries of the districts or the regulations of this Ordinance. Any amendment may be initiated by resolution of the Town Council, motion of the Planning Commission, or petition of any property owner using forms specified by the Planning Commission.

3.2 The application for an amendment to the text of this Ordinance shall state in particular the article, section, and paragraph sought to be amended. The application shall contain the language of the proposed amendment and shall set forth the reasons for such proposed change.

3.3 The application for an amendment to the map of this Ordinance shall specify the map and parcel or parcels sought to be amended, the current and proposed zoning classifications, and set forth the reasons for the proposed map amendment.

3.4 Before taking any action on any proposed amendment, supplement, change, modification, or repeal, the Town Council shall submit the proposal to the Planning Commission for review and recommendation. The Planning Commission may hold a hearing on any proposed amendment, supplement, or change before submitting its recommendation to the Town Council. The Planning Commission may request any pertinent data and information as it deems necessary. In its recommendation, the Planning Commission shall address:

3.4.1 The public need for the proposed amendment; and

3.4.2 Whether the proposed amendment is consistent with the Comprehensive Plan as established in Article 66B §4.09.

3.4.3 When reviewing an amendment to the zoning map, the Planning Commission shall address the suitability of the property in question for the uses permitted under the proposed zoning, and shall give consideration and make findings of fact with regard to the matters enumerated in Article 66B, §4.05(a)(2) of the Annotated Code of Maryland.

3.5 Before approving any proposed change or amendment, the Town Council shall publish notice of the time and place of the public hearing, together with a summary of the proposed regulation, restriction or boundary, in at least one newspaper of general circulation within the Town, once a week for two successive weeks, with the first notice to be published at least 14 days before the hearing. The property shall also be conspicuously posted with one or more signs indicating the date, time, place, and nature of the hearing. The notices may indicate where the proposed amendment and documents relating to the amendment may be reviewed, which may include a reference to internet publication of documentation by the Town.

3.6 In order to approve an amendment to the zoning map, except in the case of a comprehensive rezoning, the Town Council shall find either:

3.6.1 A change in the character of the neighborhood since the last rezoning of the property; or

3.6.2 A mistake in the current zoning of the property.

3.7 Petitions for amendments, supplements, or changes denied by the Town Council, or substantially similar petitions, shall not be considered for one year after the denial.

3.8 Any taxpayer, any officer, department, board, commission or bureau of the Town, or any person aggrieved by a decision or action of the Mayor and Council in a zoning action may appeal the decision or action to the Circuit Court for Frederick County, as provided in Article 66B §4.08.

4.0 REVIEW AND APPROVAL OF USES AND PERMITS

4.1 Use Permits

4.1.1 A use permit is required to ensure that a use complies with all applicable zoning standards in this Ordinance.

4.2.2 Applicability. A use permit shall be required for any change of use of any land or buildings, including accessory uses and buildings.

4.2.3 Procedure. An application for a use permit shall be filed with the Zoning Administrator. With reasonable promptness after the application is determined to be complete, the Zoning Administrator shall review the application and determine whether to approve, approve with modifications, or deny the application based on compliance with the standards set forth in this Ordinance.

4.2 Accessory Use/Building Permits

4.2.1 An accessory use permit is required to ensure that an accessory use complies with all applicable zoning standards in this Ordinance.

4.2.2 Applicability. An accessory use permit shall be required for any of the accessory use listed by Zoning District.

4.2.3 Procedure. An application for an accessory use permit shall be filed with the Zoning Administrator. With reasonable promptness after the application is determined complete, the Zoning Administrator shall review the application and determine whether to approve, approve with modifications, or deny the application based on compliance with the standards set forth in this Ordinance.

4.3 Temporary Use Permits

4.3.1 No use that is classified as a temporary use in the zoning district in which it is to be located shall be placed or established on the property without first receiving a temporary use permit.

4.3.2 Filing and Contents of Application

a. An application for a temporary use permit shall be filed with the Zoning Administrator. Where appropriate, each application shall be accompanied by a sketch plan showing the boundaries of the property, the use of adjacent properties, the proposed location of the temporary use or structure on the property, and other information sufficient to show that the temporary use or structure complies with the standards set forth in III 4.3 of this Ordinance.

b. All applications for temporary use permits shall be filed at least two weeks prior to the date the temporary use is proposed to commence, or at least four weeks prior to the date the temporary use will commence if public safety support is requested from the Town. The Zoning Administrator may waive this filing deadline requirement in an individual case, for good cause shown.

4.3.3 Approval Criteria

a. The Zoning Administrator may issue a temporary use permit only upon finding that the proposed temporary use satisfies the requirements of Article III 4.3.

b. No tent, trailer, or other temporary structure governed by the Town Building Code shall be occupied or used in conjunction with a temporary use until and unless the applicant has received a permit from the Town pursuant to the Town Building Code.

4.4 Building Permits

4.4.1 It shall be unlawful to commence the construction of any building or other structure, including accessory buildings, or to commence the alteration of any buildings or other structures, including signs and accessory buildings, unless the Zoning Administrator has issued a building permit for such work.

4.4.2 Issuance and Application. In applying to the Zoning Administrator for a building permit, the applicant shall submit a plan in duplicate, drawn to scale, showing the name of the person making application, the actual dimensions of the lot to be built upon as shown by a survey, the size, shape and location of each building, sign or structure to be erected, together with such other information as may be necessary to provide for the enforcement of this Ordinance.

4.4.3 If the proposed construction or alteration as set forth in the application is in conformity with the provisions of this Ordinance and other ordinances of the Town, the Zoning Administrator shall issue a building permit for the application, including such conditions as the Zoning Administrator may deem appropriate, and post or cause to be posted a copy of said certificate on the site at which the work is taking place.

4.4.4 If a building permit is refused, the Zoning Administrator shall advise the applicant of such refusal in writing, stating the reasons for the denial. A record of the application, plans and action thereon shall be maintained in the office of the Zoning Administrator.

4.4.5 Issuance of a building permit for construction not conforming to requirements of this Ordinance shall not be construed as waiving any provisions of this Ordinance.

4.4.6 Building Permit May Be Outdated. A building permit shall become void

- a. one year from date of issuance unless the project is more than 25% completed, as determined by the Zoning Administrator; or
- b. if construction activity ceases for a period of 60 days.

4.5 Grading Permits

4.5.1 It shall be unlawful to commence the excavation, grading, moving, or alteration of any land involving more than 5,000 sq ft of land area until the Zoning Administrator has issued a grading permit for such work.

4.4.2 In applying to the Zoning Administrator for a grading permit, the applicant shall submit a plat in duplicate, drawn to scale, showing the name of the person making application, the actual dimensions of the lot to be graded as shown by a survey, the size, shape and location of the area to be graded and, if applicable, each building, sign and structure to be erected, together with such other information as may be necessary to provide for the enforcement of this Ordinance. This section is applicable to the construction or erection of signs.

4.4.3 If the proposed excavation, grading, moving, or alteration as set forth in the application is in conformity with the provisions of this Ordinance and other ordinances of the Town, the Zoning Administrator shall issue a grading permit for the application and post a copy of said certificate in those places designated by the Town Council for the posting of public notices, including such conditions as the Zoning Administrator may deem appropriate. If the proposed excavation, grading, moving, or alteration involves blasting activities, the specifications contained in 1) MD SHA Standard Specification for Construction and Materials - January 2001, Terms and Conditions TC-6.07 Use of Explosives and 2) COMAR Title 26 Department of the Environment shall be followed.

4.4.4 If a grading permit is refused, the Zoning Administrator shall advise the applicant of such refusal in writing, stating the reasons for the denial. A record of the application, plats and action thereon shall be maintained in the office of the Zoning Administrator.

4.4.5 Issuance of a grading permit not conforming to requirements of this Ordinance shall not be construed as waiving any provisions of this Ordinance.

4.4.6 A grading permit shall become void

- a. one year from date of issuance unless the project is more than 25% completed as determined by the Zoning Administrator; or
- b. if grading activity ceases for a period of 60 days.

4.6 Occupancy Permits

4.6.1 No vacant land shall be occupied or used, except for agricultural uses, unless a certificate of occupancy shall have been issued by the Zoning Administrator.

4.6.2 No premises shall be used and no buildings hereafter erected or structurally altered shall be used, occupied or changed in use, except for agricultural uses, unless a certificate of occupancy

shall have been issued by the Zoning Administrator which states that the building or proposed use of a building or premises complies with the provisions of this Ordinance.

4.6.3 Certificates of occupancy shall be applied for after the erection or structural alteration of such buildings shall have been completed in conformity with this Ordinance. A record of all certificates shall be kept on file in the office of the Zoning Administrator.

4.6.4 A certificate of occupancy shall be optional for all nonconforming uses for the purpose of maintaining, renewing, changing, or extending a nonconforming use. An application for a certificate of occupancy for nonconforming uses may be issued upon request with respect to any nonconforming use.

4.6.5 The Zoning Administrator may issue a conditional certificate of occupancy, which shall be valid only for the period of time stated in the certificate, for a specified portion or portions of a building that may safely be occupied prior to final completion of the entire building and/or site. Conditions that are attached to the conditional certificate of occupancy must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the conditional certificate, the certificate of occupancy shall immediately expire. Upon receipt of a written application to the Zoning Administrator stating satisfactory reasons for the failure to complete work within the given time period, the Administrator may renew the certificate for a specified period of time, not to exceed 90 days.

4.7 Sign Permits (See also Article VII)

4.7.1 No sign, unless herein excepted, shall be erected, constructed, posted, altered or relocated except as provided in this Article and these regulations and until a permit has been issued by the Administrator. Before any permit is issued, an application especially provided by the Administrator shall be filed, together with three sets of drawings and/or specifications, one set to be returned to the applicant, as may be necessary to fully advise and acquaint the Zoning Administrator with the location, construction, materials, manner of illumination and/or securing or fastening, number of signs applied for and the wording of the sign or advertisement to be carried on the sign. All signs shall be erected on or before the expiration of one hundred eighty days from the date of issuance of the permit; otherwise, the permit shall become null and void and a new permit shall be required. No sign shall be approved for use unless it has been found to be in compliance with all requirements of this Ordinance and applicable technical codes. Fees for sign permits shall be in accordance with the schedule adopted by ordinance or resolution of the Mayor and Council, a copy of which is maintained in the office of the Zoning Administrator.

4.7.2 Within the Historic District, approval of the display of a sign shall be granted by the New Market Historic District Commission only when such signs and the plans therefor so far as they relate to the appearance, color, size, position, method of attachment, texture of materials and design conform to the historic period, and distinctive character of the building or structure, and do not injuriously affect the same, and/or do not impair the contributing value to the community of those buildings having historic and/or architectural worth.

4.8 Demolition Permits

4.8.1 The purpose of a demolition permit is to ensure that the lot is clear of debris and other health hazard material and that the utility connections have been plugged and sealed. A demolition permit is required when a building is being razed or removed from a lot.

4.8.2 Permit requirements are:

- a. A bond in an amount not less than the estimated cost of the demolition.
- b. A list of adjacent and confronting property owners and their addresses.
- c. Cap any well(s) located on the property and submit a well completion report to the Town.
- d. Contact utility companies to request disconnections; submit copies of disconnection letters to the Zoning Administrator.
- e. Remove any asbestos in accordance with the Maryland Department of the Environment regulations prior to demolition.

5.0 SUBDIVISIONS

5.1 Subdivisions (See also Article VI)

5.1.1 This section has been established for the purpose of guiding and accomplishing the coordinated and harmonious development of New Market, and its environs in order to promote, in accordance with present and future needs, the health, safety, morals, order, convenience, prosperity and general welfare of the citizens of the Town. In the accomplishment of this purpose, the regulations as herein established provide for, among other things, efficiency and economy in the process of development; the proper arrangement of streets in relation to each other and to the existing and planned streets and other features of the Master Plan; adequate open spaces for recreation, light and air; convenient distribution of population and traffic; adequate provision for public utilities and other public facilities; and other requirements for land subdivision which will tend to create conditions favorable to the health, safety, convenience and prosperity of the citizens of New Market and its environs.

5.1.2 A subdivision plat is required for all developments that meet the definition of subdivision set forth in this Ordinance. This section shall apply to the incorporated territory of New Market. The regulations contained herein are adopted under the authority of Article 66B of the Annotated Code of Maryland, and shall be in addition to any requirements pertaining to land subdivision promulgated by the State of Maryland, and in the case of any conflict, the more restrictive regulation shall prevail.

5.1.3 Any owner, agent or proprietor of any tract of land located within the territory to which these regulations shall apply who subdivides such land into lots, blocks, streets, alleys, public ways or public grounds shall cause a plat of such subdivision to be made in accordance with the regulations set forth herein and the laws of the State of Maryland and shall cause a copy of said plat to be recorded in the office of the Clerk of the Circuit Court for Frederick County.

5.1.4 No subdivision plat shall be recorded by the Clerk of the Circuit Court unless and until it shall have been submitted to and approved by the Planning Commission as provided herein. The Planning Commission shall not approve said plat unless and until the plat satisfactorily complies with the requirements of these regulations.

5.1.5 No parcel of land in a subdivision created after the effective date of this section shall be transferred, sold or offered for sale nor shall a building permit be issued for any structure thereon until a Final Plat of such subdivision shall have been approved by the New Market Planning Commission and recorded among the plat records maintained by the Clerk of the Circuit Court for Frederick County.

5.1.6 The Planning Commission shall administer this ordinance and, in furtherance of said authority, shall:

- a. Maintain permanent and current records of this ordinance, including amendments thereto.
- b. Receive and file all preliminary plats and final plats (together with applications).
- c. Forward copies of the preliminary and final plat to other Town, County and State offices and agencies for their recommendations and report wherever appropriate.
- d. Receive, file and check for compliance with regulations, all final plats.
- e. Give preliminary and final approval or disapproval of all subdivisions submitted.
- f. Make all other determinations required by the regulations herein.

6.0 SITE PLANS (See also Article VI)

6.1 Site Plan Review Required

6.1.1 The purpose of the site plan requirement is to ensure compliance with applicable provisions of this Ordinance and to prescribe standards for the design and construction of improvements. Proposed uses and developments requiring site plan approval shall be permitted only in accordance with all the specifications contained on an approved site plan, and shall not be undertaken until the site plan is approved and all the required constructions permits have been obtained, subsequent to such approval.

6.1.2 For the purpose of assuring a good arrangement and appearance and ensuring harmony with the Master Plan, site plans shall be required for the following uses and shall be subject to review by the Planning Commission:

- a. Any condominium residential development;
- b. Any multi-family residential development;
- c. Any non-residential development or non-residential component of a mixed-use development;
- d. Parking lots accessory to any of the above; and
- e. Redevelopment of any of the above, including the following: 1) changes to the structure or site, 2) renewed use after nonuse lasting 12 months or longer, or 3) a change of use.
- f. Specifically designated entryways to the Historic District including all properties within the Residential Merchant District and Mixed Residential Service District but not within the New Market Historical District.

6.2 Residential Site Plan Review

6.2.1 The purpose of residential site plan review is to preserve traditional patterns of design and development in New Market and to ensure the preservation of a consistency of land uses, together with the protection of buildings, structures, or areas, the destruction or alteration of which would disrupt the existing scale and architectural character of the neighborhood. The general purposes include:

- a. Protection of the architectural massing, composition, and style, as well as the scale and character of the neighborhood;
- b. Compatibility of new construction and structural alterations with the existing scale and character of surrounding properties;
- c. Preservation of streetscapes; and
- d. Protection of natural resources.

6.2.2 Residential developments subject to site plan review shall be reviewed for compliance with this Ordinance by the Planning Commission, in accordance with the following site plan review guidelines.

- a. Where new residential buildings or enlargements are proposed, their design shall be compatible with the historic character and general design of the neighborhood, and shall promote the existing spatial and visual qualities in the neighborhood, including height and scale of buildings, orientation, spacing, site coverage, and exterior features, such as porches, roof pitch and direction, and landscaping. All buildings shall observe the established historic front and side yard setbacks, if any, for the block on which they are proposed. All new residential buildings or enlargements of existing buildings shall have bulk, massing, and scale similar to the rest of the structures along the block.
- b. Exterior structural alterations to historic and contributing structures along the street frontage shall be kept to a minimum.
- c. Design for new construction and/or enlargements to all existing buildings or structures shall be compatible with the distinguishing, contributing characteristics of the majority of surrounding properties along the block.

6.3 Preliminary Conference Required. The applicant shall consult with Town staff to ascertain the location of proposed major streets, highways, parks, playgrounds, school sites and other planned public improvements and to determine the zoning regulations and other requirements relating to, affecting or applying to the proposed site plan. The applicant shall also consult with the Town Engineer and appropriate County agencies on the proposed street layout and the proposed facilities for sanitary sewage disposal, storm drainage and water supply to serve the proposed development. The applicant shall also consult with the local fire department and County law enforcement agency as well as the local public school and public library system to determine any needs or limitations they may identify. The purpose of these consultations is to assist the applicant by furnishing information and advice in order to expedite review and approval for the applicant, avoid unnecessary expense and promote coordination between the plans of the applicant and the policies and requirements of the Town.

6.4 Building permit issuance. A building permit may be issued for the uses listed above only after a site plan showing the proposed development of the property has been approved by the Planning Commission in accordance with the procedures and requirements of this Ordinance.

7.0 SPECIAL EXCEPTIONS, VARIANCES, AND APPEALS

7.1 Considerations.

Where, in this Ordinance, certain powers are conferred upon the Board of Appeals, it shall study the specific property involved and the neighborhood, cause a notice of public hearing to be posted in a conspicuous place, conduct a public hearing, consider all testimony and evidence admitted into the record, and hear any person for or against the application. However, the application shall not be approved where the Board finds the proposal would adversely affect the public health, safety, security, morals or general welfare, would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board shall give consideration, among other things, to the following:

- 7.1.1 Decisions of the courts;
- 7.1.2 The orderly growth of the neighborhood and community;
- 7.1.3 The most appropriate use of land and structure;
- 7.1.4 Facilities for sewerage, water, trash and garbage collection and disposal, and the ability of the Town or County to provide such services;
- 7.1.5 Adequacy of available firefighting equipment;
- 7.1.6 The effect of such use upon the peaceful enjoyment of people in their homes;
- 7.1.7 The number of people residing, working or studying in the immediate and surrounding area;
- 7.1.8 The type and kind of structures in the vicinity where people are apt to gather in large numbers such as schools, churches, theaters, hospitals and the like;
- 7.1.9 Traffic conditions, including facilities for pedestrians, such as sidewalks and safety zones and parking facilities available and the access of cars off highways;
- 7.1.10 The preservation of cultural and historic landmarks;
- 7.1.11 The conservation of property values;
- 7.1.12 The effect of odors, dust, gas, smoke, fumes, vibrations, glare, and noise upon the use of surrounding properties;
- 7.1.13 The effect, if any, such proposed use, building or addition would have upon the deterioration of areas and neighborhoods;
- 7.1.14 The recommendation of the Historic District Commission when such matters are located within the Historic District.

7.2 Application Procedures

7.2.1 Applications to the Board of Appeals may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the Board, who shall place the matter on the docket, advertise a public hearing thereon and give written notice of such hearing to the parties in interest. The Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.

7.2.2 The Board shall fix a reasonable time for the hearing of an application, give public notice thereof, as well as due notice to the parties in interest, and decide the same within sixty days following the hearing. Upon the hearing, any party may appear in person or by agent or by attorney. Public notice of a hearing shall consist of a publication, at least fifteen days prior to the hearing, in a newspaper of general circulation in the town, which specifies the time, place and nature of the hearing. In addition, the Board shall cause the date, time, place and nature of the

hearing to be posted conspicuously on the property in accordance with the rules of the Board. In exercising its powers, the Board may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and may make such order, requirement, decision or determination as ought to be made and to that end shall have all the powers of the Administrator.

7.3 Public Hearing Required.

The Board shall make no decision except in a specific case and after a public hearing conducted by the Board. A notice of time and place of such public hearing shall be published in a paper of general circulation in the Town at least once, no more than 30 or less than 10 days prior to the hearing. Such notice shall include the particular address or location of the property which is the subject of the appeal, as well as a brief description of the nature of the appeal, and the relief sought.

7.4 Special Exceptions

The purpose of the special exception process is to provide for certain uses which, because of their unique characteristics cannot be distinctly listed as a permitted use in a particular District. These Special Exceptions may be approved by the Board of Appeals after consideration, in each case, of the impact of such uses upon neighboring properties, the surrounding area, and the public need for the particular use at the particular location. Limitations and standards are herein established to ensure the use's consistency with the character, uses, and activities in the District.

7.4.1 No Special Exception shall be authorized unless the Board finds that the establishment, maintenance, or operation of the Special Exception meets the standards set forth in this Article. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all questions of fact which are determined by the Board. The Board shall give consideration to the following, where appropriate:

- a. The nature of the proposed use, the site, including its size and shape, and the proposed size, shape, and arrangement of proposed structures;
- b. Traffic impact;
- c. Nature of the surrounding area;
- d. Proximity of dwellings, churches, schools, public structures, and other places of public gathering;
- e. Availability of public services;
- f. Preservation of cultural or historic landmarks and significant natural features and trees.

- g. Probable effect of noise, vibration, smoke, and particulate matter, toxic matter, odor, fire or explosion hazards, or glare upon surrounding properties;
- h. Conservation of property values;
- i. The purpose and intent of this Ordinance;
- j. Consistency with the Town's Master Plan;
- k. The recommendation of the Historic District Commission when the application concerns property located within the Historic District.

7.4.2 The Board of Appeals may impose conditions in granting a special exception for the purpose of mitigating potential adverse effects of the use proposed.

7.4.3 After the Board of Appeals has approved a special exception, the special exception so approved shall lapse after the expiration of one year, if no substantial construction or change of use has taken place in accordance with the plans for which a special exception was granted or if the Board does not specify some longer period than one year for good cause shown, and the provisions of these regulations shall thereafter govern.

7.4.4 Permits issued under a special exception approval may be revoked by the Administrator for failure to comply with the conditions of approval.

7.4.5 No application for approval of a special exception shall be accepted by the Administrator that is identical or substantially similar to an application that has been denied by the Board of Appeals within the previous year. This waiting period requirement may be waived in an individual case, for good cause shown, by the affirmative vote of the members of the Board of Appeals.

7.5 Variances

7.5.1 Where by reason of the exceptional narrowness, shallowness or unusual shape of a specific piece of property when zoning was adopted in New Market or by reason of exceptional topographic conditions or other extraordinary situation or condition of such piece of property, the literal enforcement of the requirements of this Ordinance would result in practical difficulty to the applicant, the Board shall have power, upon appeal in specific cases, to authorize a variance from the terms of this Ordinance so as to relieve such practical difficulty, and so that the spirit and purpose of this Ordinance shall be observed and substantial justice done. In authorizing a variance, the Board may attach thereto such conditions, regarding the location, character, and other features of the proposed structure or use as it may deem necessary in the public interest. In authorizing a variance, with attached conditions, the Board may require such guarantee as it may deem necessary that the conditions attached are being and will be complied with.

7.5.2 It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general. Rather, it is intended to provide relief where the requirements of this Ordinance render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested.

7.5.3 No such variance in the provisions or requirements of this Ordinance shall be authorized by the Board unless it finds that all the following facts and conditions exist:

- a. That there are exceptional or extraordinary circumstances or conditions applicable to the property in question or to the intended use of the property that do not apply generally to other properties or classes of uses in the same zoning district;
- b. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity; and
- c. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this Ordinance or the public interest.

7.6 Appeals Alleging Administrative Error.

7.6.1 An appeal to the Board of Appeals may be filed by (1) any person aggrieved by any decision of the administrative officer; or (2) any officer, department, board, or bureau of the jurisdiction affected by any decision of the administrative officer. The question of standing to appear before the Board is to be decided on a case-by-case basis. A person may properly be a party before the Board of Appeals, but may not have standing in court to challenge an adverse decision of the Board.

- a. All appeals to the Board of Appeals shall be taken within thirty (30) days of the date of the written decision from which the appeal is taken.
- b. An appeal shall be taken by filing a form designated as a Notice of Appeal. The Notice of Appeal shall specify the grounds upon which the administrative decision is challenged. The Notice of Appeal shall be filed with the zoning official or officials from whom the appeal is taken, and a copy of the Notice of Appeal shall be filed with the Board of Appeals.
- c. Upon receiving the Notice of Appeal, the zoning official from whose decision the appeal is taken shall transmit to the Board of Appeals, without delay, all of the papers, exhibits and other documents which constitute the record upon which the decision was made. Upon receipt of the record, the Board shall schedule a hearing for the appeal. The hearing shall be scheduled within forty-five (45) days of the date on which the notice of

appeal was received by the Board of Appeals. The Board of Appeals shall notify the parties and shall give public notice of the date, time and place of the hearing. At the hearing, any party may appear in person or may be represented by an agent or an attorney.

d. An appeal stays the order or decision from which the appeal is taken; however, an appeal shall not stay the order if the zoning official from whom the appeal is taken certifies to the Board that a stay would, in such official's opinion, cause imminent peril to life, health, safety or property. In any such certification, the zoning official shall state the facts upon which the certification is based. In that event, the order appealed from shall not be stayed.

7.6.2 Appeals from the Board of Appeals. Any person, board, taxpayer, or department of the Town aggrieved by any decision of the Board of Appeals may seek review by the Circuit Court of such decision in the manner provided in Article 66B, §4.08 of the Annotated Code of Maryland, and Title 7, Chapter 200 of the Maryland Rules.

8.0 MINOR MODIFICATIONS

8.1 Minor Modifications to Approved Site Plans and Subdivision Plats. The Planning Commission may approve the following minor changes to approved plans, provided that those changes meet the requirements of this Ordinance:

8.1.1 Changes to an approved site plan to allow an inconsequential change to an existing use, structure, or site which is subject to a previously approved site plan. Minor changes or amendments include, but are not limited to the following changes:

- a. Limited structural modifications to an existing building façade;
- b. Addition or substitution of an awning or awnings;
- c. Modifications to an approved exterior paint color;
- d. Modifications or additions to approved landscaping;
- e. Internal reconfiguration of an existing building without any change in uses;
- f. The addition of mechanical or other incidental equipment outside of an existing structure.
- g. Changes to the amount or layout of parking; or
- h. Minor field alterations to accommodate physical site conditions.

8.1.2 Changes to an approved subdivision plan or plat to allow:

- a. Combination or recombination of existing platted lots so that the total number of lots is not increased and the amended plat represents the same general lot relationships as shown in the plat prior to amendment; or
- b. Changes to a plat that are the result of minor field alterations to accommodate physical site conditions involving interior features of the site design, including relocation of easements, utilities and infrastructure, which represents the same general lot and easement relationships, topography, landscaping, and minimum utility standards.

8.1.3 Changes to an approved master plan for planned development to allow:

- a. A reduction in the width of a required buffer or setback by no more than 10 percent; or
- b. Minor field alterations to accommodate physical site conditions.

8.1.4 Any other proposed change to an approved plan not listed above shall be accomplished in the same manner as the original plan approval. In no circumstance shall a modification be granted under this section that results in:

- a. An increase in overall project density;
- b. A change in permitted uses or mix of uses;
- c. An increase in building height beyond 10 percent of the structure's original height; or
- d. A change in a zoning condition.

8.1.4 Procedure

- a. Any applicant with an approved subdivision plan or plat, site plan, or master plan for planned development may request a minor modification under this section.
- b. The Administrator shall submit applications for minor changes to an approved use plan

to the Planning Commission for decision.

c. The Planning Commission may approve the minor modification subject to the criteria set forth in 8.1.5. If approved, the Planning Commission shall note the terms of the approved modification directly on the amended plan and affix his or her signature and the date of approval.

d. If the Planning Commission determines that an application for a minor modification under this section would be a significant departure from the spirit of the originally approved plan, the Planning Commission may require that the application be processed using either the variance procedure or shall require the applicant to resubmit the application under the procedure used for the original approval.

8.1.5 The Planning Commission may approve a minor modification under this section only upon finding that all of the relevant criteria below have been met:

a. All changes shall conform to the minimum required standards for the zoning district in which the property is located;

b. All additions, alterations, and expansions shall be compatible with existing or approved lots, easements, infrastructure, existing or approved structures, and parking areas;

c. The effect of the landscaping, buffers, or screening on the site, or on the approved subdivision/site plan shall not be diminished;

d. The number of access points to public streets shall not be increased or substantially relocated;

e. The circulation pattern shall continue to provide for the safe, controlled, and orderly flow of pedestrians and vehicles;

f. The change will result in better or equal performance of the overall objectives of the approved subdivision/site plan and specific zoning district classification;

g. The change has no appreciable effect on adjoining or surrounding property;

h. The change does not otherwise violate any provision of this Ordinance or other applicable laws; and

i. The use and development of the property is otherwise in full compliance with the requirements of this Ordinance.

9.0 DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS

9.1 Authority.

The right to enter into development rights and responsibilities agreements shall be vested in the Mayor and Council of the Town of New Market, pursuant to the authority conferred upon the Mayor and Council in Article 66B, §13.01 of the Annotated Code of Maryland, and upon such terms and conditions as may be proposed or accepted by the Mayor and Council in accordance with the statute.

9.2 Petition.

Before entering into a development rights and responsibilities agreement, a person having a legal or equitable interest in real property or the representative of a person having a legal or equitable interest in real property shall petition the Mayor and Council, and in the petition set forth an offer or solicit an offer, setting forth the proposed terms and conditions to be included in an agreement. At a minimum, the petition shall contain the following:

9.2.1 a certification that the petitioner has either a legal or equitable interest in the property;

9.2.2 the names and addresses of all persons or entities having a legal or equitable interest in the property, including but not limited to, owners, contract purchasers and lienholders; and

9.2.3 the location, land area and zoning classification of the property.

9.3 Public Hearing.

After receiving a petition and before entering into an agreement, the Mayor and Council shall conduct a public hearing. If a public hearing is already required for the approval of the development, or the annexation of the

property concerned, of any part thereof, that public hearing may satisfy the public hearing provisions of this paragraph. At least fifteen (15) days of notice of the time and place of such hearing shall be published in a newspaper of general circulation in the Town. The notice shall contain the name of the petitioner, a brief description sufficient to identify the property involved, a fair summary of the contents of the petition and the date, time and place of the public hearing.

9.4 Determination of Consistency with the Town's Master Plan.

Before any agreement between the Town and the petitioner may become effective, the proposed agreement shall be referred to the Planning Commission. The Planning Commission shall review the proposed agreement and determine whether the proposed agreement is consistent with the adopted Master Plan of the Town, and shall promptly advise the Mayor and Council of its findings.

9.5 Contents of the Agreement.

The agreement shall conform to the requirements of 13.01 (f) (1), and may provide for those additional matters set forth in 13.01 (f) (2), and shall be subject to the time limitations set forth in 13.01 (g) of Title 13, unless otherwise established in the Agreement as permitted under subsection (g).

9.6 Amendment of Agreements.

After public hearing, the parties to an agreement may amend the agreement by mutual consent, provided that the Planning Commission shall determine that the proposed amendment is consistent with the adopted Master Plan of the Town.

9.7 Termination of Agreement.

The parties to an Agreement may terminate the Agreement by mutual consent, or may terminate or suspend an Agreement in accordance with 13.01 (i) (2).

9.8 Recordation.

The Agreement shall be recorded in the Land Records of the Clerk of the Circuit Court for Frederick County within twenty (20) days following its execution.

9.9 Fees and Expenses.

The Petition shall be accompanied by such fees as may be established or modified by resolution of the Mayor and Council, from time to time adopted. The petitioner shall be responsible for payment in advance of all advertising and recording expenses incurred in connection with an Agreement.

ARTICLE IV. DISTRICT REGULATIONS

1.0 ESTABLISHMENT OF DISTRICTS AND USE CLASSIFICATIONS

1.1 Establishment of Districts: For the purposes of this Ordinance, the following Zoning Districts are hereby established.

General Use Districts

AG	Agricultural
OS	Open Space District
RM	Residential Merchant District
R-1	Low Density Residential
R-2	Medium Density Residential
MRS	Mixed Residential Service District
MC	Mixed Commercial District
MCI	Mixed Commercial/Industrial District
AP	Amusement Park District
I	Institutional District

Overlay and Floating Districts

HD	Historic District Overlay
ARD	Architectural Review District Overlay
PDD	Planned Development District (Floating)
TRC	Town Residential/Commercial Mixed Use District (Floating)
TBP	Town Business Park District (Floating)

1.1.1 Boundaries of Districts. Unless otherwise indicated on the zoning district maps, the boundary lines of the districts follow lot lines, center lines of streets, alleys, or such center lines extended, center lines of creeks or the corporate limit line as existing at the time of adoption of this Ordinance or measured line.

1.1.2 Application of Regulations. No building or land shall hereafter be used and no building or part thereof shall be erected, moved or altered unless for a use expressly permitted by and in conformity with the regulations for the district in which it is located.

1.1.3 Location of Zoning Line in Vacated Street. Whenever the Town Council vacates a street or alley, adjacent districts shall extend to the center line of the vacation.

1.2 Use Classifications: Use classifications are used to denote a group of similar and commonly-recognized uses which are grouped together under a single type or classification for the purposes of organizing this Ordinance. This Ordinance contains five use classifications: Residential, Public/Institutional, Non-Residential, Industrial, Accessory Uses, and Temporary Uses. If there is a discrepancy between the Use Tables in this Section 1.2 and Section 2.0 following, Section 2.0 Table of Uses shall prevail.

1.2.1 Purpose. Use classifications organize land uses and activities into general use categories and specific use types based on common functional, product, or physical characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions. The use classifications provide a systematic basis for assigning present and future land uses into appropriate zoning districts. Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification.

1.2.2 Structure of This Section. Each subsection below first describes common characteristics of the use category. Principal uses are assigned to the category that most closely describes the nature of the principal use. Also listed are examples of common accessory uses, which generally are allowed in conjunction with a principal use unless otherwise stated in the regulations. Unless otherwise stated, accessory uses are subject to the same regulations as the principal use. Each subsection also lists specific use types that are included in the use category. If there are no specific use types or if the list of specific use types is not all inclusive, this subsection also lists common examples of other uses included in the category.

1.3 Residential Uses (These topical categories e.g. residential, public/institutional, etc., are for the aid of the reader as a means of organization only.)

1.3.1 Residential Uses. This use category is characterized by residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month or longer basis (lodging where tenancy may be arranged for a period of less than 30 days is classified under the Public Accommodation category). Common accessory uses include recreational activities, raising of domestic pets, gardens, personal storage buildings, hobbies, and parking of the occupants' vehicles. Specific use types include, but are not limited to:

a. Single-Family Detached Dwelling. A building that is developed with open yards on all sides, contains one dwelling unit not attached to any other building or dwelling unit, and is not on the same lot as any other dwelling unit. This shall not include trailers, mobile homes, hotels, motels, motor lodges, boarding- and rooming houses, tourist courts or tourist homes.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P		P				

b. Two-Family Dwelling (two units). A building on one lot that has open yards on all sides and contains two dwelling units that share a common wall or ceiling/floor and have separate access from the outside. Each dwelling unit of a duplex dwelling must comply with the minimum lot area per dwelling unit specified . The dwelling units and individual lots of a duplex may be titled separately if separate utility systems are provided and if separate lots for all dwelling units in a building are created at the same time and in conformance with the applicable regulations and standards governing the subdivision of land.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
			P	P		P				

c. Attached Dwelling (two units). A building that contains two dwelling units that share one or more common walls with each dwelling unit located on a separate lot.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
			P	P		P				

d. Multi-Family Dwelling (three or more units). A building, other than a townhouse, that contains three or more individual dwelling units attached along and sharing one or more common walls between any two units and/or stacked one above the other. None of the individual dwelling units within a multi-family dwelling are separated by property lines. This type of structure shall include any such building, regardless of the form of ownership (*e.g.*, condominium or leasehold) of the individual dwelling units therein.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P			

e. Residential Use in a Non-Residential Building. A structure combining residential (living) and non-residential (working) activities.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					P	P	P		P	

f. Townhouse. A single-family dwelling on its own lot owned in fee simple by the owner of the dwelling, with a private entrance that is part of a structure where the dwelling units are joined side-by-side and separated by party walls, with no unit being located above or below another unit, and having totally exposed front and rear walls for access, light, and ventilation. This shall include any such dwelling, regardless of the form of ownership (*e.g.*, condominium or leasehold) of the individual dwelling units therein.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P			

g. Mobile Home. A structure designed for permanent habitation and so constructed as to permit its transport on wheels, temporarily or permanently attached to its frame, from the place of its construction to the location, or subsequent locations, at which it is intended to be a permanent home and designed to permit the occupancy thereof as a dwelling place for one or more persons and manufactured in accord with standards that are 1) promulgated by the U.S. Department of Housing and Urban Development, and 2) established in the Code of Maryland Regulations 05.01.01 as amended from time to time. Notwithstanding that the structure may rest on a permanent foundation, with wheels, tongue, hitch and axle or lug bolts permanently removed, it shall be construed as a mobile home. A Mobile Home is allowed as an accessory use on a farm.

1.3.2 Residential Special Uses. This category is characterized by residential occupancy of a structure by a group of people who do not meet the common definition of “household.” Tenancy is arranged on a monthly or longer basis, and the size of the group may be larger than a family. Generally, these structures have a common eating area for residents. The residents may receive care, training, or treatment, and caregivers may or may not also reside at the site. Accessory uses commonly include recreational facilities and vehicle parking for occupants and staff. Specific use types include:

a. Bed and Breakfast/Guest House. A manager or operator-occupied dwelling in which lodging is provided and which may include meals as a part of the accommodations offered to such guests.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P				P		P				

b. Boardinghouse/Rooming House. A dwelling in which, for compensation, lodging or meals, or both are furnished to three or more but not exceeding nine guests. A boardinghouse shall not be deemed a home occupation. The proprietor or proprietor's agent must reside on the premises.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P		P				

c. Convalescent Home. See "Nursing Home."

d. Group Home. A State-licensed facility offering residential accommodations to provide care to specifically defined clientele, such as developmentally disabled persons, exceptional persons, or victims of domestic violence.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P				

e. Life Care Community. A building or group of buildings that contains dwelling units where the occupancy is restricted to persons who are at least 55 years of age, or married couples in which one of the persons is at least 55 years of age, and which provides nursing and/or medical care as well as support services, such as common dining facilities, retail stores, and personal service establishments, which are operated by the owner of the life care community or lessees of the owner. Life care communities are designed to meet the residents' basic needs for shelter, food, and health care, regardless of the level of independence of the individual resident and regardless of how these needs may change over time.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
			P			P				

f. Nursing Home. A licensed facility where three or more elderly, chronically ill, infirm, or incurable persons, not members of a family residing on the premises, are provided with food, lodging, and medical care for compensation. This definition includes congregate care facilities but not hospitals, clinics, or life care communities (even though a life care community may include a nursing home as one of its components).

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P			P	

1.4 Public/Institutional Uses

1.4.1 Public Uses

a. Athletic Fields, Public. Land, often requiring equipment, owned by a unit of government and designed for outdoor games and sports such as baseball, football, and soccer.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P	SE						P	P		P

b. Community Center (publicly owned and operated). A common building, area, or garden open to the public that provides a focus for recreational, neighborhood, educational, and cultural activities for residents.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					P	P				P

c. Library. A public facility for the use, but not sale, of literary, musical, artistic, or reference materials.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
		P	P	P	P	P	P			P

d. Museum. A building owned or operated by a private non-profit entity serving as a repository for a collection of natural, scientific, or literary curiosities or objects of interest, or works of art, and designed to be used by members of the public for loaning or viewing, with or without an admission charge.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P	P	P	P		P	P

e. Public Park. A noncommercial, non-profit facility or land owned by the Town, the State of Maryland, or another unit of government which is used or intended to be used by for recreation, education, or cultural use, including both active and/or passive recreation.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P	P	P	P			P	P	P	P	P

f. Parking Garage, Public. A structure or facility designed with one or more levels or floors partially or fully enclosed and used exclusively for the parking or storage of motor vehicles. The facility may be above, below, or partially below ground. Includes parking garages and parking decks.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P	P	P	

g. Post Office.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P	P	P		P

h. Public Heliport. An area designed, used, or intended for use for the landing and take-off of helicopters, and any supporting operations facilities, such as maintenance, loading and unloading, storage, fueling, or terminal facilities.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

i. Public Safety Station. A use designed to protect public safety and provide emergency response services, often located in or near the area where the service is provided. Employees are regularly present on-site. Accessory uses include offices, banquet halls, and parking. Examples include fire stations, police stations, and emergency medical and ambulance stations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					P	P	P	P		P

j. Public Utility Facility. Buildings, structures, or other facilities used or intended to be used by any public agency or utility. (Private or non-governmental utility facilities are included under “private utility facilities,” below.) This category includes buildings or structures that house or contain facilities for the operation of publicly-owned or publicly-licensed water, wastewater, waste disposal, or electricity services. This use also includes water storage tanks; radio, television, and microwave transmission or relay towers; and electric or gas substations, water or wastewater pumping stations, or similar structures used as an intermediary switching, boosting, distribution, or transfer station of electricity, natural gas, water, wastewater, cable television, or telephone services. This category includes passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, water, sewage, communication signals, or other similar services on a local level. Additionally, a public utility facility means any energy device and/or system that generates energy from renewable energy resources including solar, hydro, wind, biofuels, wood, geothermal, or similar sources. Accessory uses may include control, monitoring, data, or transmission equipment.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		P

k. Public Works Yard/Garage.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		P

1.4.2 Institutional Uses

a. Club, Lodge, or Hall. An organization and its premises catering exclusively to members and guests for social, intellectual, recreational, or athletic purposes not intended for profit.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					SE	P	P	P		

b. College-level educational institutions. A degree-granting institution, other than a trade school, which provides education beyond the high school level, and which may provide lodging or dwelling units for students or faculty, and typically has programs resulting in an Associate's, Bachelor's, or Master's degree. It may include classroom buildings as well as offices, laboratories, lecture halls, athletic facilities, dormitories, and similar buildings.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	P

c. Educational Use, Private. at the primary, elementary, middle, or high school level, other than trade or business schools, which provide educational instruction to students. Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums, and before or after-school day care.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P							P	P	P	

d. Hospital. A licensed public or private institution that provides in-patient primary health services and medical or surgical care to persons suffering from illness, disease, injury, deformity, or other physical or mental condition, and including related facilities such as laboratories, outpatient, or training facilities.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P	P	

e. Place of Worship. Facilities used primarily for non-profit purposes by a religious sect to provide assembly and meeting areas for religious activities. Accessory uses include Sunday school facilities, parking, caretaker's housing, pastor's housing, and group living facilities such as convents. Examples include churches, temples, synagogues, and mosques, but not associated schools, day care facilities, or other facilities not devoted to religious activity.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P					SE	SE	P		P	P

f. Elementary, Middle, Junior, and High School. A public elementary school, middle school, junior high school, or high school that does not provide lodging for students, including any accessory athletic fields and recreational facilities.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P		P

1.4.3 Private Utility Facilities. Buildings, structures, or other facilities used or intended to be used by any private or non-governmental utility. (Public utility facilities are included under “public utility facilities,” above.) This category includes buildings or structures that house or contain facilities for the operation of privately owned water, wastewater, waste disposal, or electricity services. This use also includes water storage tanks; radio, television, and microwave transmission or relay towers; and electric or gas substations, water or wastewater pumping stations, or similar structures used as an intermediary switching, boosting, distribution, or transfer station of electricity, natural gas, water, wastewater, cable television, or telephone services. This category includes passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, water, sewage, communication signals, or other similar services on a local level. Additionally, generates energy from renewable energy resources including solar, hydro, wind, biofuels, wood, geothermal, or similar sources. Accessory uses may include control, monitoring, data, or transmission equipment.

- a. Utility Facility, Major. A service of a regional nature that normally entails the construction of new buildings or structures, and that typically has employees at the site. Examples include water works, reservoirs, power or heating plants, or steam generating plants.
- b. Transportation Facility. A facility or location that receives and discharges passenger and at which facilities and equipment required for their operation are provided. Examples include terminals for bus, trolley, taxi, commuter/passenger railroad, shuttle van, or other similar vehicular services.
- c. Utility Substation, Minor. A service that is necessary to support development within the immediate vicinity and that involves only minor structures. Employees typically are not located at the site. Examples include electric transformer stations, gas regulator stations, telephone exchange buildings, and well, water, and sewer pumping stations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.5 Non-Residential Uses

1. 5.1 Agricultural Uses. Activities that primarily involve raising, producing, or keeping plants or animals, or cultivation and management of other natural resources provided that the above uses shall not include the business of garbage feeding of hogs, fur farms or the raising of animals for use in medical or other tests or experiments. Accessory uses may include dwellings for proprietors and employees, barns, storage of grain, animal raising, feed preparation, and wholesale sales of products produced on-site. Specific use types include:

- a. Farming, General. An area of land not less than five (5) acres in size used for the commercial production of agricultural products such as crops, dairy products, livestock, and poultry.
- b. Forestry. The science, business, and art of creating, conserving, and managing forests or forestlands for the continuing uses of commodity and non-commodity benefits.
- c. Riding Stable - Commercial or Club

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P		

1.5.2 Amusement Establishment, Indoor. An establishment offering sports, game playing, or similar amusements to the public within a fully enclosed building. This shall include bowling alleys, billiard parlors, video games, and skating rinks. This shall not include amusements that are accessory to churches, schools, or colleges.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P	P	P	P	

1.5.3 Amusement parks, which may include mechanical rides, water rides, games, day care, shows, theme exhibits, refreshment stands, go-kart tracks, miniature golf, paintball, bumper cars, bumper boats, arcade games, laser tag, thrill rides, indoor and outdoor rides and attractions, water rides, water slides, wave pools, lazy rivers and spray grounds.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
									P	

1.5.4 Animal Service. Uses that involve the selling, boarding, or care of animals on a commercial basis. Accessory uses may include confinement facilities for animals, parking, and storage areas. Specific use types include:

- a. Kennel. An establishment where four or more domesticated animals are kept, sold, boarded, bred, groomed, or trained, typically with fenced or enclosed spaces, areas, or runs for individual animals. Kennels may be indoor only, or indoor/outdoor, depending on the zoning district in which they are located.
- b. Veterinary Hospital/Office. An establishment for the care and treatment of animals that are admitted for daytime and/or overnight stay in order to obtain veterinary treatment for illnesses, diseases, or injuries. Such facilities may be indoor only, or may have both indoor and outdoor facilities, depending on the zoning district in which they are located;

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P		

1.5.5 Antique Restoration Services excluding dip tanks.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.6 Antique Shop.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.7 Art Framing Shop, with or without gallery.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.8 Artisan Shop. A business in which an artist, craftsman, or designer engages in the production of marketable goods and services, creating individual pieces or products for produced for demonstration, retail sale, and which are consistent with the cultural, artistic and entrepreneurial heritage of the Town, such as upholstering, spinning, weaving, quilting, period tailoring, reproduction clothing, coppersmithing, tinsmithing, cabinetmaking, broom making, cobbling and caning.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.9 Auction House.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P							P	P		

1.5.10 Auto Repair and Service Station. Building, lot, or both in or upon which the business of general motor vehicle repair and service is conducted, but excluding junk and/or auto wrecking business.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.11 Auto/Junk/Salvage Yard. Any establishment or land used, in whole or in part, for commercial or industrial storage, dismantling, and/or sale of waste paper, rags, scrap metal, motor vehicles, machinery, tires, or other junk outside of an enclosed building. This definition shall not include a landfill, solid waste transfer facility, other public utility facility, or a recycling and salvage operation.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								SE		

1.5.12 Auto Sales/Rental. The storage, display, sale, lease or rental of motor vehicles, including automobiles, vans, and light trucks. This shall not include salvage operations or scrap operations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.13 Bakery, Commercial. A bakery in which the production and/or wholesaling of baked goods is permitted, but where over-the-counter or other retail dispensing of baked goods is prohibited.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.14 Bakery, Retail A business where products of a bakery are offered and kept for retail sale, including incidental baking. (Amended 4/14/04).

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P	P	

1.5.15 Bank/Savings and Loan/Credit Union with drive-thru service. A financial institution with a drive-through window that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P	P	P	

1.5.16 Bank/Savings and Loan/Credit Union without drive-thru service. A financial institution without a drive-through window that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P	P	P	P	

1.5.17 Blacksmithing. A commercial operation using a forge to produce, shape and repair iron and other metals.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					SE					

1.5.18 Bookstore, Adult. An establishment, the principal use of which is to offer for sale, viewing or display, or an establishment with a segment or section devoted to the sale, viewing or display of books, magazines, printed material, films, videos, tapes, peep shows and live acts which depict, describe or relate to any of the following sexual activities: human genitals in a state of sexual

stimulation or arousal; acts of human masturbation, sexual intercourse or sodomy; fondling or other erotic touching of human genitals, pubic region, buttock or female breast; or depict any of the following anatomical areas less than completely and opaquely covered: human genitals, pubic region, female breast below a point immediately above the top of the areola or human male genitals in a discernibly turgid state, even if completely and opaquely covered. Adult bookstores are not permitted in any of the Town's zoning districts.

1.5.19 Building Material Sales.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

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

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.21 Campground. Any lot, parcel or tract of land, together with such open spaces as are required under the provisions of this Ordinance, upon which there are located one (1) or more cottages or cabins used, designed, maintained or held out for the accommodation of transient guests, whether or not a charge is made therefor.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P										

1.5.22 Candle Shop

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.23 Car Wash. A commercial establishment that washes, cleans, and/or waxes automobiles or other motor vehicles, whether or not in conjunction with other goods or services provided to customers.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.24 Cemetery. Land used or dedicated to the interment of human or animal remains, including columbarium, mausoleums, and maintenance facilities.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P		P

1.5.25 Clinic, Medical or Dental

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P	P			P

1.5.26 Coffee and/or Tea Shop

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P	P	

1.5.27 Confectionery Shop

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P	P	

1.5.28 Contractor Yard.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.29 Convenience Store. A retail establishment with a gross floor area of less than 5,000 square feet, which sells a limited line of groceries and household items, gasoline, and/or beer and wine generally intended for the convenience of the neighborhood, but not including a service station.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								SE		

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

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.31 Day Care. This use category includes facilities that provide care, protection, and supervision for children or adults on a regular basis away from their primary residence for less than 24 hours per day. Accessory uses include offices, recreation areas, and parking. Specific use types include:

a. Child Day Care Center. A facility operated for the purpose of offering or supplying group care to seven or more children, all of whom are separated from their parents or guardians, for less than 24 hours a day and on a regular schedule more often than once a week, provided it is licensed by the Maryland Department of Health and Mental Hygiene as a “Group Day Care Center,” as required, and is subject to any regulations administered by that Department. A “Child Day Care Center” is not to be considered a home occupation under the terms of this Ordinance. All recreational and open space shall be in accordance with State regulations. Play areas provided must be fully fenced.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						SE	P		P	

b. Day Care Home. A residence in which care is given in lieu of parental care to six or fewer children for less than 24 hours a day, on a regular schedule more often than once a week, and for which compensation is paid. Such residence is one other than the child’s or children’s residence. Such day care homes shall be registered by the Frederick County Department of Social Services, as required, and is subject to any regulations administered by that department. A Day Care Home is considered a major home occupation under the terms of this Ordinance. All recreational and open space shall be in accordance with State regulations. Play areas provided must be fully fenced.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P			P	P	P		

1.5.32 Delicatessen. An establishment where food is sold primarily for consumption off-premises and no more than 20 seats are provided for on-premises consumption. Sales of unrefrigerated wine and specialty beers are permitted as one of the delicatessen’s product lines. This definition does not include grocery stores or supermarkets.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	SE	P	P			

1.5.33 Dry Cleaning Service. These facilities may include dry cleaning equipment and customer service.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.5.34 Equipment Sales and Leasing. The storage, display, sale, lease or rental of vehicles or other apparatus commonly used in commercial, industrial, or construction enterprises, including trucks, trailers, bulldozers, cranes, backhoes, rollers, lifts, and loaders. This shall not include salvage operations, or scrap operations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.35 Fine Arts Education: Instruction and training in the fine arts to include of music, dance,, theater, the visual arts, and other similar disciplines.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				SE	SE	P	P			

1.5.36 Florist Shop

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.37 Food and Beverage Services: Grocery, fruit or vegetable stores, supermarkets, meat markets, delicatessens, and bakeries in conjunction with retail sales.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.38 Funeral Home. A building, or portion thereof, used for funeral services in preparation of the dead for burial. Such uses may include a chapel or gathering area, offices, facilities for storage of required materials, vehicles, or supplies, but not for the interment or cremation of remains.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.5.39 Garden Supply Store

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.40 Gasoline Service Station. A facility limited to retail sales of vehicle fuels, oils, and accessories where repair service, if any, is incidental to the activities on the site and no storage or parking space is offered for rent.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.5.41 General Store. A retail store of less than 4,000 square feet serving a small community and stocked with a wide variety of routine stock and specialty merchandise to attract customers in a limited market. . Sales of unrefrigerated wine and specialty beers are permitted as one of the store's product lines.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				SE	P	P	P	P	P	

1.5.42 Golf Course. A tract of land laid out with a course having nine or more holes for playing the game of golf, including any accessory clubhouse, driving range, office, restaurant, concession stand, picnic tables, pro shop, maintenance building, restroom facility, or similar accessory use or structure. This term shall not include miniature golf courses as a principal or accessory use, nor shall it include driving ranges that are not accessory to a golf course.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P										

1.5.43 Golf Driving Range. A sports facility equipped with tee areas, distance markers, and related features for practicing golf, and which may include a pro shop, snack bar, but excludes miniature golf courses.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P									P	

1.5.44 Greenhouse, Commercial. A building used for the growing of plants, all or part of which are sold at retail or wholesale.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P		

1.5.45 Health and Fitness Club.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P	P	P	

1.5.46 Historic Preservation Offices.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P			

1.5.47 Home Office, Professional. The private office of a resident physician, dentist, architect, engineer, attorney, or similar professional person located in that person's home and not used to see clients.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P		P	P			

1.5.48 Hotel. A building in which lodging or boarding is provided for ten or more persons, primarily transient, for compensation. Ingress and egress to and from all rooms is made through an inside lobby or office supervised by a person in charge at all hours. A hotel may include restaurants, taverns, club rooms, public banquet halls, ballrooms, and meeting rooms.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							SE	P	P	

1.5.49 Ice Cream Parlor

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P		P	

1.5.50 Interior Decorator Studio. A business that provides by way of advice, consultancy, or technical assistance, services related to the planning, design, or beautification of man-made spaces, including illustrative non-inventory showrooms, samples and displays

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.51 Jewelry Shops

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.52 Lamp Shops

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.53 Laundromats

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P			

1.5.54 Lumber Yard

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.55 Motel. A building or buildings in which lodging or boarding and lodging are provided and offered to the public for compensation; same as a hotel, except that the buildings are usually designed to serve tourists traveling by automobile. Ingress and egress to rooms need not be through a lobby or office, and parking usually is adjacent to the rooms.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P	P	P	

1.5.56 Nursery, Plant. Any land used to raise tree, shrubs, flowers, and other plants for sale or for transplanting.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P		

1.5.57 Office, Business or Professional. A use or building where business is conducted that does not primarily involve the sale or transfer of goods by the business to the customer at that location. This includes, but is not limited to, general business offices, insurance offices, law offices, and real estate sales and management offices excluding medical clinics.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				SE	SE	P	P	P	P	

1.5.58 Office, Government. A building, structure, or facility owned, operated, or occupied by a governmental agency to provide a governmental service to the public.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				SE	SE	P	P	P	P	

1.5.59 Parking Garage, Private. A structure or facility designed with one or more levels or floors partially or fully enclosed and used exclusively for the parking or storage of motor vehicles. The

facility may be above, below, or partially below ground. Includes parking garages and parking decks.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.60 Parking Lot, Commercial. A lot or portion thereof, other than an automobile sales lot, held out or used for the storage or parking of six (6) or more motor vehicles for a consideration, where service or repair facilities are not permitted. Such parking lot shall not be considered an accessory use; nor shall it be used for the storage of dismantled or wrecked motor vehicles, parts thereof, or junk.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P	P	P	

1.5.61 Personal Services. A place of business engaged in the provision of frequent or recurrent needed nonmedical services of a personal nature. Typical uses include, but are not limited to, beauty and barber shops, shoe repair shops, tailor shops, dry cleaning pick-up stores, self-service laundries, hair stylists, and cosmeticians. This shall not include automobile service stations, travel agencies, real estate agencies, tattoo parlors, or Commercial Indoor/Outdoor Recreation uses.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				SE	SE	P	P	P	P	

1.5.62 Photo Art Shop

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.63 Pottery and Ceramic Shops

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.64 Professional Services. A business that offers a personal service to the public which requires as a condition precedent to the rendering of such service the obtaining of a license or other legal authorization. Professional services include but are not limited to, accountants, architects, chiropractors, doctors, lawyers, dentists, engineers, optometrists, osteopaths, social workers, and real estate brokerages.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P	P		P	

1.5.65 Restaurant with drive-thru service. A commercial establishment whose principal purpose is the preparation and sale of food and beverages in a state that is ready to eat, either on the premises or off the premises. Restaurants may be indoor only, or may also have outdoor operations, depending on the zoning district in which the use is located.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P	P	P	

1.5.66 Restaurant without drive-thru service. A commercial establishment whose principal purpose is the preparation and sale of food and beverages in a state that is ready to eat, either on the premises or off the premises. Restaurants may be indoor only, or may also have outdoor operations, depending on the zoning district in which the use is located.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				SE	SE	SE	P	P	P	

1.5.67 Retail Sales, Small-Scale. Business establishments of 5,000 square feet or less of gross floor area dealing in commodities which tend to be purchased on a comparison basis for consumer or household use. Typical uses include apparel and accessories; communications equipment sales and service; draperies, fabrics; floor covers; hardware; luggage and leather goods; paint and wall covers; party supplies; photographic equipment sales and service; radios, records, and tapes; sporting goods; and toys and games. This category does not include bulk retail (e.g. large categorized products such as lumber, household furnishings, electrical and heating fixtures and supplies, etc.) restaurants, personal service establishments, convenience stores, or amusement establishments.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				SE	SE	P	P	P	P	

1.5.68 Retail Sales, Specialty. Retail operations that specialize in a merchandise theme such as Made in Maryland products or handle a limited number of lines of merchandise and are characteristic of a diverse commercial area. Such stores may include but are not limited to antique shops, art galleries, art framing shops with or without a gallery, bookstores (except adult bookstores), candle shops, china and glassware shops, cosmetic shops, florist shops, import shops, interior decorator studios, jewelry stores, lamp shops, music stores, photo art shops, pottery and ceramic shops, and stationary stores.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P	P		

1.5.69 School, Trade or Professional. A school, other than a college, which provides specialized training and education principally in the business, commercial, or vocational arts, and does not provide lodging or dwelling units for students or faculty, and has programs which typically result in the awarding of a certificate.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.5.70 Shopping Center. A building or group of buildings, either freestanding or connected, under unified ownership of land parcels, which contains one or more primary tenant or anchor store, with common parking, pedestrian circulation, ingress and egress, and which is used or intended for use primarily for the retail sale of goods and services to the public.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P		P	

1.5.71 Theater. An indoor structure or establishment used for showing motion pictures or for dramatic, operatic, dance, musical, or other live performances. May include food and beverage sales and similar concessions. Theaters may not exceed 350 seats.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						SE	P		P	

1.5.72 Vehicle Repair, Heavy. The use of a site for the repair and maintenance of trucks, trailers, commercial and/or construction vehicles.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.73 Vehicle Repair, Light. Any building, structure, or lot used for one or more of the following: (1) dispensing, selling, or offering for retail sale items such as gasoline, kerosene, lubricating oil, or grease for the operation and maintenance of automobiles, including the sale and installation of tires, batteries and other minor accessories and services for automobiles; or (2) the business of repairing automobiles. This shall not include car washes, the retreading and/or recapping of tires, or convenience stores which sell gasoline or lubricating oil, but not other automotive accessories or services.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.74 Warehouse Retail.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.75 Wholesale Sales. An establishment primarily engaged in the sale or distribution of goods and materials in large quantity to retailers or other businesses for resale to individual or business

customers. This shall not include heavy manufacturing, resource extraction, scrap operations, or salvage operations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.5.76 Recreation Facilities, Commercial and Neighborhood. Uses that provide continuous recreation or entertainment activities, either indoor or outdoor. Accessory uses may include concessions, snack bars, parking, and maintenance facilities. Specific use types include, but are not limited to:

a. Neighborhood Recreation Center (Indoor/Outdoor). A building, structure, or facility available for recreational clubs and activities. Such uses commonly include tennis courts, swimming pools, restaurants for members and guests only, and gymnasiums. Such uses may be either public or private, but typically are intended only for the residents and guests of a particular residential development or neighborhood.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
		SE	SE							

b. Commercial Recreational Facilities. A recreational facility operated as a business, and which is open to members of the general public for a fee. Such uses generally include, but are not limited to gyms, health clubs, courts, or pools.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
							P	P	P	

c. Amusement parks, which may include mechanical rides, day care, water rides, games, shows, theme exhibits, refreshment stands, go-kart tracks, miniature golf, paintball, bumper cars, bumper boats, arcade games, laser tag, thrill rides, indoor and outdoor rides and attractions, water rides, water slides, wave pools, lazy rivers and spray grounds.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
									P	

1.6 Industrial Service Uses. Industrial Service firms are engaged in the repair or servicing of agricultural, industrial, business, or consumer machinery, equipment, products, or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site. Accessory activities may include retail sales, offices, parking and storage. Specific use types include:

1.6.1 General Industrial Service. Manufacturing of finished parts or products, or storage and handling of such products and materials. Examples include, without limitation: welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal, and building materials; building, heating, plumbing or electrical contractors with on-site storage; publishing and

lithography; exterminators; janitorial and building maintenance services; fuel oil distributors; solid fuel yards; laundry, dry-cleaning and carpet cleaning plants; and photo-finishing laboratories.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.6.2 Research Laboratory. A facility that is designed or equipped for basic or applied research or experimental study, testing, or analysis in the natural sciences or engineering, including any educational activities associated with and accessory to such research.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.7 Manufacturing and Production Uses. This use category includes firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Custom industry is included (i.e., establishments primarily engaged in the on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment). Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Accessory activities may include retail sales, offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets and caretaker's quarters. Specific use types include:

1.7.1 Manufacturing, Heavy. The assembly, fabrication, or processing of goods and materials using processes that ordinarily have greater than average impacts on the environment, or that ordinarily have significant impacts on the use and enjoyment of other properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards, or that otherwise do not constitute "light manufacturing," or any use where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, or processing exceeds 25 percent of the floor area of all buildings on the lot. "Heavy manufacturing" shall include, but not be limited to, the following: enameling, lacquering, or the plating or galvanizing of metals; industrial chemical manufacture; mixing plants for concrete or paving materials, and manufacture of concrete products; pressure treating of wood; stonecutting; This shall not include resource extraction or recycling and salvage operations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.7.2 Manufacturing, Light. The assembly, fabrication, or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, or processing does not exceed 25 percent of the floor area of all buildings on the lot. This shall not include uses that constitute "heavy manufacturing," resource extraction, or recycling and salvage operations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.8 Telecommunications Facilities. Telecommunications facilities are structures used to transmit or receive analog or digital voice or communications information between or among points using electromagnetic signals via antennas, microwave dishes, and similar structures. Supporting equipment includes buildings, shelters, cabinets, towers, electrical equipment, parking areas, and other accessory development. Amateur radio antennas are excluded as provided in FCC PRB-1. This term does not include dish antennas two meters or less in diameter. Specific use types include:

1.8.1 Antenna Co-Location on Existing Tower. Any structure or device used to collect, receive, transmit, or radiate electromagnetic waves, including both directional antennas (such as panels, microwave dishes, satellite earth station antennas over two meters in diameter) and omnidirectional antennas (such as whips) that is placed upon an existing telecommunications tower or projection.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					SE			P	P	

1.8.2 Concealed (Stealth) Antennae and Towers. Any man-made trees, clock towers, bell steeples, light poles, water towers and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					SE				P	

1.8.3 Other Building-Mounted Antennae and Towers. Any tower, pole, or similar structure attached to a building that supports telecommunications antennae.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					SE			P	P	

1.8.4 Other Freestanding Towers. Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
					SE			P	P	

1.9 Warehouse and Freight Movement Uses. Firms involved in the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for

some will-call pickups. There is little on-site sales activity with the customer present. Accessory uses may include offices, truck fleet parking, and maintenance areas. Specific use types include:

1.9.1 Mini-Storage. A building or group of buildings divided into separate spaces or compartments leased to individuals, organizations, or businesses on an individual basis for self-service storage of personal property. Also known as self-storage.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.9.2 Warehousing and Distribution Establishment. A use engaged in (1) the storage of goods, materials, vehicles, trailers, or boats, or (2) the distribution of goods and materials to another location for the purposes of resale or use at the place distributed to. At least 50 percent of the gross floor area of the use shall be used for warehouse and distribution purposes. This shall include offices located on the same property in conjunction with such uses. This shall not include heavy manufacturing, resource extraction, scrap operations, or salvage operations.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P	P	

1.9.3 Truck Stop. A structure or land used or intended to be used primarily for the sale of fuel for trucks and, usually long term truck parking, incidental service or repair of trucks, overnight accommodations, or restaurant facilities open to serve the general public; or a group of facilities consisting of such a use and attendant eating, repair, sleeping, or truck parking. As used here, the term “trucks” does not include any vehicle whose maximum gross weight is 10,000 pounds or less, as rated by the State Motor Vehicle Administration.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								SE		

1.10 Waste-Related Uses. This category includes uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material or processing of scrap or waste material. Waste-Related uses also include uses that receive hazardous wastes from others. Accessory uses may include recycling of materials, offices, and repackaging and shipment of by-products. Specific use types include:

1.10.1 Recycling and Salvage Operation. A facility, other than a recycling drop-off station, for the collection, handling, sorting, storage, processing, compaction, purchase, and/or resale of scrap or discarded material like paper, metal, rubber, plastic, glass, or cloth. The term includes facilities for separating trash and debris from recoverable materials such as paper products, glass, and metal cans which can be returned to a condition in which they may again be used for production.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.10.2 Recycling Drop-Off Station. A center or collection point with containers or facilities designed and intended for the depositing of clean, separated, and recyclable paper, cardboard, metal, glass, or plastic materials and the collection of such materials for processing at another location, but itself having no mechanical facilities for the processing of such materials.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
								P		

1.11 Accessory Uses

1.11.1 Accessory Apartment. An accessory apartment shall be permitted within a single-family dwelling, provided the following conditions are met that insure the use is consistent with such a unit:

- a. The accessory dwelling unit is within the principal single-family dwelling located on its own lot;
- b. The accessory dwelling unit shall not exceed the lesser of 33% of the gross livable floor area of the dwelling, or more than 800 square feet and shall include a toilet and bathing facilities;
- c. Any entrance to the accessory dwelling unit from the outside shall not be on the front wall of the principal structure;
- d. Home occupations shall be prohibited within an accessory apartment; and
- e. A minimum total of four (4) off-street parking spaces shall be provided for the principal dwelling and the accessory dwelling unit. An exception to this requirement may be approved by the Administrator if written verification is given by the property owner that the occupants of the accessory dwelling unit, due to age or physical disability, will not have vehicles on-site. No more than two vehicles owned by the occupants of the accessory dwelling unit will be permitted and must be parked off-street.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
		P		P						

1.11.2 Accessory Building. A subordinate use or structure, which is located on the same lot as the principal use or building. Multiple accessory buildings are allowed; provided, however, that the aggregate volume of all accessory buildings must be less than that of the principal structure. An accessory structure's height may not exceed 2 ½ stories or 35 feet in height.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P		P	P	P			

1.11.3 Boat, Travel Trailer, Recreational Vehicle Storage. Storage of one boat and one RV is allowed in a rear yard, not in a front or side yard. See also Art. V Section 9.11 Special District Requirements.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P		P				

1.11.4 Guesthouse. Guesthouse living quarters may be located within a detached accessory building on the same premises with the main building and used by temporary guests of the occupants of the premises, such quarters having no kitchen facilities and not rented or otherwise used as a separate dwelling.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P	P					

1.11.5 Home Occupation, Major. An occupation conducted entirely within a dwelling or a single accessory building by a member or members of the immediate family residing therein (a) in connection with which there is no display or exterior visible evidence of the conduct of such home occupation except one (1) sign affixed to the building not exceeding a total area of two square feet, nor projecting more than one (1) foot beyond the building and not illuminated, that will indicate from the exterior that the building is being utilized in whole or in part for purposes other than that of a dwelling; (b) in connection with which not more than one (1) person other than members of the immediate family residing on the premises are engaged or employed in the conduct of the Home Occupation. Boarding and rooming houses, tourist homes, private educational institutions, beauty and barber shops (other than one-chair beauty or barber shops which are permitted as Home Occupations) (Amended 4/14/04), and restaurants shall not be deemed home occupations; (c) provided equipment or processes used do not emit uncomfortable or harmful amounts of noise, vibrations, heat, glare, smoke, odor, visual or audible electrical interference or other obnoxious elements; (d) and provided no product is sold on the premises; (e) in addition to the required residential off-street parking, a minimum of two (2) off-street parking spaces shall be provided; (f) the use may increase vehicular traffic and parking by no more than two (2) vehicles at a time; (g) shall not involve the frequent use of commercial vehicles for delivery of materials to and from the premises; (h) no home occupation may cause an increase in the use of any one or more public facilities so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood;

- a. Said home occupation shall be clearly incidental and subordinate to the use of the property for residential purposes, and located within the dwelling unit or a single accessory building, and shall not change the residential character thereof.
- b. No retail or wholesale merchandise transactions are conducted on the premises, not including transactions made solely by mail or telephone, including direct sales of merchandise, supplies, or products off display racks or shelves and any pick-up or delivery of goods bought or sold as part of the home occupation. ~~(amended 8/8/90).~~

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
		SE	SE	SE	SE	SE				

1.11.6 Home Occupation, Minor. An occupation conducted entirely within a dwelling or a single accessory building by a member or members of the immediate family residing therein (a) in connection with which there is used no display or exterior visible evidence of the conduct of such home occupation that will indicate from the exterior that the building is being utilized in whole or in part for purposes other than that of a dwelling; (b) in connection with which none other than members of the immediate family residing on the premises are engaged or employed in the conduct of the Home Occupation. Boarding and rooming houses, tourist homes, private educational institutions, beauty and barber shops (other than one chair beauty or barber shops which are permitted a Home Occupations), and restaurants shall not be deemed home occupations; (c) provided equipment or processes used do not emit uncomfortable or harmful amounts of noise, vibrations, heat, glare, smoke, odor, visual or audible electrical interference or other obnoxious

elements (d) and provided no product is sold on the premises; (e) the use may not materially increase vehicular traffic and parking; (f) the use shall not involve the use of commercial vehicles for routine delivery of materials to and from the premises; (g) no home occupation may cause an increase in the use of any one or more public facilities so that the combined total use for dwelling and home occupation purposes exceeds the average for residences in the neighborhood.

a. Said home occupation shall be clearly incidental and subordinate to the use of the property for residential purposes, and located within the dwelling unit or a single accessory building, and shall not change the residential character thereof.

b. No retail or wholesale merchandise transactions are conducted on the premises, not including transactions made solely by mail or telephone, including direct sales of merchandise, supplies, or products off display racks or shelves and any pick-up or delivery of goods bought or sold as part of the home occupation.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
		P	P	P	P	P				

1.11.7 Kennel. All kennel buildings shall be sufficiently insulated so that no unreasonable noise or odor shall be detected off-premises. Where outdoor runs or pens are allowed, they shall be located on site and shall be screened from the view of all adjacent streets and properties by fencing or vegetation. No unreasonable noise or odor shall be detected off-premises.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P								P		

1.11.8 Mobile Home. Allowed as an accessory use on a farm.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P										

1.11.9 Off-street Parking of Commercial Vehicle. The off-street parking, in an open or enclosed space, of any commercial vehicle with a gross vehicle weight of over 10,000 lbs is prohibited. A commercial vehicle is any bus, truck, or truck-tractor required to display vehicle identification by the Maryland Department of Transportation and/or a USDOT number by the US Department of Transportation. See Article V Section 9.11 for additional requirements.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P		P	P	P	P	

1.11.10 Outdoor Display and Sales. Outdoor display and/or sale may be allowed as an accessory use for all uses requiring site plan approval. It is the intent of this Ordinance to allow the display of merchandise for sale, but not where the display of such items impedes the flow of pedestrian or vehicular traffic, or creates an unsafe condition. This shall not include hazardous and flammable materials, such as gasoline, oil, antifreeze, kerosene, poisons, pesticides and similar items. The display of goods shall meet all of the following requirements:

a. Outdoor display and/or sale shall require approval of the Administrator and the hours of display shall be considered as part of the approval/denial.

- b. All outdoor display of goods shall be located immediately adjacent to the storefront and not in drive aisles, loading zones, fire lanes, or parking lots.
- c. The area used for outdoor display or sales shall be limited to the store front, unless increased by the Administrator after taking into account aesthetic and safety concerns or other relevant factors.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
				P	P	P	P		P	

1.11.11 Outdoor Storage . Outdoor storage may be allowed as an accessory use for all uses requiring site plan approval. The storage area shall meet all of the following requirements:

- a. Each outdoor storage area shall be incorporated into the overall design of the primary structure on the site and shall be located at the rear of the primary structure.
- b. Goods stored in an approved outdoor storage area shall be limited to those sold on the premises.
- c. Each outdoor storage area shall be screened from view from all property lines and adjacent rights-of-way by an opaque fence or wall six feet in height in the MRS and MC Districts and eight feet in height in the MCI District that incorporates at least one of the predominant materials and one of the predominant colors used in the primary structure. The fence may exceed eight feet in height where the difference in grade between the right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area. Materials may not be stored higher than the height of the fence in the MRS and MC Districts. The perimeter of the fence or wall must be landscaped with a 7-foot wide strip containing a minimum of one tree for every 150 square feet of lot area.
- d. A landscaped earth berm may be used instead of or in combination with a required fence or wall.
- e. If installed, exterior lighting shall meet the functional needs of the facility without adversely affecting adjacent properties or the neighborhood.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
						P	P	P	P	

1.11.12 Poultry as Pets and Beekeeping. Up to four domestic fowl are allowed per single-family dwelling. No roosters and no slaughtering are allowed. Poultry shall be kept within a secure enclosure and not allowed to run free. Enclosures for poultry or bees shall be located not closer than 25' to the nearest neighbor's residence.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
		P		P						

1.11.13 Satellite Dish Antenna. Antennas shall not be allowed on the street-facing facade of structures in the Historic District.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P		P	P	P	P	P

1.11.14 Swimming Pools, Hot Tubs, and Spas. The approval of the Administrator shall be

required prior to the construction of a swimming pool, hot tub, or spa. The Administrator shall approve the swimming pool, hot tub, or spa upon finding that it meets the requirements of this Ordinance and the Town Building Code.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P		P	P	P	P	P

1.11.15 Utility/Storage Building. In all districts, the design and construction of any storage structure shall be similar to or compatible with the design and construction of the main building. The exterior building materials and colors shall be similar to the main building and shall be commonly associated with the construction of buildings. Structures over 150 sq. ft. require review by the Planning Commission. See Table of Uses for additional provisions.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P		P	P	P	P	P

1.12 Temporary Uses

1.12.1 Open Air Farm Market. A structure and/or area devoted to the small scale retail and/or wholesale sales of agricultural goods or products.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P		P	P	P	P	P	P

1.12.2 Real Estate Sales Office, Construction Trailers, Portable Classrooms.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P		P	P	P	P	P	P	P	P	P

1.12.3 Storage Unit, Temporary Portable: A temporary portable storage unit means any unit, including, but not limited to, a trailer, box, or other shipping container, which is used as impermanent storage space whether the unit is located at a facility owned or operated by the owner or the renter or at another location designated by the owner or the renter.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P	P	P	P	P	P	P	P	P	P	P

1.12.4 Town-Sponsored Events. The Mayor and Town Council may periodically schedule events held for the betterment of the Town. A permit is required.

AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
P	P	P	P	P	P	P	P	P	P	P

2.0 TABLE OF USES

See Article IV, Section 15.0 for a description of permitted uses in the PDD Planned Development District Floating Zone, Section 16.0 for the TRC Town Residential/Commercial Mixed Use District Floating Zone, and Section 17.0 for the TBP Town Business Park District Floating Zone.

Residential and Special Residential Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Single Family Detached Dwelling	P		P	P	P		P				
Two-Family Dwelling - two units				P	P		P				
Attached Dwelling - two units				P	P		P				
Multi-family Dwelling - three or more units								P			
Residential Use in Non-residential Building						P	P	P		P	
Townhouse								P			
Bed and Breakfast	P				P		P				
Boardinghouse/Rooming House					P		P				
Group Home							P				
Life Care Community				P			P				
Nursing Home							P			P	

Public and Institutional Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Athletic Fields, Public	P	SE						P	P		P
Community Center, Public						P	P				P
Library			P	P	P	P	P	P			P
Museum	P		P	P	P	P	P	P		P	P
Parking Garage, Public								P	P	P	
Public Park	P	P	P	P			P	P	P	P	P
Post Office							P	P	P		P
Public Heliport									P		
Public Safety Station						P	P	P	P		P
Public Utility Facility									P		P
Public Works Yard/Garage									P		P
Club, Lodge, or Hall						SE	P	P	P		

Public and Institutional Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
College level educational institutions									P	P	P
Educational Use, Private	P							P	P	P	
Hospital	P								P	P	P
Place of Worship	P					SE	SE	P		P	P
ES, MS or JHS, and HS	P								P		P

Non-Residential Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Agricultural Use	P								P		
Amusement Establishment, Indoors e.g. theaters, bowling alleys, billiard parlors, skating rinks								P	P	P	
Amusement Park										P	
Animal Services	P								P		
Antique Shops					P	P	P	P	P		
Antique Restoration Services excluding dip tanks					P	P	P	P	P		
Art Framing Shops, with or without gallery					P	P	P	P	P		
Artisan Shops					P	P	P	P	P		
Auction Houses	P							P	P		
Auto/Junk/Salvage Yard									SE		
Auto Repair or Service Shop									P	P	
Auto Sales/Rental									P	P	
Bakery, Commercial									P	P	
Bakery, Retail					P	P	P	P	P	P	
Bank/ Credit Union with drive-thru service								P	P	P	
Bank/ Credit Union without drive- thru service							P	P	P	P	
Blacksmithing						SE					
Bookstores, except adult bookstores					P	P	P	P	P	P	
Building Material Sales									P	P	

Non-Residential Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Business Services e.g. advertising, credit reporting, janitorial, office or business equipment rental, photofinishing, telecommunications, blueprinting, photocopying									P	P	
Campground	P										
Candle Shops					P	P	P	P	P		
Car Wash									P	P	
Cemetery	P								P		P
Clinic, Medical or Dental							P	P			P
Coffee and/or Tea Shop					P	P	P	P	P	P	
Confectionery Shop					P	P	P	P	P	P	
Contractor Yard									P	P	
Convenience Store									SE		
Construction Services e.g. building contractors, carpentry, wood flooring services, electrical services, HVAC services, general contracting, masonry, stonework, tile setting, plumbing, and roofing services									P	P	
Day Care Center, Child							SE	P		P	
Day Care Home as a Major Home Occupation	P		P	P			P	P	P		
Delicatessen					P	SE	P	P			
Dry Cleaning Service									P		
Equipment Sales & Leasing									P	P	
Fine Arts Education					SE	SE	P	P			
Florist Shop					P	P	P	P	P		
Food Store & Beverage Services									P	P	
Funeral Home									P		
Garden Supply Store									P	P	
Gasoline Service Station									P		
General Store					SE	P	P	P	P	P	
Golf Course	P										
Golf Driving Range	P									P	
Greenhouses	P								P		

Non-Residential Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Health and Fitness Club								P	P	P	
Historic Preservation Offices					P	P	P	P			
Home Office, Professional	P		P	P	P		P	P			
Hotel								SE	P	P	
Ice Cream Parlor					P	P	P	P		P	
Interior Decorator Studios					P	P	P	P	P		
Jewelry Shops					P	P	P	P	P		
Lamp Shops					P	P	P	P	P		
Laundromats								P			
Lumber Yard									P	P	
Motel								P	P	P	
Nursery, Plant	P								P		
Office, Business or Professional					SE	SE	P	P	P	P	
Office, Government					SE	SE	P	P	P	P	
Parking Garage, Private									P	P	
Parking lot, Commercial								P	P	P	
Personal Services. See Art. IV Sec. 1.5.61					SE	SE	P	P	P	P	
Photo Art Shop					P	P	P	P	P		
Pottery and Ceramic Shops					P	P	P	P	P		
Professional Services							P	P		P	
Recreation, Commercial								P	P	P	
Recreation, Neighborhood			SE	SE							
Restaurant with drive-thru service								P	P	P	
Restaurant without drive-thru service					SE	SE	SE	P	P	P	
Retail Sales, Small-Scale See Art. IV Sec. 1.5.67					SE	SE	P	P	P	P	
Retail Sales, Specialty See Art. IV Sec. 1.5.68					P	P	P	P	P	P	
School, Trade or Professional									P		
Shopping Center								P		P	

Non-Residential Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Theater							SE	P		P	
Vehicle Repair, Heavy									P	P	
Vehicle Repair, Light									P	P	
Warehouse Retail									P	P	
Wholesale Sales									P	P	

Industrial Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
General Industrial Service									P		
Research Lab									P	P	
Private Utility Facility									P		
Manufacturing, Light									P	P	
Manufacturing, Heavy									P		
Antenna Co-location						SE			P	P	
Concealed Antennae and Towers						SE				P	
Building Mounted Antennae						SE			P	P	
Free-Standing Towers						SE			P	P	
Mini-storage/Self Storage									P	P	
Warehousing and Distribution									P	P	
Recycling and Salvage									P		
Recycling Drop-off Station									P		
Truck Stop									SE		

Accessory Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Accessory Apartment			P		P						
Accessory Building	P		p ³	p ³		p ³	p ³	p ³			
Boat-Travel Trailer Storage ¹	P		P	P	P		P				
Guest house	P		P	P	P	P					

Accessory Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Home Occupation, Major			SE	SE	SE	SE	SE				
Home Occupation, Minor			P	P	P	P	P				
Kennel ²	P								P		
Mobile Home	P										
Off-street Parking of Commercial Vehicle ²	P		P	P	P		P	P	P	P	
Outdoor Display-Sales					P	P	P	P		P	
Outdoor Storage							P	P	P	P	
Poultry as Pets and Beekeeping			P		P						
Satellite Dish Antenna	P		P	P	P		P	P	P	P	P
Swimming Pool, Hot Tub, Spa	P		P	P	P		P	P	P	P	P
Utility/Storage Building	P		P ³	P ³	P ^o		P ³	P	P	P	P

¹ Storage of one boat and one RV is allowed in a rear yard, not in a front or side yard. See also Art. V Section 9.11 Special District Requirements.

² Storage of one boat and one RV is allowed in a rear yard, not in a front or side yard. See also Art. V Section 9.11 Special District Requirements.

³ Multiple accessory buildings are allowed; provided, however, that the aggregate volume of all accessory buildings must be less than that of the principal structure. An accessory structure's height may not exceed 2 ½ stories or 35 feet in height.

Temporary Uses	AG	OS	R-1	R-2	RM in d.u.	RM not in d.u.	MRS	MC	MCI	AP	I
Open Air Farmer's Markets ¹	P		P	P	P	P	P	P	P	P	P
Sales and Construction Trailers, Portable Classrooms, etc ²	P		P	P	P	P	P	P	P	P	P
Storage Unit, Temporary ³ Portable	P	P	P	P	P	P	P	P	P	P	P
Temporary Structures for Non-Subdivision Projects ⁴	P	P	P	P	P	P	P	P	P	P	P
Town-Sponsored Events ⁵	P	P	P	P	P	P	P	P	P	P	P

¹Open Air Farmer's Markets. The Planning Commission may periodically allow Produce Stands and Open Air Farmer's Markets in districts where permitted for the betterment of the Town. A permit must be received.

²Sales and Construction Trailers

In connection with the construction, marketing and sale of new dwellings, commercial buildings, or unimproved residential lots, one or more temporary offices or trailers for marketing and sales, construction or both may be established within the development in any district, which trailers shall

be permitted to remain until all dwellings or lots offered for sale in the development have been conveyed or leased. Upon written request submitted to the Zoning Administrator no later than one month prior to the expiration date, and for good cause shown by the applicant, a one time extension for a period not to exceed one year may be granted by the Zoning Administrator. Extensions granted beyond one year may be granted by the Board of Appeals upon written request for good cause shown.

³Storage Unit, Temporary Portable: A temporary portable storage unit means any unit, including, but not limited to, a trailer, box, or other shipping container, which is used as impermanent storage space whether the unit is located at a facility owned or operated by the owner or the renter or at another location designated by the owner or the renter.

- a. Temporary portable storage units may be located in any zoning district but the property upon which they are to be placed must be occupied by a principal building.
- b. It shall be unlawful for any person to place or permit the placement of a portable storage unit on property which he or she owns, rents, occupies or controls without first obtaining a permit and approval from the Town. The exterior of the storage unit shall have a weatherproof clear pouch in which the permit shall be conspicuously displayed.
- c. A site drawing shall be submitted showing the location on the property where the unit will be placed, the size of the unit and distance to all applicable property lines and all other buildings or structures.
- d. The total square footage for portable storage units on any site shall not exceed 130 square feet in area and eight feet in height.
- e. Portable storage units shall meet all applicable setback requirements.
- f. No portable storage unit shall remain at a site in excess of fourteen consecutive days. No portable storage units shall be placed on any one property in excess of ten days in a calendar year in residential zoning districts. In commercial and industrial zoning districts, no more than twelve permits may be secured within a twelve-month period and a minimum of twenty days shall exist between the issuance of permits for the same property. In the event of a natural disaster, these limits may be extended by the Zoning Administrator.
- g. The person in possession of the portable storage unit shall be responsible to ensure that the portable storage unit is in good condition, free from evidence of deterioration, weathering, discoloration, rust, ripping, tearing or other holes or breaks.

⁴ Temporary Structures for Non-Subdivision Projects

Temporary buildings or structures include the following: Portable classrooms, mobile homes, office trailers, and storage trailers relating to construction work on that premises or emergency need on that premises are approved for all zones, provided that all the following occur:

- a. The structure meets all Town ordinances and any State requirements;
- b. Repair work or construction must begin no later than one month after temporary structure is placed upon property;
- c. The original permit is for a period of one year from date issued. Extensions may be granted at six month intervals for a period not to exceed two years beyond the initial period of approval;
- d. The Town Council may approve temporary structures needed on an emergency basis.
- e. No temporary structure may remain upon the property for a period of more than three years including the initial period of approval and all extensions which may have been granted. Failure to remove structure will be treated as a zoning violation.

⁵Town-Sponsored Events

- a. During officially-designated Town events such as New Market Days, additional retail activity related to the event, the historic period, or the nature of the town, may be temporarily permitted by and upon application to the Town.
- b. The Mayor and Town Council may periodically schedule events held for the betterment of the Town. A permit must be applied for and shall specify:
 - (1) Proposed uses including entertainment, sale of food, antiques, etc;
 - (2) Use of public facilities requested--street closing, if any, rest rooms, etc.;

- (3) Parking provisions;
- (4) Traffic, security, and clean-up provisions;
- (5) Duration of festival, hours; and
- (6) Event coordinator or committee contact.

3.0 AGRICULTURAL DISTRICT

3.1 Intent and Purpose

The purpose of the Agricultural District is to preserve productive agricultural land and the character and quality of the rural environment and to prevent urbanization where roads and other public facilities are scaled to meet only rural needs.

3.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

3.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0.

3.4 Special Exceptions

None allowed.

3.5 Height, Area, and Bulk Requirements in the Agricultural District

Use	Min. Lot Area Per Unit	Lot Width (ft.)	Front Yard (ft.)	Side Yard (ft.)	Rear Yard (ft.)	Height (ft.)
Animal Care & Services	5 acres	300	40	50	50	30
Auction House	As determined by the Planning Commission					
Bed and Breakfast	5 acre	100	40	10	30	30
Cemetery	As determined by the Planning Commission					
Educational Use, Private	5 acres	As determined by the Planning Commission				
Golf Course	As determined by the Planning Commission					
Golf Driving Range	As determined by the Planning Commission					
Governmental & Public Utility	As determined by the Planning Commission					
Greenhouses and/or Nurseries	As determined by the Planning Commission					
Hospital	As determined by the Planning Commission					
Place of Worship	10 acres	200	40	50	50	30
Public Athletic Fields	As determined by the Planning Commission					

Public Park	As determined by the Planning Commission					
Single-family Dwelling	2 acres	100	40	10	30	30

3.6 Supplementary Regulations in the Agricultural District

3.6.1 In the Agricultural District, the preferred use is agriculture. The operation at any time of any machinery used in farming procedures and all other agricultural operations shall be permitted and have preference over all other uses.

3.6.2 The minimum lot size for single-family dwellings will be two acres and, except as provided in Article IV 16.0, subdivision will be permitted only as follows: a minor subdivision of three (3) lots will be permitted to be subdivided off an original tract of land; thereafter land will have to be rezoned before additional dwellings, other than tenant houses, may be built. An original tract of land shall be as described in the County land records as of August 18, 1976.

3.6.3 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

4.0 OPEN SPACE DISTRICT

4.1 Intent and Purpose

The Open Space District is intended to provide permanent open space for its natural beauty and recreational value. It is also intended to preserve natural resources, prevent erosion, pollution, silting, and safeguard the health, safety and welfare of persons and property by limiting development on excessive slopes, on flood plains, on poorly drained lands, or on other areas where protection against natural dangers to life and property, or the lack of such protection would prove costly to members of the community.

4.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

4.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0.

4.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0 and Article X.

4.5 Height, Area, and Bulk Requirements

4.5.1 Minimum Area: Not specified.

4.5.2 Front Yard: 50 ft.

4.5.3 Rear Yard: 50 ft.

4.5.4 Side Yard: 15 ft.

4.5.5 For structures higher than 25 feet, a distance of 2.5 times the height of the structure shall be maintained for all yards between the foundation and nearest lot line.

4.6 Supplementary Regulations

4.6.1 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

5.0 R-1 LOW DENSITY RESIDENTIAL DISTRICT

5.1 The R-1 District is intended to encourage and promote the development of single-family residential neighborhoods free from land usage which might adversely affect such development. Such a district may incorporate large lot sizes in which the green space desired is entirely within the lot or it may encourage the formation of green space communities in which the lot sizes are made smaller and that the area which results from the reduction of the area of each lot below the general standard for the district be provided and maintained as recreation areas to serve the needs of the residents of the development.

5.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

5.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0.

5.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0 and Article X.

5.5 Height, Area, and Bulk Requirements

5.5.1 Lot Width.

- a. Single-family dwellings: 75 ft. minimum

5.5.2 Front Yard Setback.

- a. Single-family dwellings: 35 ft. minimum

5.5.3 Rear Yard Setback.

- a. Single-family dwellings: 40 ft. minimum for the principal building and 8 ft for an accessory structure.

5.5.4 Side Yard Setback.

- a. Single-family dwellings: 8 ft. minimum

5.5.5 Lot Area Requirements (per family or dwelling unit and provided public water and sewer facilities are available):

- a. Single-family dwelling: 20,000 square feet

5.5.6 Building Height.

- a. No single-family dwelling in the district shall exceed 2 ½ stories or 35 feet in height whichever is highest.

5.6 Supplementary Regulations

5.6.1 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

6.0 R-2 MEDIUM DENSITY RESIDENTIAL DISTRICT

6.1 Intent and Purpose

The R-2 District is intended to provide an attractive, pleasant living environment at a sufficient density to maintain a high standard of physical maintenance and the optimum utilization of land appropriate for residential use by encouraging higher density green space communities and planned unit developments while simultaneously leaving sloping areas, flood plains and other unbuildable areas open and available for recreational purposes.

6.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

6.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0

6.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0 and Article X.

6.5 Height, Area, and Bulk Requirements

6.5.1 Lot Width.

- a. Single-family dwellings: 60 ft. minimum
- b. Two-family and attached dwellings: 60 ft. minimum

6.5.2 Front Yard Setback.

- a. Single-family dwellings: 35 ft. minimum
- b. Two-family and attached dwellings: 35 ft. minimum

6.5.3 Rear Yard Setback.

- a. Single-family dwellings: 30 ft. minimum for the principal building and 8 ft for an accessory structure.
- b. Two-family and attached dwellings: 30 ft. minimum for the principal building and 8 ft for an accessory structure.

6.5.4 Side Yard Setback.

- a. Single-family dwellings: 8 ft. minimum
- b. Two-family and attached dwellings: 10 ft. minimum

6.5.5 Lot Area Requirements (per family or dwelling unit and provided public water and sewer facilities are available):

- a. Single-family dwellings: 20,000 sq. ft. minimum
- b. Two-family and attached dwellings: 20,000 sq. ft. minimum per unit

6.5.6 Building Height.

- a. No single-family, two-family, or attached dwelling in the district shall exceed 2 ½ stories or 35 feet in height whichever is highest.

6.6 Supplementary Regulations

6.6.1 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

7.0 RESIDENTIAL MERCHANT DISTRICT

7.1 Intent and Purpose

The purpose of this district is to preserve the historic character of areas within the Town of particular historic significance, and to preserve, encourage and strengthen the historically appropriate mixed residential and commercial character of the district, while allowing limited retail and commercial uses which promote and enrich tourism

7.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

7.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0

7.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0 and Article X.

7.5 Height, Area, and Bulk Requirements

7.5.1 Lot Width. Lot widths for single-family dwellings must be at least 60 feet. Lot width for two-family dwellings must be at least 30 feet per dwelling unit. Lot frontage must be on North Alley, South Alley, Federal Street or Eighth Alley.

7.5.2 Front Yards. Buildings fronting on Main Street must be not further from the right-of-way of Main Street than the structure on the adjoining property which is closest to the right-of-way of Main Street, unless approved by the Historic District Commission.

7.5.3 Rear Yards. None specified but subject to approval by the Historic District Commission.

7.5.4 Side Yards. None specified but subject to approval by the Historic District Commission.

7.5.5 Lot Area. None specified but subject to approval by the Historic District Commission.

7.5.6 Building Height. No structure in the district shall exceed 2 ½ stories or 35 feet in height whichever is highest. Building height is determined from the vertical distance as measured from the average finish grade elevation along the front of the building to the highest point of the building, excluding chimneys and antenna.

7.5.7 Places of worship and their related uses and accessory structures must meet the following:

- a. Building lot must be a minimum of one acre;
- b. Building footprint does not exceed 25% of the total lot area; and
- c. Parking spaces are provided at a rate of one space per 4 seats of total capacity.
- d. Existing places of worship and related uses shall be exempt from subsections 5.5.7 a. through c., except when an expansion of structures and/or lot size is sought, at which time subsections 5.5.7 b. and c. shall apply to the additional area or structure only.

7.6 Supplementary Regulations

7.6.1 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

7.6.2 Applications in the RM when outside of the HD shall be referred to and considered by the Architectural Review Commission.

8.0 MRS MIXED RESIDENTIAL SERVICE DISTRICT

8.1 Intent and Purpose

The MRS District is intended to permit residential areas the convenience of having a limited number of frequently used retail and service needs in close proximity to their daily requirements. Trips to satisfy such needs are made principally on foot and therefore this District is intended to encourage the provision of small, safe, attractive, and well-located shopping areas for primarily pedestrian use in a manner that will make them totally compatible assets to the residential environment.

8.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

8.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0

8.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0 and Article X.

8.5 Height, Area, and Bulk Requirements

- 8.5.1 Minimum lot area: None.
- 8.5.2 Minimum lot width: None.
- 8.5.3 Front yard depth: 20' when adjacent to an "R" district.
- 8.5.4 Each side yard: 10' but no side yard required when adjacent to other commercial lots.
- 8.5.5 Each rear yard :25'.
- 8.5.6 Height restriction: No building shall exceed 2-1/2 stories or 35 feet.

8.6 Supplementary Regulations

- 8.6.1 All businesses or services shall be conducted within a completely enclosed building.
- 8.6.2 Sign requirements in accordance with Article VII, Section 2.0 apply.
- 8.6.3 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.
- 8.6.4 Applications in the MRS when outside of the HD shall be referred to and considered by the Architectural Review Commission.

9.0 MC MIXED COMMERCIAL DISTRICT

The MC District is intended to be a central shopping, service, office, and entertainment center for the community and the surrounding region. It is intended that stores and other facilities will be grouped together in an attractive and convenient manner with particular attention being paid to the safety of pedestrian travel and the protection of adjoining residential areas. This District requires excellent vehicular accessibility from the Town and the region and safe and adequate off-street parking and loading.

9.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

9.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0

9.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0 and Article X.

9.5 Height, Area, and Bulk Requirements

- 9.5.1 Minimum lot area: None.
- 9.5.2 Minimum lot width: None.
- 9.5.3 Front yard depth: 20' when adjacent to an "R" district.
- 9.5.4 Each side yard: 10' but no side yard required when adjacent to other commercial lots.
- 9.5.5 Each rear yard :40'.
- 9.5.6 Height restriction: No building shall exceed 2-1/2 stories or 35 feet.

9.6 Supplementary Regulations

- 8.6.1 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

10.0 MCI MIXED COMMERCIAL INDUSTRIAL DISTRICT

10.1 Intent and Purpose

This District is intended for the location of both heavy commercial and light industrial uses which are basically similar in nature to be protected from adverse effects of incompatible industries and which are too few in number to warrant separate districts. These uses are of such size and character as to deem them inappropriate for other commercial and industrial districts. Secure from the encroachment of residential uses, this district is intended to provide a healthful operating environment, locating uses whose operations have a relatively minor nuisance value in a manner that would make them inoffensive to one another and to adjacent land use districts.

10.2 Permitted Principal Uses

See the Table of Uses in Article IV, Section 2.0.

10.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0.

10.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0 and Article X.

10.5 Height, Area, and Bulk Requirements

Use	Minimum Lot Area (sq. ft.)	Lot Width (ft.)	Front Yard (ft.)	Side Yard (ft.)	Rear Yard (ft.)	Height (ft.)
Industrial	20000	100	25	See Note	20	45
Automobile Services	20000	100	25	See Note	20	45
Wholesaling/ Processing	20000	100	25	See Note	20	45
Open Space Uses	None	None	None	None	None	None
Freestanding Telecommunication Towers						200
Governmental & Public Utilities	20000	100	25	40	20	45

Note: Equal to height of structure

10.6 Supplementary Regulations

10.6.1 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

10.7 Performance Standards

10.7.1 Intent and Purpose. The following performance standards for the MCI District are designed to reduce the impact of industrial districts on surrounding uses by lessening traffic congestion, protecting the health and safety of workers and nearby residents, and by preventing detrimental effects on properties adjoining or in the neighborhood. All applications for a site plan approval must be accompanied by a registered engineer's certification that the use complies with all of the applicable standards. Upon receipt of the certification, the Zoning Administrator will issue an occupancy permit. After occupancy, if there occurs continuous or frequent, even though intermittent, violations of the performance standards and provisions of these regulations without bona fide and immediate corrective work, the zoning administrator will suspend or revoke the zoning certificate of the use and the operation shall immediately cease until it is able to operate in accordance with this chapter, at which time the zoning certificate shall be reinstated.

10.7.2 Storage and Operation. In the MCI District all operations and the storage of equipment, materials or products will be conducted within completely enclosed buildings or storage may be permitted outdoors only when completely screened by a wall, opaque fence, or planting so that such materials will not be visible from a public way or adjoining property. The Planning Commission shall determine the most appropriate screening for the use.

10.7.3 Noise. Noise will be measured with a sound level meter. Impact noise will be measured using the fast response of the sound level meter. Impact noises are intermittent sounds such as from a punch press or drop force hammer. The following table describes the maximum sound pressure level permitted from any industrial source and measured in any adjacent residential district, commercial district, or MCI District lot.

Maximum Permitted Sound Levels Sound Measured In Decibels dB(A)		
	Continuous Slow Meter Responses	Impact Fast Meter Response
Residential District	55	60
Commercial District	64	70
LI District lot, adjacent to noise source	70	80

The following sources of noise are exempt:

- a. Transportation vehicles not under the control of the industrial use.
- b. Occasionally used safety signals, warning devices, and emergency pressure relief valves.
- c. Temporary construction activity between 7:00 a.m. and 7:00 p.m.

10.7.4 Vibration. No vibration will be produced which is transmitted through the ground and is discernible without the aid of instruments at or any point beyond the lot line; nor will any vibration produce a particle velocity of two (2) inches per second measured at or beyond the lot line.

10.7.5 Dust and Particulates. The total emission rate of dust and particulate matter from all vents, stacks, chimneys, flues or other opening or any process, operation, or activity except solid waste incinerators within the boundaries of any lot, will not exceed the levels set forth below. Emissions of dust and particulates shall be in accordance with the State of Maryland rules and regulations governing air contamination and air pollution, and, in case of conflict, the most restrictive will apply. Particulate matter emission from materials or products subject to becoming windborne will be kept to a minimum by paving, sodding, oiling, wetting, covering or other means, such as to render the surface wind resistant. Such sources include vacant lots, unpaved roads, yards and storage piles or bulk material such as coal, sand, cinders, slag, sulfur, etc.

Ambient Air Quality Standard	Particulate Matter Suspended
Annual Arithmetic Mean, ug/m	65
24-hour maximum, ug/m	140
	Settleable
Annual Arithmetic Average, mg/cm/ /month	0.35
Monthly Maximum	0.7

10.7.6 Sulfur Oxides

Emission of oxides of sulfur (as sulfur dioxide) from combustion and other processes will be limited in accordance with ambient air quality standards of the state or those of the county, whichever are the more restrictive.

Ambient Air Quality Standard	Sulfur Oxides
Annual Arithmetic Mean, ug/m	60

10.7.7 Smoke

For the purpose of grading the density or equivalent capacity of smoke, the Ringelmann Chart as published by the United States Bureau of Mines shall be used. The emission of smoke darker than Ringelmann No. 1 from any chimney, stack, vent, opening, or combustion process is prohibited.

10.7.8 Odor. Odor thresholds shall be measured in accordance with ASTM d1391-57 "Standard Method for Measurement of Odor in Atmospheres (Dilution Method)" or its equivalent. Odorous material released from any operation or activity shall not exceed the odor threshold concentration beyond the lot line, measured either at ground level or habitable elevation.

10.7.9 Toxic matter. The ambient air quality standards for the State of Maryland shall be the guide to the release of airborne toxic materials across lot lines. Where toxic materials are not listed in the ambient air quality standards of the state, the release of such materials shall be in accordance with the fractional quantities permitted below, of those toxic materials currently listed in the threshold limit values adopted by the American Conference of Governmental Industrial Hygienists. Unless otherwise stated, the measurement of toxic matter shall be at ground level or habitable elevation, and shall be the average of any twenty-four (24) hours sampling period. The release of airborne toxic matter will not exceed one-thirtieth of the threshold limit value across lot lines.

10.7.10 Detonable materials. Activities involving the storage, utilization or manufacture of products which decompose by detonation shall be in accordance with these regulations. Such materials shall include but are not limited to: all primary explosives such as lead azide, lead styphnate, fulminates and tetracaine; all high explosives such as TNT, RDX, HMX, PETN, and picric acid; propellants and components thereof, such as dry nitrocellulose, black powder, boron hydrides, hydrazine and its derivatives; pyrotechnics and fireworks such as magnesium powder, potassium chlorate and potassium nitrate; blasting explosives such as dynamite and nitroglycerine; unstable organic compounds such as acetylides, tetrazoles and ozonides; unstable oxidizing agents such as perchloric acid, perchlorates, and hydrogen peroxide in concentration greater than thirty-five (35) per cent; and nuclear fuels, fissionable materials and products, and reactor elements such as Uranium 235 and Plutonium 239. The storage, utilization or manufacture of materials or products which decompose by detonation is prohibited.

10.7.11 Fire Hazards. Solid materials susceptible to fire hazards shall be subject to the following:

- The storage, utilization or manufacture of solid materials which are active to intense burning shall be conducted within spaces having fire resistive construction of no less than two (2) hours and protected with an automatic fire extinguishing system.
- The storage, utilization or manufacture of flammable liquids or gases which produce flammable or explosive vapors shall be permitted only in accordance with this section, exclusive of the storage of finished products in original sealed containers (sixty (60) gallons or less), which shall be unrestricted.

- c. The total storage capacity of flammable liquids and gases shall not exceed the following:
- (1) Liquids-Storage Capacity - 60,000 gal.
 - (2) Gases Above Ground - 150,000 SCF (Standard Cubic Feet at 60 degrees Fahrenheit and 29.92 inches Mercury)
 - (3) Gases Below Ground - 300,000 SCF
- d. The following setback requirements will apply to the location of any container which holds flammable liquids or gases:

Container Setback From Lot Lines			
Water Capacity per Container (Gallons)	Containers Underground (feet)	Containers Above Ground	Distance Between Above Ground Containers
0 to 2,000	25	25	3
2,001 to 30,000	50	50	5
30,000 to 60,000	50	75	1/4 the sum of the diameters of adjacent containers
In excess of 60,000	75	100	1/4 the sum of the diameters of adjacent containers

10.7.12 Glare. In the MCI district, any operation or activity producing glare shall be conducted so that direct or indirect light from the source shall not cause illumination in excess of five-tenths (0.5) foot candles when measured in a residential district.

11.0 AP AMUSEMENT PARK DISTRICT

11.1 Intent and Purpose. The purpose of the AP Amusement Park District is to provide suitable locations for a variety of attractions, such as mechanical rides, water rides, games, shows, theme exhibits, refreshment stands, go-kart tracks, miniature golf, paintball, bumper cars, bumper boats, arcade games, laser tag, thrill rides, indoor and outdoor rides and attractions, water slides, wave pools, lazy rivers, spray grounds, and picnic and recreation grounds. It is intended that such districts shall be located in a park-like configuration, near access to interstate highways or other major transportation corridors.

11.2 Principal Permitted Uses

See the Table of Uses in Article IV, Section 2.0.

11.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0.

11.4 Special Exception Uses

See the Table of Uses in Article IV, Section 2.0.

11.5 Height, Area, and Bulk Requirements

The dimensional requirements not specified shall be determined by the Planning Commission for each use permitted in the AP District, upon application to the Planning Commission.

Use	Minimum Lot Area (sq. ft.)	Lot Width (ft.)	Front Yard (ft.)	Side Yard (ft.)	Rear Yard (ft.)	Height (ft.)
Amusement Park	10 acres	Not Specified	25	8	25	See 11.5.1
Freestanding Telecommunication Towers						200

11.5.1 In the AP Amusement Park District, no amusement ride shall exceed a height of 120 feet; no other building or structure shall exceed a height of 60 feet.

11.6 Supplementary Regulations

11.6.1 Notwithstanding any other provision of this Ordinance, on premises business signs in the AP zoning district are permitted up to a sign message area of 700 square feet, and a height of not more than 35 feet, to be located in the proximity of entrances, and subject to Planning Commission approval. In approving signs in the AP zone, the Planning Commission may consider potential adverse effects of the sign on adjacent and nearby uses, traffic safety and identification of the use as a destination.

12.0 INSTITUTIONAL DISTRICT

12.1 Intent and Purpose

The purpose of this district is to accommodate educational and medical institutions and their respective campuses while preserving the residential character of existing neighborhoods within and adjacent to the district. In order to evaluate and mitigate the cumulative impacts of institutional growth within this district, all allowed uses other than single family detached dwellings and duplexes require site plan and design review.

12.2 Principal Permitted Uses

See the Table of Uses in Article IV, Section 2.0.

12.3 Accessory Uses

See the Table of Uses in Article IV, Section 2.0.

12.4 Special Exceptions

See the Table of Uses in Article IV, Section 2.0.

12.5 Height, Area, and Bulk Requirements

12.5.1 Minimum Area: Not specified.

12.5.2 Front Yard: 50 ft.

12.5.3 Rear Yard: 50 ft.

12.5.4 Side Yard: 15 ft.

12.5.5 For structures higher than 25 feet, a distance of 2.5 times the height of the structure shall be maintained for all yards between the foundation and nearest lot line.

12.6 Supplementary Regulations

12.6.1 See Article V Section 1.0 for Exceptions and Modifications to the standards contained in this District.

13.0 HISTORIC DISTRICT OVERLAY

13.1 Declaration Of Public Purpose. The preservation of sites, structures, and districts of historical, archeological, or architectural significance together with their appurtenances and environmental settings is a public purpose in New Market. It is the further purpose of this article to preserve and enhance the quality of life and to safeguard the historical and cultural heritage of New Market by preserving sites, structures, or districts which reflect elements of cultural, social, economic, political, archeological, or architectural history; to strengthen the local economy; to stabilize and improve property values of such sites, structures, or districts; to foster civic beauty; and to promote the preservation and appreciation of such sites, structures, and districts for the education and welfare of the residents of New Market.

13.2 Historic District Commission

13.2.1 Historic District Commission. The Town of New Market hereby creates a commission to be called the New Market Historic District Commission.

13.2.2 Membership. The Historic District Commission shall consist of five members appointed by the Mayor and Council. A majority of the members of the Commission shall be residents of the Town. Each member shall possess a demonstrated special interest, specific knowledge, or professional or academic training in such fields as history, architecture, architectural history, planning, archeology, anthropology, curation, conservation, landscape architecture, historic preservation, urban design, or related disciplines. Nonresident appointees to the Commission must possess professional or academic qualifications as further defined in paragraph C of this subsection (Note: desired but not required by state law). At least two (2) members of the Commission shall possess professional or academic training in one or more of the above-listed fields in accordance with the minimum professional requirements of the United States Department of the Interior for certifying local governments under 36 C.F.R. Part 61 (Note: for Certified Local Government (CLG) commissions only or those commissions planning to apply for CLG status in the near future).

13.2.3 Commission Membership Qualification Criteria. The requirement for Commission membership under the category of demonstrated special interest may be satisfied either by formal training in one or more of the fields listed in paragraph 13.2.2 of this subsection or active membership in a preservation-related organization. The requirement for membership under the category of specific knowledge may be satisfied by formal post secondary education, employment or practical experience in one or more of the above-listed fields. The requirement for Commission membership under the category of professional or academic training may be satisfied by, at a minimum, two years experience as a professional or a Bachelor's degree in one or more of the above-listed fields.

13.2.4 Terms. Commission members shall be appointed for terms of three (3) years, except that the terms of the initial appointments shall be staggered so that three (3) members shall serve terms of three (3) years, two (2) members shall serve terms of two (2) years, and two (2) members shall serve terms of one (1) year so that not more than three (3) appointments shall expire in a given year. Commission members may be reappointed.

13.2.5 Commission Officers. The Commission shall elect, from its membership, a Chairperson and Vice Chairperson. The Chairperson and Vice Chairperson shall serve for one (1) year terms and shall be eligible for reelection.

13.2.6 Vacancy. Any vacancy in the membership of the Commission caused by the expiration of a term, resignation, death, incapacity to discharge duties, removal for cause, or any other reason, shall be filled for a new term, or for the remainder of the term for which there is a vacancy, as the case may be, in the same manner as provided herein for the appointment of the initial members of the Commission. Any vacancy on the Commission shall be filled by the appointing authority

within sixty (60) days. In the case of expiration of term, a member may continue to serve until the member's successor is appointed. Unexcused absence at three (3) consecutive meetings shall constitute resignation by the member and shall create a vacancy.

13.2.7 Removal for Cause. A member may be removed from the Commission for cause, upon written charges, and after a public hearing, by the Mayor with the consent and approval of the Council.

13.2.8 Compensation. Commission members shall serve without compensation, but may be reimbursed for actual expenses incurred in the performance of their duties, provided said expenses are permitted by the budget and approved in advance by the Town.

13.2.9 Meetings. The Commission shall hold such regular meetings and hearings as necessary to discharge its duties.

J. Staff. Consistent with the Town's policies and procedures, employees may be assigned to the Commission, and such services and facilities shall be made available as New Market deems necessary or appropriate for the proper performance of its duties.

13.3 Powers and Duties. The Historic District Commission shall have the following powers and duties:

13.3.1 To direct studies, reports, and surveys to identify historical, archeological, or architecturally significant sites, structures, and districts that exemplify the cultural, social, economic, political, or architectural history of New Market, state, or nation;

13.3.2 Consistent with the Town's charter, ordinances, resolutions, local public law, policies and procedures regarding the acceptance and use of gifts by public officials, to accept and use gifts for the exercise of its functions;

13.3.3 To prescribe appropriate rules and regulations for transaction of its business;

13.3.4 To recommend for adoption by the Mayor and Council rehabilitation and new construction design guidelines and criteria for construction, alteration, reconstruction, moving, and demolition of designated landmarks, sites, structures, and districts which are consistent with the Secretary of the Interior's Standards for the Treatment of Historic Properties (36 CFR Part 68). Guidelines may include design characteristics intended to meet the needs of particular types of sites, structures, and districts, and may identify categories of changes that, because they are minimal in nature do not affect historic, archeological, or architectural significance, do not require review by the Commission. These guidelines shall be used in the Commission's review of applications.

13.3.5 Consistent with the Town's charter, ordinances, resolutions, local public law, policies and procedures governing the acquisition of easements, to accept or otherwise acquire historic preservation easements on designated landmarks, structures, or sites and, when deemed appropriate by the Commission, sites or structures located in, or adjacent to, a designated district; and

13.3.6 To undertake any other action or activity necessary or appropriate to the implementation of its powers and duties or the implementation of the purpose of this article.

13.4 Designation.

13.4.1 Designation. The Mayor and Council of New Market may designate boundaries for landmarks, sites, structures, or districts of historic, archeological, or architectural significance consistent with adopted criteria for such designation.

13.4.2 Designation Procedure. The Historic District Commission may, after making full and proper study, recommend any area within the limits of the Town for designation as a landmark, site, structure, or district of historic, archeological, or architectural significance. The Commission may also recommend boundaries for such landmarks, sites, structures or districts. The recommendations shall be submitted to the [Mayor and Council for approval or disapproval.

13.5 Application For Certificate Of Appropriateness And Commission Review

13.5.1 Application for Certificate of Appropriateness. Before the construction, alteration, reconstruction, moving, or demolition is undertaken of a designated landmark, site, or structure, or site or structure within a designated district, if an exterior change is involved which would affect the historic, archeological, or architectural significance of a designated landmark, site, or structure, or structure within a designated district, any portion of which is visible or intended to be visible from a public way, the person, individual, firm, or corporation proposing to make the construction or change shall file an application for a Certificate of Appropriateness with the Commission for permission to construct, alter, reconstruct, move, or demolish the landmark, site, or structure. Every application shall be referred to and considered by the Commission and accepted or rejected by the Commission. An application which is identical to a rejected application may not be resubmitted within a period of one year after the rejection. No Certificate of Appropriateness shall be granted until the Commission has acted thereon as hereinafter provided.

13.5.2 Application Review.

- a. In reviewing applications, the Commission shall give consideration to the historic, archeological, or architectural significance of the landmark, site, or structure and its relationship to the historic, archeological, or architectural significance of the surrounding area; the relationship of the exterior architectural features of a landmark or structure to the remainder of the landmark or structure and to the surrounding area; the general compatibility of proposed exterior design, scale, proportion, arrangement, texture, and materials to the landmark, site, or structure and to the surrounding area; and any other factors including aesthetic factors which the Commission deems to be pertinent. The Commission may require submission of any or all of the following information in connection with the application: architectural plans, site plans, landscaping plans, proposed signs and appropriate detail as to character, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view and indications as to construction materials, design of doors and windows, ornamentation, colors and the like, photographs or perspective drawings indicating visual relationships to adjoining structures and spaces, and such other exhibits and reports as are necessary for its determinations.
- b. The Commission shall consider only exterior features of a landmark or structure and shall not consider any interior arrangements.
- c. The Commission shall not disapprove an application except with respect to the several factors specified in paragraph a. above.
- d. The Commission shall be strict in its judgment of plans for sites or structures determined by research to be of historic, archeological, or architectural significance. The Commission shall be lenient in its judgment of plans for sites or structures of little historic, archeological, or architectural significance, or of plans involving new construction, unless in the Commission's judgment such plans would seriously impair the historic, archeological, or architectural significance of surrounding sites or structures. The Commission is not required to limit construction, reconstruction, or alteration to the architectural style of any one (1) period.
- e. If an application is submitted for construction, reconstruction, or alteration affecting a site or the exterior of a structure or for the moving or demolition of a structure, the preservation of which the Commission considers to be of unusual importance to New Market or of unusual importance to the State or the nation, the Commission shall attempt to formulate an economically feasible plan with the owner(s) of the site or structure for the preservation of the site or structure. Unless the Commission is satisfied that the proposed construction, alteration, or reconstruction will not materially impair the historic, archeological, or architectural significance of the site or structure, the Commission shall reject the application, filing a copy of its rejection with the Town.
- f. If an application is submitted for construction, reconstruction, or alteration, or for the moving or demolition of a site or structure that the Commission considers to be of unusual

importance and no economically feasible plan can be formulated, the Commission shall have ninety (90) days, from the time it concludes that no economically feasible plan can be formulated, to negotiate with the owner and other parties in an effort to find a means of preserving the site or structure.

g. In the case of a site or structure considered to be valuable for its historic, archeological, or architectural significance, the Commission may approve the proposed construction, reconstruction, alteration, moving, or demolition despite the provisions of Section 13.5.2 e. and f. of this Article if:

- (1) The site or structure is a deterrent to a major improvement program which will be of substantial benefit to New Market;
- (2) Retention of the site or structure would cause undue financial hardship to the owner; or
- (3) Retention of the site or structure would not be in the best interests of a majority of persons in New Market.

13.5.3 Commission Decision. The Commission shall file with the [authorizing agency] a Certificate of Appropriateness certifying its approval, modification, or rejection of each application and plans submitted to it for review. Work shall not be commenced on any project until such a certificate of approval has been filed, and the [authorizing agency] shall not issue a building permit or historic area work permit for such change or construction unless it has received such a Certificate of Appropriateness. The failure of the Commission to act upon a completed application within forty five (45) days from the date the completed application was filed shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) day period is agreed upon mutually by the applicant and the Commission or the application has been withdrawn.

13.5.4 Routine Maintenance. Nothing in this Article shall be taken or construed to prevent maintenance that does not alter the exterior fabric or features of a designated landmark, site, or structure, customary farming operations, or landscaping which will have no material effect on the historic, archeological, or architectural significance of a designated landmark, site, structure, or district.

13.6 Demolition by Neglect. See Art. XII Section 1.5.5

13.7 Maryland Historical Trust. The Commission may designate the Maryland Historical Trust to make an analysis of and report recommending the preservation of sites, structures, or districts of historic, archeological, architectural, or cultural significance within New Market. The report may include proposed boundaries of sites, structures, or districts, as well as recommendations for the identification and designation of particular sites, structures, or districts to be preserved.

13.8. Appeals. In the event that any party is aggrieved by a decision of the Commission, the party has the right of appeal to the Circuit Court (Article 66B, Section 8.15 ~~4-08~~). Appeals permitted to Circuit Court generally must be filed within thirty (30) days from the date of the Commission decision.

13.9 Violations. See Article XII Enforcement

13.10 Severability. If any provision of this article or the application thereof to any person or circumstances is held invalid for any reason, such invalidity shall not affect the other provisions or any other application of this article which can be given effect without the invalid provision or application, and to this end, all the provisions of this article are hereby declared to be severable.

14.0 ARCHITECTURAL REVIEW DISTRICT OVERLAY

14.1 Declaration of Public Purpose. The objective of the Architectural Review District is to provide a rational system for evaluating, protecting and enhancing the historic heritage of New Market. The preservation of the historic character of the Town will provide economic benefits such as stabilizing and increasing property values as well as to promote cultural and aesthetic values to foster civic beauty and pride.

14.2 Architectural Review District. The areas subject to ARD are defined as those areas which are annexed into the incorporated limits of the Town and those areas designated as entryways to the Historic District including all those properties within the Residential Merchant District and Mixed Residential Service District that are not within the New Market Historical District. The annexation agreement between the property owner and the Town, will state the acknowledgment of the property owner to comply with all regulations set forth by the ARC.

14.3 Requirements. The following provisions of the Maryland Annotated Code, Article 66B, are hereby specifically adopted by the Mayor and Council to govern the Architectural Review District of said Town:

14.3.1 Architectural easements. The Commission may recommend to purchase architectural easements in connection with structures located in or adjacent to the architectural review district, and the general public the perpetual right to have the exterior appearance of any structure upon which it is applied retained in substantially the same character as when the easement took effect.

14.3.2 Application for permission to build, alter, etc. Before the construction, alteration, reconstruction, moving or demolition of any structure of appurtenance is made within the district, if any changes are involved which would affect the exterior appearance of a structure or appurtenance visible or intended to be visible from an adjacent public way in the district, the applicant proposing to make the construction or change shall file with the Commission an application for permission to build, alter, reconstruct, move, demolish or make the addition. The term appurtenance shall include trees, landscaping, or other natural features. Every application shall be referred to and considered by the Architectural Review Commission and accepted or rejected by it. No permit for any such change may be granted until the Commission has acted thereon as hereinafter provided. Public ways in the Historic District do not fall within these requirements.

14.3.3 Material to be submitted for review. The Architectural Review Commission may require submission of any or all of the following information in connection with the application: architectural plans, site plans, landscaping plans, proposed signs and appropriate detail as to character, proposed exterior lighting arrangements, elevations of all portions of structures with important relationships to public view and indications as to construction materials, design of doors and windows, ornamentation, colors and the like, photographs or perspective drawings indicating visual relationships to adjoining structures and spaces, and such other exhibits and reports as are necessary for its determinations.

14.3.4 Determination of appropriateness. After examination of material submitted, the Commission shall determine whether the proposal is in fact appropriate to the character, appearance of the district and meets the requirements established by the Zoning Ordinance. Among other grounds for considering a design inappropriate and requiring disapproval and resubmission are the following defects: arresting and spectacular effects, violent contrasts of materials or colors and intense or lurid colors, a multiplicity or incongruity of details resulting in a restless and disturbing appearance, the absence of unity and coherence in composition not in consonance with the dignity and character of the neighborhood in the case of a new building. In addition, the location, function, activity or process will not create offensive odors, noise, dust, smoke, gas, vibration, light, and heat so as to be disturbingly apparent over a considerable area and the location, function, activity or process will not create hazard to public safety or health as specified under subsection 14.1. At regular meetings, the Commission may permit modification of original proposals if such modifications are formally acknowledged, clearly indicated and recorded. Any action by applicants following issuance of a permit shall be in accord with the application and material approved. The Commission shall not issue a permit if it finds that the action proposed would, in consideration of the above criteria, adversely affect the primary character of the district or the setting of structures and premises of substantial public interest. Where permission is denied, the Commission shall record its reasons for denial.

14.3.5 Factors for consideration in reviewing plans for construction or change. In reviewing the plans for any such construction or change the Commission shall give consideration to (1) the historic or architectural value and significance of the structure and its relationship to the historic value of the surrounding area; (2) the relationship of the exterior architectural features of the

structure to the remainder of the structure and to the surrounding area; (3) the general compatibility of exterior design, arrangement, texture, and materials proposed to be used; (4) to any other factors including aesthetic factors which the Commission deems to be pertinent.

14.3.6 Only exterior features to be considered. The commission shall consider only exterior features of a structure and shall not consider any interior arrangements. Also, the Commission shall not disapprove an application except with respect to the several factors specified in subsection 14.3.3 above.

14.3.7 Strictness and leniency in judgment of plans; limiting architectural style to one period. The Commission shall be strict in its judgment of plans for those structures deemed to be valuable according to studies performed for districts of historic or architectural value. It shall be lenient in its judgment of plans for structures of little historic value or for plans involving new construction, unless such plans would seriously impair the historic or architectural value of surrounding structures of the surrounding area. A Commission is not required to limit new construction, alteration, or repairs to the architectural style of any one period.

14.3.8 Application for reconstruction, alteration, etc. of structure of unusual importance.

a. If an application is submitted for reconstruction or alterations affecting the exterior appearance of a structure or for the moving or demolition of a structure, the preservation of which the Commission deems of unusual importance to the Town, County, State, or entire nation, it shall attempt with the owner of the structure to formulate an economically feasible plan for the preservation of the structure. Unless in these circumstances the Commission is satisfied that the proposed construction, alteration, or reconstruction will not materially impair the historic value of the structure, the Commission shall reject the application for reconstruction or alteration, filing a copy of its rejection with the Mayor. An application for any such reconstruction or alteration, if rejected, shall not be renewed within a period of one year after rejection.

b. If an application is submitted for reconstruction, alteration, or for moving or demolition of a structure that the Commission deems of unusual importance and no economically feasible plans can be formulated, it shall have ninety (90) days from the time it concludes that no economically feasible plans can be formulated to negotiate with the owner and other parties in an effort to find a means of preserving the building.

c. Approval under certain circumstances. In the case of a structure deemed to be valuable for the period of architecture it represents and important to the neighborhood within which it exists, the Commission may approve the proposed reconstruction or alteration despite the fact the changes come within the provisions of subsection 14.3.8 a. and b. above, if (a) the structure is a deterrent to a major improvement program which will be substantial benefit to the Town; (b) retention of the structure would cause undue financial hardship to the owner; or (c) the retention of the structure would not be to the best interests of a majority of persons in the community.

14.3.9 Commission meetings to be public; right to appear and be heard; records. All meetings of the Architectural Review Commission shall be open to the public. Any interested person or his representative is entitled to appear and be heard by the Commission before it reaches a decision on any matter. It shall keep an open record of its resolutions, proceedings, and actions which shall be kept available for public inspection during reasonable business hours.

14.3.10 Certificate of approval, modification or rejection of application and plans. The Commission shall file with the Mayor a certificate of its approval, modification or rejection of all applications and plans submitted to it for review. Work shall not be commenced on any such project until such a certificate of approval has been filed and no building permit for such change or construction may be issued until such certificate of approval is filed. The applicant shall not commence the proposed work or change until and unless he or it has received such a certificate of approval from the Commission. The failure of the Commission to act upon an application within forty-five (45) days from the date the application was filed, shall be deemed to constitute automatic approval of the proposed changes unless an extension of this forty-five (45) day period is agreed upon mutually by the applicant and the Commission or the application has been withdrawn.

14.3.11 Ordinary maintenance not affected; completion of work under prior permit. Nothing in this Article shall be taken or construed to prevent work and repairs on any structure coming under

the heading of ordinary maintenance. Nothing in this sub-title affects the right to complete any work covered by a permit or authorization, issued prior to the effective date of this sub-title.

14.3.13 Appeal from decision of Commission. Any person or persons or applicant aggrieved by a decision of the Architectural Review Commission has a right of appeal therefrom similar to the Board of Appeals.

14.3.14 Severability. The provisions of this Article are severable, and if any of its provisions are held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions.

15.0 PLANNED DEVELOPMENT DISTRICT

15.1 Purpose and Intent

The purpose of this section is to permit such flexibility and provide performance criteria which can result in planned developments which produce a maximum choice in the types of environment and living units available to the public; open space and recreation areas; a pattern of development which preserves trees, outstanding natural topography and geologic features and prevents soil erosion; a creative approach to the use of land and related physical development; an efficient use of land resulting in smaller networks of utilities and streets and thereby lower housing costs; an environment of stable character in harmony with surrounding development; and a more desirable environment than would be possible through the strict application of other sections of the Ordinance.

The Planned Development District is designed to provide for small and large scale developments incorporating a single type or a variety of residential and related uses which are planned and developed as a unit. A planned development shall be a separate entity with a distinct character in harmony with surrounding development.

The Planned Development District is a floating zone restricted to sites of 2 acres or greater and for specific application to portions of New Market's growth area for the purposes described in the New Market Master Plan. Approval of a "Planned Development Master Plan" in accordance with the provisions contained hereunder will allow an applicant to continue through the development process including entering into a developer's rights and responsibilities agreement and/or final subdivision approval.

15.2 Floating Zone Approval

15.2.1 The applicant will collect sufficient information to provide the Town Council and the Planning Commission with a basis to approve the overall concept of the project and to amend the zoning map and set a maximum permitted land use density for the PDD. The following submission will be made at the time of application.

- a. A plan at showing 20 foot contours, all existing natural and man-made features, existing zoning and vicinity map.
- b. A schematic plan generally identifying location, densities and acreage of all proposed land uses.
- c. A requested land use density and justification for the total project.
- d. A statement covering the considerations listed under paragraph b. following.

15.2.2 The Town Council and the Planning Commission in their respective reviews of the proposed development will consider all of the following criteria to determine whether an amendment to the zoning map allowing the establishment of a PDD should be approved or disapproved:

- a. The relationship of any development with the Comprehensive Plan, zoning regulations, and other established development policy guidelines;
- b. The general location of the site and its relationship to existing land use in immediate vicinity;
- c. The long term implications the PDD would have on subsequent local development patterns and the demand for public facilities and services in the surrounding area;

- d. The topography and relationship to existing natural and man-made features, both on site and in the immediate vicinity;
- e. The PDD's proposed phasing schedule and how it relates to the provision of public services and facilities necessary to serve the PDD;
- f. The availability and suitability of vehicular access;
- g. The availability of water and sewer facilities including a point of discharge and water appropriation.

15.2.3 The Planning Commission shall review the proposed zoning map amendment at a public hearing shall then make a recommendation to the Town Council as to approval or disapproval of the PDD application. A recommendation for approval will be accompanied by a recommendation for a land use density for the project.

15.2.4 The Town Council shall then determine the feasibility and desirability of the zoning map amendment at a public hearing. The Town Council shall approve or disapprove the PDD map amendment and, if approved, set a maximum land use density. The maximum land use density approved can only be retained through excellence of design.

15.3 Principal Permitted Uses

15.3.1 Single-Family Detached Dwelling, Two-Family Dwelling, Attached Dwelling, Townhouse, Multi-family Dwelling, and zero lot line dwellings.

15.3.2 Institutional uses as follows:

a. Outdoor recreational uses, which include:

- (1) Areas for active recreational activities including, but not limited to, jogging, cycling, tot lots, playfields, playgrounds, outdoor swimming pools, tennis courts, and golf courses;
- (2) Passive recreational uses including, but not limited to, arboretums, areas for hiking, nature areas, and wildlife sanctuaries; and
- (3) Picnic areas, public and private parks, and garden plots;

b. Institutional uses, which include aquariums, youth camps, cemeteries, churches, conference centers associated with nonprofit institutions, community or recreational centers, gymnasiums, privately owned libraries or museums, indoor recreational centers, public or private schools, indoor skating rinks (ice or roller), indoor swimming pools, tennis, racquetball, handball courts, and all other indoor recreational uses;

c. Nursing Home, Rooming House, Day Care Center.

15.3.3 Commercial Uses as follows:

a. The following commercial uses are permitted as a component of a mixed-use planned development:

- (1) Community shopping center sized to accommodate the convenience commercial needs of the local community;
- (2) Restaurants;
- (3) Business or professional offices;
- (4) Medical offices or clinics;
- (5) Banks or financial institutions; and,
- (6) Home occupations.

b. Commercial uses are permitted only in association with a residential and/or institutional mixed-use development. The Planning Commission shall approve the type and size of any commercial use(s) proposed as a component of an overall mixed-use development plan. In order to approve any specific commercial use and its appropriate size, the Planning Commission must find that the proposed commercial uses:

- (1) Are compatible in size, scale and design with anticipated development in the area consistent with the PDD; and,
- (2) Are sized to generally, but not exclusively, accommodate the service and retail needs of the local community.

15.3.4 Public Utilities and Infrastructure uses.

15.4 Accessory Uses

Accessory uses customarily incidental and subordinate to the permitted uses are allowed.

15.5 Special Exceptions: There are no special exceptions in the PDD District.

15.6 Development Standards

15.6.1 In General: Applications for development in the PDD District shall meet the following standards in addition to all other applicable requirements of this Ordinance which do not conflict with the standards contained in this section. In cases where other standards within this title may be found to conflict with the standards contained in this section, only the standards contained in this section shall apply.

15.6.2 Use Mix: In a mixed-use development which includes commercial and/or other nonresidential uses, no more than ten percent (10%) of the developed portion (total site area less the required twenty five percent (25%) open space area) of a PDD development may be utilized for nonresidential use.

15.6.3 Minimum Density: The residential density for a PDD District development shall be at least 3.5 dwelling units per acre for the gross site area of the development used for residential purposes. If the development consists of more than one parcel or lot, the acreage of the parcels or lots may be combined to compute the allowable density and/or floor area, however the lots or parcels may not thereafter be considered separately in any subdivision or site plan.

15.6.4 Planning Commission final determination on density and floor area ratio:

a. The Planning Commission may ask the Town Council to require a lower residential density and/or floor area ratio if it finds that the maximum permitted density or floor area ratio would result in development that would not be compatible with anticipated development in the surrounding area or would create an unacceptable adverse environmental impact on or adjacent to the site.

b. The Planning Commission may also find that a proposed residential density and/or floor area ratio is too low and would not be an efficient use of limited lands zoned for planned development within a designated growth sub-area, and ask the Town Council to allow an increase in residential density or floor.

15.6.5 Open Space: Open Space shall comprise at least 25% of the total site area. At least 10% of the required common or public open space shall be utilized for outdoor recreational uses. If the open space is to be commonly owned, legal documentation ensuring its continuance and maintenance must be submitted to and approved by the Planning Commission.

15.6.6 Design Standards:

a. Subject to the standards contained in this section, building setbacks, bulk standards, lot sizes, impervious coverage, height, landscaping, bufferyard, lighting, walkway, development density, and road standards shall be determined by the Planning Commission, for each individual development in the PDD District. In determining these requirements the Planning Commission shall consider such factors as the proposed intensity of the development, use mix, design and compatibility with existing or anticipated development on surrounding lands. The purpose of the Planning Commission's authority is to provide design flexibility, consistent with public health and safety, to the developer who develops property and constructs buildings in accordance with a unified and coherent plan of development.

b. Notwithstanding the preceding, maximum building height shall not exceed 40'.

15.6.7 Traffic Circulation and Pedestrian Linkages: On-site and off-site streets, traffic circulation patterns, and pedestrian linkages shall be adequate to accommodate the traffic generated by the proposed development, when combined with existing traffic and traffic generated by other approved uses which are reasonably probable of fruition. Street systems shall be pedestrian friendly, connecting various neighbors with open space and parks. Where practical, streets and pedestrian linkages shall be designed to link with those of adjacent existing or future

developments. Private internal streets/roads are permitted if such streets/roads will be adequate to carry projected traffic, will be properly maintained, and are more appropriate to the overall development design than public streets built to existing road standards. Private internal streets/roads may vary in right-of-way widths and standards of design from with the Town Engineer's approval.

15.6.8 Development Phasing: A unified development shall be master-planned as an integrated project with well-designed and coordinated transitions between various land uses and adjacent existing land uses. A phasing plan for various components of the development shall be approved by the Planning Commission as a component of approval.

15.6.9 Sign Standards: Sign standards for nonresidential development in the PDD District shall established for each development by the Planning Commission.

15.6.10 Parking and loading standards: Off-street parking and off-street loading standards for development in the PDD District are contained in Article V of this Ordinance unless otherwise modified by the Planning Commission.

15.7 Development Review Process

15.7.1 Master Plan Approval in General: The purpose of requiring the preparation and approval of a Master Plan for any development proposal in the PDD is to establish a unified scheme of development for an entire property which is consistent with the provisions of the applicable Town planning and zoning ordinances, regulations, documents and policies, and which, once approved, the developer will be obligated to comply with when applying for subdivision approval for each phase of the development.

15.7.2 Specific Procedures for the PDD District: The following items shall apply to the development review process for PDD projects:

- a. A pre-application conference between the applicant and the Planning Commission is required for all PDD District development.
- b. A comprehensive array of supporting information and analysis regarding the proposed development is required to be submitted by the applicant as part of Master Plan application. The required information shall include, at a minimum, the following:
 - (1) A Master Plan that includes:
 - (i) A plat containing a location map that indicates the location of the proposed development in relations to municipal boundaries and transportation facilities;
 - (ii) A plat showing the boundaries of the land that is the subject of the application;
 - (iii) A plat showing the land use of all adjacent properties;
 - (iv) A plat showing the physical characteristics of the land to be developed including all natural resources such as wetlands, forested areas, location of rare, threatened or endangered species or plants, steep slopes, etc.;
 - (v) A plat showing existing and proposed structures, roads, parking areas, setbacks, lot dimensions, and buffer yards;
 - (vi) A plat showing any sensitive lands, as well as any required buffers from streams, wetlands and/or tidal waters, if applicable;
 - (vii) A plat indicating proposed landscape area, proposed floor area, residential density, number of parking spaces required and provided, zoning of development site, zoning of adjacent sites, proposed impervious area, proposed right-of-way area to be dedicated to the Town or State;
 - (viii) A plat indicating how stormwater will be managed on the site in accordance with applicable State, County or local regulations;
 - (ix) A traffic analysis prepared by a licensed engineer;
 - (x) A fiscal impact assessment prepared by a qualified professional; and,
 - (xi) Proposed architectural guidelines, including representative

architectural elevations of commercial, residential and institutional structures and a discussion of architectural themes to be implemented in the development of the proposed Master Plan.

c. The Planning Commission may require the applicant to submit any additional information, plans, specifications, documents, studies, drawings, etc., reasonably necessary to determine compliance with the PDD development standards contained herein.

15.7.3 Planning Commission Approval:

a. At its first regular meeting, not later than thirty (30) days following receipt of all required information as prescribed herein, the Planning Commission shall review the application for Master Plan approval and may upon completing its review:

(1) If the Planning Commission determines that the Master Plan fulfills all of the requirements for approval, it may approve the Master Plan;

(2) If the Planning Commission determines that the Master Plan does not adequately fulfill any one or more of the requirements of approval and that such inadequacy can be addressed through minor revision to the Master Plan, or the inadequacy is more appropriately addressed through application for subdivision approval it may approve the Master Plan subject to the appropriate conditions; or

(3) If the Planning Commission determines that the Master Plan does not fulfill any one or more of the requirements for approval and that the requirements for approval cannot be fulfilled by amendment to the Master Plan or by the application of conditions to approval, the Planning Commission shall deny the application.

b. The Planning Commission, must make the following findings in order to grant Master Plan approval of development proposals in the PDD District:

(1) The proposed Master Plan conforms to all applicable regulations contained in this Ordinance.

(2) The proposed Master Plan conforms to the New Market Comprehensive Plan.

(3) The proposed Master Plan in conjunction with reasonably anticipated development in the surrounding neighborhood, will not create a substantial adverse impact on the adequate and orderly provision of public services and facilities for the area.

(4) The proposed Master Plan is planned in such a manner as to minimize adverse impacts to environmentally sensitive areas and important historic or cultural features on the site.

(5) The proposed Master Plan is designed to be compatible with existing development in the surrounding neighborhood and/or the proposed development contains adequate screening, landscaping and buffer yards to protect the surrounding neighborhood.

c. Following Master Plan approval the applicant shall proceed to subdivision approval in accordance with New Market Land Subdivision Regulations for all or part of the proposed development, but said application must be generally consistent with the approved Master Plan, including any conditions thereof.

d. Receipt of Master Plan approval by the Planning Commission does not relieve the applicant of complying with all other State requirements and receiving any and all applicable approvals from regulatory agencies prior to receiving any issuance of a building permit from the Town, including but not limited to stormwater management, Maryland State Highway access approvals, and Forest Conservation approval.

16.0 TRC TOWN RESIDENTIAL/COMMERCIAL MIXED USE DISTRICT (FLOATING ZONE)

16.1 Purpose and Intent: The TRC District is a floating zone and is restricted to sites of 2 acres or greater in MRS, MC, and MCI Districts and for application to portions of New Market's growth area for the purposes described in the New Market Master Plan. Approval of a "Master Plan" in accordance with the provisions contained hereunder

will allow an applicant to continue through the development process including entering into a developer's rights and responsibilities agreement and final subdivision approval.

16.2 Floating Zone Approval

16.2.1 The applicant will collect sufficient information to provide the Town Council and the Planning Commission with a basis to approve the overall concept of the project and to amend the zoning map and set a maximum permitted land use density for the TRC.

a. The following submission will be made at the time of application.

(1) A plan at showing 20 foot contours, all existing natural and man-made features, existing zoning and vicinity map.

(2) A schematic plan generally identifying location, densities and acreage of all proposed land uses.

(3) A requested land use density and justification for the total project.

(4) A statement covering the considerations listed under paragraph b. following.

b. The Town Council and the Planning Commission in their respective reviews of the proposed development will consider all of the following criteria to determine whether an amendment to the zoning map allowing the establishment of a TRC should be approved or disapproved:

(1) The relationship of any development with the Comprehensive Plan, zoning regulations, and other established development policy guidelines;

(2) The general location of the site and its relationship to existing land use in immediate vicinity;

(3) The long term implications the TRC would have on subsequent local development patterns and the demand for public facilities and services in the surrounding area;

(4) The topography and relationship to existing natural and man-made features, both on site and in the immediate vicinity;

(5) The TRC's proposed phasing schedule and how it relates to the provision of public services and facilities necessary to serve the TRC;

(6) The availability and suitability of vehicular access;

(7) The availability of water and sewer facilities including a point of discharge and water appropriation.

c. The Planning Commission shall review the proposed zoning map amendment at a public hearing shall then make a recommendation to the Town Council as to approval or disapproval of the TBP application. A recommendation for approval will be accompanied by a recommendation for a land use density for the project.

d. The Town Council shall then determine the feasibility and desirability of the zoning map amendment at a public hearing. The Town Council shall approve or disapprove the TBP map amendment and, if approved, set a maximum land use density. The maximum land use density approved can only be retained through excellence of design.

16.3 Principal Permitted Uses

16.3.1 A building or land shall be used only for the following purposes:

a. Single-family Detached, Duplex, and Townhouse residential uses.

b. Outdoor recreational uses, which include:

(1) Areas for active recreational activities including, but not limited to, jogging, cycling, tot lots, playfields, playgrounds, outdoor swimming pools, and tennis courts;

(2) Passive recreational uses including, but not limited to, arboretums, areas for hiking, nature areas, and wildlife sanctuaries; and

(3) Picnic areas, public and private parks and garden plots;

c. Institutional uses, which include aquariums, cemeteries, churches, community or recreational centers, gymnasiums, privately owned libraries or museums, indoor recreational centers, public or private schools, indoor skating rinks (ice or roller), indoor swimming pools, tennis, racquetball, handball courts, and all other indoor recreational uses

d. Nursing Home, Rooming House, Day Care Center Child;

- e. Public services;
- f. Public utilities and infrastructure;
- g. Fraternal Organizations; and
- h. Post Office.
- i. The following commercial uses are permitted as a component of a mixed-use planned development:
 - (1) Community shopping center sized to accommodate the convenience commercial needs of the New Market community;
 - (2) Animal hospital, completely enclosed.
 - (3) Artisan and speciality shops.
 - (4) Banks, with and without drive through facilities.
 - (5) Retail business, including but not limited to grocery stores, hardware stores, clothing stores, office supplies, drug stores, and sporting goods stores.
 - (6) Public service buildings and structures such as, firehouses and emergency facility and communications center.
 - (7) Professional and government offices, including financial institutions.
 - (8) Restaurants, without drive-thru service.

16.4 Accessory Uses and Structures

- 16.4.1 The following accessory uses are permitted on all properties in the TRC District.
 - a. Any use normally and customarily incidental to any uses permitted as a matter of right in the district.

16.5 Special Exception Uses: There are no special exceptions in the TRC District.

16.6 Development Standards:

16.6.1 In General: Applications for development in the TRC District shall meet the following standards in addition to all other applicable requirements of this Ordinance which do not conflict with the standards contained in this section. In cases where other standards within this title may be found to conflict with the standards contained in this section, only the standards contained in this section shall apply.

16.6.2 Maximum Residential Density: The maximum gross residential density for a TRC District development shall be 4 dwelling units per acre the gross site area of the development used for residential purposes. If the Master Plan development consists of more than one parcel or lot, the acreage of the parcels or lots may be combined to compute the allowable density and/or floor area, however the lots or parcels may not thereafter be considered separately in any subdivisions or site plans.

16.6.3 Maximum Floor Area Ratio: Maximum floor area ratio for the nonresidential portion of a TRC District development is 0.40.

- 16.6.4 Planning Commission final determination on density and floor area ratio:
 - a. The Planning Commission may require a lower residential density and/or floor area ratio if it finds that the maximum permitted density or floor area ratio would result in development that would not be compatible with anticipated development in the surrounding area or would create a unacceptable adverse environmental impact on or adjacent to the site.
 - b. The Planning Commission may also find that a proposed residential density and/or floor area ratio is too low and would not be an efficient use of limited lands zoned for planned development within a designated growth sub-area, and thereby require an increase is residential density or floor area.

16.6.5 Open Space: Common or public open space shall comprise at least 20% of the total site area. At least 10% of the required common or public open space shall be utilized for outdoor recreational uses. If the open space is to be commonly owned, legal documentation ensuring its continuance and maintenance must be submitted to and approved by the Planning Commission.

16.6.6 Design standards:

- a. Subject to the standards contained in this section, building setbacks, bulk standards, lot sizes, impervious coverage, height, landscaping, bufferyard, lighting, walkway, development density, and road standards shall be determined by the Planning Commission for each individual development in the TRC District. In determining these requirements the Planning Commission shall consider such factors as the proposed intensity of the development, use mix, design and compatibility with existing or anticipated development on surrounding lands. The purpose of the Planning Commission's authority is to provide design flexibility, consistent with public health and safety, to the developer who develops property and constructs buildings in accordance with a unified and coherent plan of development.
- b. Notwithstanding the preceding, the maximum building height shall not exceed 35'.

16.6.7 Traffic Circulation and Pedestrian Linkages: On-site and off-site streets, traffic circulation patterns, and pedestrian linkages shall be adequate to accommodate the demands generated by the proposed development. Street systems shall be pedestrian friendly, connecting various neighbors with open space and parks. Where practical, streets and pedestrian linkages shall be designed to link with those of adjacent existing or future developments. Private internal streets/roads are permitted if such streets/roads will be adequate to carry projected traffic, will be properly maintained, and are more appropriate to the overall development design than public streets built to existing road standards. Private internal streets/roads may vary in right-of-way widths and standards of design from that prescribed by the various Town standards with the Town Engineer's and Planning Commission's approval.

16.6.8 Development Phasing: A unified development shall be master-planned as an integrated project with well-designed and coordinated transitions between various land uses and adjacent existing land uses. A phasing plan for various components of the development shall be approved by the Planning Commission as a component of the Master Plan approval.

16.6.9 Sign standards: Sign standards for nonresidential development in the TPD District shall be established for each development by the Planning Commission.

16.6.10 Parking and loading standards: Off-street parking and off-street loading standards for development in the TPD District are contained in Section V of this Ordinance unless otherwise modified by the Planning Commission.

16.6 Development Review Process

16.6.1 Master Plan Approval in General: The purpose of requiring the preparation and approval of a Master Plan for any development proposal in the TRC is to establish a unified scheme of development for an entire property which is consistent with the provisions of the applicable Town planning documents and policies, and which, once approved, the developer will be obligated to comply with when applying for subdivision approval.

16.6.2 Specific procedures for the TRC District: Notwithstanding subsection (a), the following items shall apply to the development review process for TRC projects:

- a. A pre-application conference between the applicant and the New Market Planning Commission or Staff is required for all TRC District development.
- b. A comprehensive array of supporting information and analysis regarding the proposed development is required to be submitted by the applicant as part of Master Plan application. The required information shall include, at a minimum, the following:
 - (1) A Master Plan that includes:
 - (i) A plat containing a location map that indicates the location of the proposed development in relations to municipal boundaries and transportation facilities;
 - (ii) A plat showing the boundaries of the land that is the subject of the application;
 - (iii) A plat showing the land use of all adjacent properties;

- (iv) A plat showing the physical characteristics of the land to be developed including all natural resources such as wetlands, forested areas, location of rare, threatened or endangered species or plants, steep slopes, etc;
- (v) A plat showing existing and proposed structures, roads, parking areas, setbacks, lot dimensions, and bufferyards;
- (vi) A plat any required buffers from streams, wetlands and/or tidal waters, if applicable;
- (vii) A plat indicating proposed landscape area, proposed floor area, residential density, number of parking spaces required and provided, zoning of development site, zoning of adjacent sites, proposed impervious area, proposed right-of-way area to be dedicated to the Town or State;
- (viii) A plat indicating how stormwater will be managed on the site in accordance with applicable State, County or local regulations;
- (ix) A traffic analysis prepared by a licensed engineer;
- (x) A fiscal impact assessment prepared by a qualified professional; and,
- (xi) Proposed architectural guidelines, including representative architectural elevations of commercial, residential and institutional structures and a discussion of architectural themes to be implemented in the development of the proposed Master Plan.

c. The Town Planning Commission may require the applicant to submit any additional information, plans, specifications, documents, studies, drawings, etc., reasonably necessary to determine compliance with the TRC development standards contained herein.

16.6.3 Planning Commission Approval:

a. At its first regular meeting, not sooner than thirty (30) days following receipt of all required information as prescribed herein, the Planning Commission shall review the application for site plan approval and may upon completing its review:

- (1) If the Planning Commission determines that the Master Plan fulfills all of the requirements for approval, it shall approve the Master Plan;
- (2) If the Planning Commission determines that the Master Plan does not adequately fulfill any one or more of the requirements of approval and that such inadequacy can be addressed through minor revision to the Master Plan, or the inadequacy is more appropriately addressed through application for subdivision approval; or
- (3) If the Planning Commission determines that the Master Plan does not fulfill any one or more of the requirements for approval and that the requirements for approval cannot be fulfilled by amendment to the Master Plan or by the application of conditions to approval, the Planning Commission shall deny the application

b. The Planning Commission, must make the following findings in order to grant Master Plan approval of development proposals in the TRC District:

- (1) The proposed Master Plan conforms to all applicable regulations contained in this Ordinance.
- (2) The proposed substantially conforms to the New Market Master Plan.
- (3) The proposed Master Plan in conjunction with reasonably anticipated development in the surrounding neighborhood, will not create a substantial adverse impact on the adequate and orderly provision of public services and facilities for the area.
- (4) The proposed Master Plan is planned in such a manner as to minimize adverse impacts to environmentally sensitive areas and important historic or cultural features on the site.
- (5) The proposed Master Plan is designed to be compatible with existing development in the surrounding neighborhood and/or the proposed development contains adequate screening, landscaping and bufferyards to protect the surrounding neighborhood.

c. Following Master Plan approval the applicant shall proceed to subdivision approval in accordance with New Market Land Subdivision Regulations for all or part proposed development, but said application must be consistent with the approved Master Plan, including any conditions thereof.

- d. Receipt of Master Plan approval by the Planning Commission does not relieve the applicant of complying with all other State and County requirements and receiving any and all applicable approvals from regulatory agencies prior to receiving any issuance of a building permit from the Town, including but not limited to stormwater management, Maryland State Highway access approvals, and Forest Conservation approval.

17.0 TBP TOWN BUSINESS PARK DISTRICT (FLOATING ZONE)

17.1 Purpose and Intent: This zone is intended to accommodate mixed commercial and business uses of varying sizes as a master planned business park which helps to serve the employment needs of the Town and County. Mixed uses should include retail, service, offices, light industrial, and entertainment which provide basic goods and services to the community and surrounding region. In recognition of the Town character, development specifications are kept to a minimum to encourage compact and efficient business and commercial development for each site subject to the approval of the Planning Commission.

The TBP District is a floating zone and is restricted to sites of 10 acres or greater in the MC and MCI Districts and for application to portions of New Market's growth area for the purposes described in the New Market Master Plan. Approval of a "Master Plan" in accordance with the provisions contained hereunder will allow an applicant to continue through the development process including entering into a developer's rights and responsibilities agreement and final subdivision approval.

17.2 Floating Zone Approval

17.2.1 The applicant will collect sufficient information to provide the Town Council and the Planning Commission with a basis to approve the overall concept of the project and to amend the zoning map and set a maximum permitted land use density for the TBP.

- a. The following submission will be made at the time of application.
 - (1) A plan at showing 20 foot contours, all existing natural and man-made features, existing zoning and vicinity map.
 - (2) A schematic plan generally identifying location, densities and acreage of all proposed land uses.
 - (3) A requested land use density and justification for the total project.
 - (4) A statement covering the considerations listed under paragraph b. following.
- b. The Town Council and the Planning Commission in their respective reviews of the proposed development will consider all of the following criteria to determine whether an amendment to the zoning map allowing the establishment of a TBP should be approved or disapproved:
 - (1) The relationship of any development with the New Market Master Plan, zoning regulations, and other established development policy guidelines;
 - (2) The general location of the site and its relationship to existing land use in immediate vicinity;
 - (3) The long term implications the TBP would have on subsequent local development patterns and the demand for public facilities and services in the surrounding area;
 - (4) The topography and relationship to existing natural and man-made features, both on site and in the immediate vicinity;
 - (5) The TBP's proposed phasing schedule and how it relates to the provision of public services and facilities necessary to serve the TBP;
 - (6) The availability and suitability of vehicular access;
 - (7) The availability of water and sewer facilities including a point of discharge and water appropriation.
- c. The Planning Commission shall review the proposed zoning map amendment at a public hearing shall then make a recommendation to the Town Council as to approval or disapproval of the TBP application. A recommendation for approval will be accompanied by a recommendation for a land use density for the project.
- d. The Town Council shall then determine the feasibility and desirability of the zoning map amendment at a public hearing. The Town Council shall approve or disapprove the TBP map

amendment and, if approved, set a maximum land use density. The maximum land use density approved can only be retained through excellence of design.

17.3 Principal Permitted Uses:

- 17.3.1 A building or land shall be used only for the following purposes:
- a. Animal hospital, completely enclosed, including all runs and exercise areas.
 - b. Artisan and specialty shops.
 - c. Auto body repair shops provided any exterior storage is completely screened from adjacent properties.
 - d. Auto parts and accessory sales.
 - e. Automobile service establishments provided:
 - (1) Bulk storage of flammable liquids shall be underground.
 - (2) No outside storage, including accumulation of junk or scrap.
 - (3) No vehicle shall remain on the premises for more than (30) thirty consecutive days.
 - f. Banks, with and without drive through facilities.
 - g. Stores, community and regional shopping centers for retail business including but not limited to grocery stores, hardware stores, clothing stores, office supplies, drug stores and sporting goods stores and other general merchandise.
 - h. Direct market sales and fulfillment including but not limited to mail order catalog sales.
 - i. Home improvement and garden centers including the sales of building supplies and nursery products.
 - j. Public service buildings and structures such as firehouses and emergency facility and communications center.
 - k. Professional, medical and government offices, including financial institutions.
 - l. Radio and television stations.
 - m. Active recreational uses including but not limited to bowling alleys, movie theater, amusement centers, health clubs and swimming pools.
 - n. Service businesses, with no exterior storage, including but not limited to: hair salons, building, plumbing, mechanical contracting; manufacturing, sales, service, repairs and rental of appliances, office machines, electronic and communications equipment and computer equipment.
 - o. Hotels and motels as well as associated ancillary uses such as conference facilities, aquatic facilities, health spas, athletic courts, etc.
 - p. Restaurants, with or without drive-thru
 - q. Public Utility and Infrastructure uses.
 - r. Open Air Farmers' Markets
 - s. Warehousing and mini-warehouse storage facilities.

17.4 Accessory Uses and Structures

- 17.4.1 The following accessory uses are permitted on all properties in the TBP District.
- a. Any use normally and customarily incidental to any uses permitted as a matter of right in the district.

17.5 Special Exception Uses: There are no special exceptions in the TBP District.

17.6 Development Standards

17.6.1 In general: Applications for development in the TBP District shall meet the following standards in addition to all other applicable requirements of this Ordinance which do not conflict with the standards contained in this section. In cases where other standards within this title may be found to conflict with the standards contained in this section, only the standards contained in this section shall apply.

17.6.2 Maximum floor area ratio: Maximum floor area ratio for the nonresidential development in the TBP District is 0.40.

17.6.3 Planning Commission Final Determination on Density and Floor Area Ratio:

- a. The Planning Commission, may require a lower floor area ratio if it finds that the maximum permitted floor area ratio would result in development that would not be compatible with anticipated development in the surrounding area or would create a unacceptable adverse environmental impact on or adjacent to the site.
- b. The Planning Commission, may also find that a proposed floor area ratio is too low and would not be an efficient use of limited lands zoned for TBP development within a designated growth sub-area, and thereby require an increase in floor area.

17.6.4 Design Standards:

- a. Subject to the standards contained herein, any property applying for development approval in the TBP shall be master planned. Building setbacks, lot sizes, building size, landscaping, buffer yard, lighting, pedestrian circulation, and architecture shall be determined by the Planning Commission. In determining these requirements the Planning Commission shall consider such factors as the proposed intensity of the development, use mix, design and compatibility with existing or anticipated development on surrounding lands. The purpose of this standard is to provide design flexibility, consistent with public health and safety, to the developer who develops property and constructs buildings in accordance with a unified and coherent plan of development.
- b. Notwithstanding the preceding, maximum building height shall not exceed 45'.

17.6.5 Traffic Circulation and Pedestrian Linkages: On-site and off-site streets, traffic circulation patterns, and pedestrian linkages shall be adequate to accommodate the demands generated by the proposed development. Access points shall be pedestrian friendly. Pedestrian linkages shall connect various uses with each other. Where the Planning Commission deems appropriate, streets and pedestrian linkages shall be designed to link with those of adjacent existing or future developments.

17.6.6 Development Phasing: A unified development shall be master-planned as an integrated project with well-designed and coordinated transitions between various land uses and adjacent existing land uses. A phasing plan for various components of the development shall be approved by the Planning Commission as a component of initial sketch and/or concept plan approval.

17.6.7 Sign Standards: Sign standards for nonresidential development in the TBP District shall be established for each development by the Planning Commission.

17.6.8 Parking and Loading Standards: Off-street parking and off-street loading standards for development in the TBP District are contained in Section V, of this Ordinance unless otherwise modified by the Planning Commission.

17.6.9 Outside Storage: Outside material storage may be permitted where it is essential to a permitted use, provided all materials are stored in an area completely enclosed and screened from view of the general public.

17.6.10 Stormwater:

- a. At the time of development or redevelopment, stormwater management technologies shall be implemented to minimized adverse water quality caused by stormwater. Stormwater pollution offsets shall be provided as follows:
 - (1) In the case of new development, offsets shall be used if they reduce pollution loadings by at least ten percent (10%) of the predevelopment levels.

- (2) In the case of redevelopment, if these technologies do not reduce pollutant loadings by at least ten percent (10%) below the level of pollution on the site prior to redevelopment, then offsets shall be provided.
- (3) Offsets may be provided either on or off site, provided that water quality benefits are equivalent, that their benefits are obtained within in the same watershed, and that the benefits can be determined through the use of modeling, monitoring or other computation of mitigation.
- (4) All proposed stormwater management measures shall be reviewed by the Town prior to implementation.
- (5) When the cutting or clearing of trees in forests and developed woodland areas is associated with current or planned development activities, such activities shall be designed and implemented to protect forest and woodland vegetation. Urban forestry practices such as street tree plantings, gardens, landscaping and buffer plantings shall be employed.
- (6) Permeable areas shall be established in vegetation, and redevelopment shall reduce existing levels of pollution. Future development shall use cluster development, when applicable, as a means to reduce impervious areas and maximize areas of natural vegetation.

17.7 Development Site Plan Review and Approval Process

17.7.1 Specific procedures for Site Plan Approval in the TBP District: The following items and procedures shall apply to the Site Plan review process for TBP projects:

- a. A pre-application conference between the applicant and the New Market Planning Commission or Staff is required for all TBP District development.
- b. A comprehensive array of supporting information and analysis regarding the proposed development is required to be submitted by the applicant as part of site plan application. The required information shall include, at a minimum, the following:
 - (1) A development plan that includes:
 - i. A plat containing a location map that indicates the location of the proposed development in relation to municipal boundaries and transportation facilities;
 - ii. A plat showing the boundaries of the land that is the subject of the application;
 - iii. A plat showing the land use of all adjacent properties;
 - iv. A plat showing the physical characteristics of the land to be developed including all natural resources such as wetlands, forested areas, location of rare, threatened or endangered species or plants, steep slopes, etc;
 - v. A plat showing existing and proposed structures, roads, parking areas, setbacks, lot dimensions, and bufferyards;
 - vi. A plat showing any required buffers from streams, wetlands and/or tidal waters;
 - vii. A plat indicating proposed landscape area, proposed floor area, number of parking spaces required and provided, zoning of development site, zoning of adjacent sites, proposed impervious area, proposed right-of-way area to be dedicated to the Town or State;
 - viii. A plat indicating how stormwater will be managed on the site in accordance with applicable State, County or local regulations; and,
 - ix. Architectural elevations of all structures to be constructed on the subject property.
- c. The Town Planning Commission may require the applicant to submit any additional information, plans, specifications, documents, drawings, etc., reasonably necessary to determine compliance with the TBP development standards contained herein.

17.7.2 Planning Commission Approval:

- a. At its first regular meeting, not sooner than thirty (30) days following receipt of all required information as prescribed herein, the Planning Commission shall review the application for Site Plan approval and may:
 - (1) If the Planning Commission determines that the Site Plan fulfills all of the requirements for approval, it shall approve the Site Plan;
 - (2) If the Planning Commission determines that the Site Plan does not adequately fulfill any one or more of the requirements of approval and that such inadequacy can be addressed through minor revision to the Site Plan, or the inadequacy is more appropriately addressed through application for subdivision approval it may approve the Master Plan subject to the appropriate conditions; or
 - (3) If the Planning Commission determines that the Site Plan does not fulfill any one or more of the requirements for approval and that the requirements for approval cannot be fulfilled by amendment to the Site Plan or by the application of conditions to approval, the Planning Commission shall deny the application.
- b. The Planning Commission must make the following findings in order to grant Site Plan approval of development proposals in the TBP District:
 - (1) The proposed development conforms to all applicable regulations contained in this Ordinance.
 - (2) The proposed development generally conforms to the New Market Master Plan.
 - (3) The proposed development, in conjunction with reasonably anticipated development in the surrounding neighborhood, will not create a substantial adverse impact on the adequate and orderly provision of public services and facilities for the area.
 - (4) The proposed development is planned in such a manner as to minimize adverse impacts to environmentally sensitive areas and important historic or cultural features on the site.
 - (5) The proposed development is designed to be compatible with existing development in the surrounding neighborhood and/or the proposed development contains adequate screening, landscaping and bufferyards to protect the surrounding neighborhood.
- c. Receipt of Site Plan approval by the Planning Commission does not relieve the applicant of complying with all other State and County requirements and receiving any and all applicable approvals from regulatory agencies prior to receiving any issuance of a building permit from the Town, including but not limited to stormwater management, Maryland State Highway access approvals, and Forest Conservation approval.

ARTICLE V. DEVELOPMENT STANDARDS

1.0 EXCEPTIONS AND MODIFICATIONS

1.1 Yards, parking space, or lot area required for one building may not be used for another main building..

1.2 Any lot to be served by an individual water supply and individual sewerage disposal system, regardless of the zone in which it is located, shall have a minimum area of 40,000 square feet and a minimum lot width of one hundred (100) feet.

1.3 On any lot in all districts, there shall be no obstruction to traffic visibility at intersecting streets or driveways at the point of intersection.

1.4 Exceptions to Yard Requirements

1.4.1 Architectural features of buildings such as window sills, cornices, roof overhangs and unenclosed porches, three (3) feet. Open fire escapes, fireproof outside stairways, chimneys and flues may project into the required yard not more than three (3) feet. Ground floor terraces or patios may extend into the rear yard not, however, within six (6) feet of either side lot line.

1.4.2 Signs, awnings, canopies, marquees as attached to and part of a building may project into the front yard in the MCI District only.

1.4.3 One story accessory buildings may project into yards providing that (a) when more than ten (10) feet from the building and sixty (60) feet from the front yard, it may project into the side or rear yards providing it projects no closer than six (6) feet to the side or rear lot lines, (b) garage accessory buildings entered from alley or street in the case of double frontage lots, are not closer than ten (10) feet to the street or alley line. This section (1.4.3) does not apply to the Historic District.

1.4.4 Fences may be constructed in or project into yards provided that (a) no fence or planting more than three (3) feet high shall be located within thirty (30) feet of a street intersection, (b) no fence more than four (4) feet high may be located closer to the front of the lot than the principal building, and (c) no fence more than eight (8) feet high shall be allowed on any part of the lot.

1.5 Exceptions to Height Limitations

1.5.1 Public buildings, churches, temples, and hospitals may exceed the height limit to a total of seventy (70) feet provided all yards required in the particular district are increased one (1) foot for each two (2) feet in excess of height limitation.

1.5.2 Chimneys, church steeples, cooling towers, elevators, bulkheads, fire towers, monuments, stacks, stage towers, or scenery lofts, tanks, water towers, spires, grain elevators, or other such architectural and mechanical appurtenances are exempt from height regulations.

2.0 RESERVED

3.0 LANDSCAPING, BUFFERING, AND SCREENING

3.1 Purpose.

The purpose of these policies is to protect and promote the public health, safety, and welfare by establishing standards of practice for the preservation of native vegetation, trees and the landscape improvements of all developed areas in order to better control erosion and the transport of sediment, improve the environmental quality of surface and groundwater, screen wind, light and noise, and preserve, protect and enhance wildlife.

3.2 Plans and Standards

3.2.1 Any application for subdivision or site plan approval shall include a landscape plan which addresses street trees, windbreaks, wildlife corridors, screening, and buffers. The plan shall be prepared by a registered professional forester, landscape architect, or professional with equivalent experience and qualifications. The plan shall show in sufficient detail:

- a. All existing vegetation to be preserved, the location, general size, and type of all significant vegetation;
- b. Location of proposed landscape material - including spacing;
- c. Species to be planted - botanical and common name; quantity of each species; height of shrubs; containers sized in gallons;
- d. Typical planting detail using American Association of Nurseryman standards;
- e. Specify container, balled and burlapped, bareroot, or pots;
- f. Plantings should be shown on the approved preliminary subdivision plat or site plan where possible;
- g. Estimated cost, including installation and maintenance; and
- h. Planting schedule.

3.2.2 All subdivisions and uses requiring site plan approval shall provide the following:

- a. Street trees;
- b. Wildlife corridors as may be required;
- c. Screens and buffers as may be required; and
- d. Woodland reforestation or afforestation.
- e. Whenever possible, existing forests, tree lines, and hedgerows shall be preserved and expanded. Wildlife corridors, screens, buffer areas, and windbreaks shall, whenever possible connect or expand existing forests;
- f. All proposals shall include a mixture of coniferous, deciduous trees, and shrubs;
- g. All proposals shall include both fast and slow growing species;
- h. Where plant groupings which serve a dual function, such as windbreaks, wildlife corridors, and reforestation/afforestation the strictest standards shall apply;

3.2.3 Street Trees

- a. Street trees shall be included in each subdivision.
- b. Street trees may be clustered, evenly spaced or when building envelopes are located within 20 feet of the road right-of-way, as a front yard landscape tree.
- c. The number of trees required shall be calculated as follows:
 - (1) Small trees (those trees less than 25 feet in height at maturity) - 1 per 25 linear feet of street frontage or open space;
 - (2) Medium and large trees (taller than 25 feet at maturity) - 1 per 40 linear feet of street frontage or open space; and
 - (3) Large subdivisions (20 acres or more) - 1 per 150 linear foot of street frontage or open space.
- d. Unless otherwise approved by the Town, street trees shall be planted a minimum of ten feet from the road right-of-way. Coniferous trees shall be located a minimum of 15 feet from the right-of-way.
- e. Subdivisions which combine lot sizes shall follow the strictest standard.
- f. Size:
 - (1) Deciduous - Minimum of 2-3 inch caliber at a height 4.5 ft. above grade height;
 - (2) Coniferous - Minimum 5 to 6 foot in height.

3.2.4 Buffers/Screens

- a. Landscaped buffers will be used to accomplish the following:
 - (1) Increase infiltration;
 - (2) Improve water quality; and

- (3) Particular attention shall be paid to screening the effects of incompatible activities on adjacent or nearby properties.
- b. Whenever possible, existing vegetation and landform will be used in the establishment of landscaped buffer areas.
- c. Landscaped buffer areas will be designed to complement other landscaping occurring naturally on the site, planted previously, or accomplished through this Ordinance.
- d. Landscaped buffer areas will include functional and well-designed combinations of the following:
 - (1) Vegetative ground cover.
 - (2) Coniferous and deciduous shrubs. Specimens of which will reach and maintain a minimum height of 5 feet of full vegetative growth. Plants will measure a minimum of 3 feet in heights at the time of planting and are expected to attain a 5 foot height within 3 years of planting.
 - (3) Coniferous and deciduous trees. Species and sizes of which will be chosen to best accomplish an adequate buffer (i.e. evergreens used for visual screening, deciduous trees for seasonal buffers, etc.) All plantings are subject to review and approval by the Planning Commission and its staff or its delegated agent.

3.2.5 Wildlife Corridors

Planted wildlife corridors will be created to provide uninterrupted corridors connecting areas of forest, woodlands, waterways, wetlands, and other natural habitats for animal life. Corridors will be created at many levels including on the ground, within bushes and shrubs, in waterways, within the forest canopy, and in the air.

- a. Whenever possible existing corridors will be preserved and enhanced throughout the development process to protect wildlife in the corridor.
- b. A wildlife corridor may serve a dual purpose in some cases as a buffer screen windbreak, and as an enhancement to open space.
- c. Standards:
 - (1) Wildlife corridors will be a minimum of 30 feet in width at the narrowest point.
 - (2) A variety of plant types will be utilized in creating or enhancing a wildlife-corridor including coniferous shrubs and trees, deciduous shrubs and trees, and appropriate vegetative ground cover. Species shall be of a variety with beneficial properties for wildlife.
 - (3) A variety of plant sizes will be provided to create a diverse habitat for various plant and animal species.
 - (4) Linkages with existing corridors and other natural habitats will be created when the opportunity exists.

3.3 Maintenance

The property owner shall be responsible for the continued proper maintenance of all landscape materials and shall keep them in a proper neat and orderly appearance, free from refuse and debris at all times. All unhealthy or dead plant material shall be replaced within six months or by the next planting season, whichever comes first. In buffers, screens, wildlife corridors and windbreaks, trees shall be replaced at a rate of 1 new to 1 removed tree, unless healthy material is deliberately removed, then vegetation will be replaced at a rate of 1.5 new to 1 tree removed. Proper maintenance shall include watering, weeding, mowing, mulching, fertilizing and pruning.

3.4 Bonds/Development Agreement

3.4.1 Prior to final approval of the site plan or subdivision, the developer shall enter into an agreement with the Town to provide completed plantings and shall post an irrevocable letter of credit, bond, or other surety with the Town

3.4.2 If all the plantings are not completed within three years of approval, or if the approved landscape plan is not followed, the irrevocable letter of credit, bond or other surety may be forfeited and applied, in whole or in part, to complete the landscape plan as approved.

3.4.3 The irrevocable letter of credit, bond or other surety shall be held for a period of two years after installation of plantings to assure proper maintenance and growth. Failure to maintain the vegetation and to replace dead plants or trees shall result in a forfeiture of the posted bond or other surety

3.4.4 Prior to the release of the letter of credit, bond, or other surety, the site shall be inspected by the Town upon notification by the developer to assure proper maintenance and installation.

4.0 STORMWATER MANAGEMENT

4.1 Purpose

The purpose of stormwater management is to protect, maintain and enhance public health and safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with increased stormwater runoff. Proper management of stormwater runoff will minimize damage to public and private property, reduce the effects of development on land and stream channel erosion, assist in the attainment and maintenance of water quality standards, reduce local flooding and maintain after development, as nearly as possible, the pre-development runoff characteristics.

4.2 Authority

The provisions of this Section, pursuant to the Natural Resources Article, ~ 8-11A-02, of the Annotated Code of Maryland, 1983 Replacement Volume, are adopted under the authority of the Municipal Corporation Charter of New Market, Maryland, and shall apply to all development occurring within the incorporated area of the Town of New Market. The application of this Chapter and the provisions expressed herein shall be the minimum stormwater management requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute. The Mayor and Council shall be responsible for the coordination and enforcement of the provisions of this Ordinance.

4.3 Control measures

4.3.1 No person shall develop any land for residential, commercial, industrial or institutional uses without having provided for appropriate storm water management measures that control or manage runoff from such developments, except as provided in 4.3.2.

4.3.2 Exemptions. The following development activities are exempt from the provisions of this Chapter and the requirements of providing stormwater management:

- a. Normally accepted agricultural land management activities.
- b. Additions or modifications to existing single-family detached residential structures.
- c. Developments that do not disturb over five thousand square feet of land area.
- d. Land development activities which the Water Resources Administration determines will be regulated under specific state laws which provide for managing stormwater runoff.
- e. Residential developments consisting of single-family houses, each on a lot of two acres or greater.

4.3.4 The Town of New Market may grant a waiver of the stormwater management requirements for the individual developments, provided that a written request is submitted by the applicant which contains descriptions, drawings and any other information that is necessary to evaluate the proposed development. A separate written waiver request shall be required in accordance with the provisions of this section if there are subsequent additions, extensions or modifications to a development receiving a waiver. Eligibility for a waiver shall be determined if the applicant can conclusively demonstrate that:

- a. The proposed development will not generate an increase of more than ten percent in the two-year pre-development peak discharge rate and will not cause an adverse impact on the receiving wetland, watercourse or body of water;
- b. A site is completely surrounded by existing areas which are served by an existing network of public storm drainage systems of a capacity adequate to accommodate the runoff from the additional development;
- c. Provisions to control direct outfall to tidewater are provided when the first inch of rainfall is managed according to infiltration standards and specifications promulgated by the Water Resources Administration; or
- d. A high-water table exists on the site such that the potential health risks caused by retention of stormwater exceed the benefit of such retention for stormwater management purposes.

4.3.5 The Town of New Market may grant a written variance from any requirement of this Section if there are exceptional circumstances applicable to the site such that strict adherence to the provisions of this Chapter will result in unnecessary hardship and not fulfill the intent of the Ordinance. A written request for variances shall be provided to the Town of New Market and shall state the specific variances sought and reasons for their granting. The Town of New Market shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the person developing the land.

5.0 SOIL EROSION AND SEDIMENT CONTROL

5.1 Purpose and Authority

5.1.1 The purpose of grading and sediment control is to protect, maintain and enhance the public health, safety and general welfare by establishing minimum requirements and procedures to control the adverse impacts associated with accelerated soil erosion and resultant sedimentation. Minimizing soil erosion and off-site sedimentation will minimize damage to public and private property and will assist in the attainment and maintenance of water quality standards.

5.1.2 The provisions of this Section, pursuant to Natural Resources Article, §§ 8-1101 through 8-1108, of the Annotated Code of Maryland are adopted under the authority of the New Market Municipal Charter and shall apply to all grading occurrences within the Town of New Market. The application of this Chapter and the provisions expressed herein shall be the minimum erosion and sediment control requirements and shall not be deemed a limitation or repeal of any other powers granted by state statute.

5.2 Compliance required; exemptions and variances

5.2.1 No person shall clear or grade land without implementing soil erosion and sediment controls in accordance with the requirements this Section, except as provided in 5.2.2.

5.2.2 Exemptions shall be as follows:

- a. Agricultural land management practices and construction of agricultural structures.
- b. Single-family residences or their accessory buildings on lots of two acres or more.
- c. Clearing or grading activities that disturb less than five thousand square feet of land area and disturb less than one hundred cubic yards of earth.
- d. Clearing or grading activities that are subject exclusively to state approval and enforcement under state law and regulations.

5.2.3 The Natural Resources Conservation Service may grant a written variance from the requirements of the Standards and Specifications if strict adherence to the specifications will result in unnecessary hardship and not fulfill the intent of this Section. The applicant shall submit a written request for a variance to the Natural Resources Conservation Service. The request shall state the specific variances sought and reasons for requesting the variance. The Conservation

Service shall not grant a variance unless and until sufficient specific reasons justifying the variance are provided by the applicant.

6.0 BUILDING CONSTRUCTION

For purposes of controlling all matters pertaining to the design, construction, alteration, repair, removal, demolition, and maintenance of all buildings and structures, the Town of New Market has adopted the International Building Code (2003 Edition) with local variations.

7.0 RESERVED

8.0 OUTDOOR LIGHTING

8.1 Purpose: Good outdoor lighting at night benefits everyone. It increases safety, enhances the Town's night time character, and helps provide security. New lighting technologies have produced lights that are extremely powerful, and these types of lights may be improperly installed so that they create problems of excessive glare, light trespass, and higher energy use. Excessive glare can be annoying and may cause safety problems. Light trespass reduces everyone's privacy, and higher energy use results in increased costs for everyone. Appropriately regulated, and properly installed, outdoor lighting will contribute to the safety and welfare of the residents of the Town.

This Section is intended to reduce the problems created by improperly designed and installed outdoor lighting. It is intended to eliminate problems of glare, minimize light trespass, and help reduce the energy and financial costs of outdoor lighting by establishing regulations which limit the area that certain kinds of outdoor-lighting fixtures can illuminate and by limiting the total allowable illumination of lots located in the Town of New Market. All business, residential, and community driveway, sidewalk, and property luminaires should be installed with the idea of being a "good neighbor," with attempts to keep unnecessary direct light from shining onto abutting properties or streets.

8.2 Definitions. See Article XV Section 13.5

8.3 Requirements: All public and private outdoor lighting installed in the Town of New Market shall be in conformance with the requirements established by this Ordinance.

8.3.1 Control of Glare -- Luminaire Design Factors:

- a. Any luminaire with a lamp or lamps rated at a total of MORE than 1800 lumens, and all flood or spot luminaires with a lamp or lamps rated at a total of MORE than 900 lumens, shall not emit any direct light above a horizontal plane through the lowest direct-light-emitting part of the luminaire.
- b. Any luminaire with a lamp or lamps rated at a total of MORE than 1800 lumens, and all flood or spot luminaires with a lamp or lamps rated at a total of MORE than 900 lumens, shall be mounted at a height equal to or less than the value $3 + (D/3)$, where D is the distance in feet to the nearest property boundary. The maximum height of the luminaire may not exceed 25 feet.

Table 2: TYPICAL LUMEN VALUES FOR VARIOUS LAMP WATTAGES

WATTAGE	LOW PRESSURE SODIUM	HIGH PRESSURE SODIUM	METAL HALIDE	FLUOR-ESCENT	QUARTZ	MERCURY VAPOR	INCAND-ESCENT
9				600			
18	1,800						
35	4,725	2,250					
40		4,000		2,250			480
50					1,400	1,140	480
55	7,925						
60							870
70		5,800	5,500				
75						2,800	1,190
90	14,400						
100		9,500	8,000			4,300	1,750
110				6,600			
150		16,000					2,850
175			14,000			8,600	
200		22,000					4,010
250		27,500	20,500			12,100	
300							6,360
400		50,000	36,000			22,500	
500							10,850

8.3.2 Exceptions to Control of Glare:

- a. Any luminaire with a lamp or lamps rated at a total of 1800 lumens or LESS, and all flood or spot luminaires with a lamp or lamps rated at 900 lumens or LESS, may be used without restriction to light distribution or mounting height, except that if any spot of flood luminaire rated 900 lumens or LESS is aimed, directed, or focused such as to cause direct light from the luminaire to be directed toward residential buildings on adjacent or nearby land, or to create glare perceptible to persons operating motor vehicles on public ways, the luminaire shall be redirected or its light output controlled as necessary to eliminate such conditions.
- b. Luminaires used for public-roadway illumination may be installed at a maximum height of 25 feet and may be positioned at that height up to the edge of any bordering property.
- c. All temporary emergency lighting need by the Police or Fire Departments or other emergency services, as well as all vehicular luminaires, shall be exempt from the requirements of this article.
- d. All hazard warning luminaires required by Federal regulatory agencies are exempt from the requirements of this regulation, except that all luminaires used must be shown to be as close as possible to the Federally required minimum lumen output requirement for the specific task.
- e. Luminaires used primarily for sign illumination may be mounted at any height to a maximum of 25 feet, regardless of lumen rating.
- f. Law Governing Conflicts. Where any provision of federal, state, county, or town statutes, codes, or laws conflicts with any provision of this code, the most restrictive shall govern unless otherwise regulated by law.

8.3.3 Outdoor Advertising Signs:

- a. Top Mounted Fixtures Required. Lighting fixtures used to illuminate an outdoor advertising sign shall be mounted on the top of the sign structure. All such fixtures shall comply with the shielding requirements of Section 8.3.1. Bottom-mounted outdoor advertising-sign lighting shall not be used.
- b. Outdoor advertising signs of the type constructed of translucent materials and wholly illuminated from within do not require shielding. Dark backgrounds with light lettering or symbols are preferred, to minimize detrimental effects. Unless conforming to the above dark background preference, total lamp wattage per property shall be less than 41 watts.
- c. Compliance Limit. Existing outdoor advertising structures shall be brought into conformance with this regulation within five years from the date of adoption of this Ordinance.
- d. Prohibitions. Electrical illumination of outdoor advertising off-site signs between the hours of 11:00 p.m. and sunrise is prohibited.

8.3.4 Recreational Facilities:

- a. Any light source permitted by this Ordinance may be used for lighting of outdoor recreational facilities (public or private), such as, but not limited to, football fields, soccer fields, baseball fields, softball fields, tennis courts, or show areas, provided all of the following conditions are met:
 - (1) All fixtures used for event lighting shall be fully shielded as defined in Section 8.3.1 of this Code, or be designed or provided with sharp cut-off capability, so as to minimize up-light, spill-light, and glare.
 - (2) All events shall be scheduled so as to complete all activity before or as near to 10:30 p.m. as practical, but under no circumstances shall any illumination of the playing field, court, or track be permitted after 11:00 p.m. except to conclude a scheduled event that was in progress before 11:00 p.m. and circumstances prevented concluding before 11:00 p.m.

8.3.5 Prohibitions:

- a. Laser Source Light. The use of laser source light or any similar high intensity light for outdoor advertising or entertainment, when projected above the horizontal is prohibited.
- b. Searchlights. The operation of searchlights for advertising purposes is prohibited.
- c. Outdoor Advertising Off-Site Signs. Electrical illumination of outdoor advertising off-premise signs is prohibited between the hours of 11:00 p.m. and sunrise.

8.3.6 Temporary Outdoor Lighting:

- a. Any temporary outdoor lighting that conforms to the requirements of this Ordinance shall be allowed. Nonconforming temporary outdoor lighting may be permitted by the Planning Commission after considering: (1) the public and/or private benefits that will result from the temporary lighting; (2) any annoyance or safety problems that may result from the use of the temporary lighting; and (3) the duration of the temporary nonconforming lighting. The applicant shall submit a detailed description of the proposed temporary nonconforming lighting to the Planning Commission, who shall consider the request at a duly called meeting of the Planning Commission. The Planning Commission shall render its decision on the temporary lighting request within two weeks of the date of the meeting. A failure by the Planning Commission to act on a request within the time allowed shall constitute a denial of the request.

8.4 Effective Date and Grandfathering of Nonconforming Luminaires:

8.4.1 All luminaires lawfully in place prior to the date of the Ordinance shall be grandfathered. However, any luminaire that replaces a grandfathered luminaire, or any grandfathered luminaire that is moved, must meet the standards of this Ordinance. Advertising signs are grandfathered only for a period of five years, as specified in Section 8.3.3.

8.4.2 Grandfathered luminaires that direct light toward streets or parking lots that cause disability glare to motorists or cyclists should be either shielded or re-directed within 90 days of notification, so that the luminaires do not cause a potential hazard to motorists or cyclists.

8.5 New Construction:

8.5.1 The applicant for any permit required by any provision of the laws of this jurisdiction in connection with proposed work involving outdoor lighting fixtures shall submit (as part of the application for permit) evidence that the proposed work will comply with this Ordinance. The submission shall contain but shall not necessarily be limited to the following, all or part of which may be part or in addition to the information required elsewhere in the laws of this jurisdiction upon application for the required permit:

- a. plans indicating the location on the premises, and the type of illuminating devices, fixtures, lamps, supports, reflectors, and other devices;
- b. description of the illuminating devices, fixtures, lamps, supports, reflectors, and other devices and the description may include, but is not limited to, catalog cuts by manufacturers and drawings (including sections where required);
- c. photometric data, such as that furnished by manufacturers, or similar showing the angle of cut off or light emissions.

8.5.2 The above required plans, descriptions and data shall be sufficiently complete to enable the Zoning Administrator to readily determine whether compliance with the requirements of this Ordinance will be secured. If such plans, descriptions and data cannot enable this ready determination, by reason of the nature or configuration of the devices, fixtures, or lamps proposed, the applicant shall additionally submit as evidence of compliance to enable such determination such certified reports of tests as will do so provided that these tests shall have been performed and certified by a recognized testing laboratory.

8.5.3 Subdivision Plat Certification. If any subdivision proposes to have installed street or other common or public area outdoor lighting, the final plat shall contain a statement certifying that the applicable provisions of the Outdoor Lighting regulation will be adhered to.

8.5.4 Lamp or Fixture Substitution. Should any outdoor light fixture, or the type of light source therein, be changed after the permit has been issued, a change request must be submitted to the building official for his approval, together with adequate information to assure compliance with this Ordinance, which must be received prior to substitution.

8.6 Notification Requirements:

8.6.1 The Town of New Market building permit shall include a statement asking whether the planned project will include any outdoor lighting.

9.0 OFF-STREET PARKING AND LOADING

9.1 Applicability. Except as otherwise provided in this Section, when any building or structure is hereafter erected or structurally altered or any building or structure hereafter is converted for the uses listed in Off-Street Parking Schedule A included in this Section, accessory off-street parking spaces shall be as required in such table or as required in subsequent sections of this Ordinance. Permanent off-street parking spaces shall be provided as specified by this section for all uses occupying land or facilities (or portions thereof). Such parking spaces may be provided in a parking garage. The requirements of this section shall be met:

- 9.1.1 At the time a Certificate of Occupancy is issued for a building or structure in which an approved use takes place;
- 9.1.2 At the time any principal or ancillary use or building is enlarged or increased in capacity, such as by adding dwelling units, guest rooms, seats, floor area, or other units of measurement used in Schedule A, which follows; or
- 9.1.3 Before conversion from one type of use or occupancy to another, or any change in the manner in which the use is constructed that would result in additional parking requirements.

Each site and/or subdivision plan that is submitted for approval shall include information as to the number, location, and dimensions of all off-street parking and loading spaces and the means of ingress and egress to such spaces. This information shall be illustrated in sufficient detail to indicate whether the requirements of this Section are met. In those cases where no site plan is required, the applicant must show that the number of parking spaces and the design and construction of all parking areas meet the requirements of this Section in order to receive a Certificate of Occupancy.

9.2 Definition. Bituminous concrete, paving block, turf pavers, or other stabilized material such as crusher-run and three inches of stone that shall meet the minimum performance standards of those methods listed elsewhere shall be provided on any lot on which any of the following uses are hereafter established, such space shall be provided with vehicular access to a street or alley. For purposes of computing, each space will not be less than 180 square feet.

9.3 Computation of Off-Street Parking Requirements

9.3.1 Calculations. When measurements of the number of required spaces result in fractions, the space requirements shall be rounded upward to the next highest whole number.

9.3.2 Different Use Areas. Except as provided for in this Ordinance, parking shall be calculated separately for each different use area in a building or on a site, including all ancillary uses.

9.3.3 On-Street Parking. Except as provided for in this Ordinance, on-street parking within public or private streets, driveways, or drives, shall not be used to satisfy the off-street parking requirements prescribed by this Section.

9.3.4 Commercial Parking Maximums. For uses classified as commercial, the number of spaces shown in Schedule A shall be considered the maximum allowed for such uses. The maximum number of allowable parking spaces requirements may only be exceeded by the Planning Commission provided that adequate information needed to determine the cumulative parking needs for a site is provided by the applicant.

9.3.5 Parking Based on Seating. When requirements use seating as a unit of measurement, all calculations shall be based on the design capacity of the areas used for seating.

9.3.6 Parking Based on Floor Area. Except as provided for in this Section, when requirements use amount of square footage in buildings as a unit of measurement, all calculations shall be based on gross floor area.

9.3.7 Parking Based on Students, Staff, and Occupants. Except as provided for in this Ordinance, when requirements use number of students, staff, or occupants as a unit of measurement, all calculations shall be based on the maximum enrollment, the largest number of persons working on any single shift, or the maximum fire-rated capacity whichever is applicable and results in the greater number of required spaces.

9.3.8 Single-Family Residence Parking. For single-family residences only, driveways may be used to satisfy minimum on-site parking requirements, provided that sufficient space is available to satisfy the minimum design standards.

9.3.9 Parking for Unlisted Uses. Parking requirements for uses not specifically listed in Schedule A shall be determined by the Planning Commission based on the requirements for the closest comparable use, as well as on the particular parking demand and trip generation characteristics of the proposed use. The Planning Commission may alternately require the submittal of a parking demand study that justifies estimates of parking demand based on the recommendations of the Institute of Traffic Engineers (ITE), and includes relevant data collected from uses or combinations of uses that are the same or comparable to the proposed use in terms of density, scale, bulk, area, type of activity, and location.

9.3.10 Whenever a building or use is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise to create a need, under the requirements of this Ordinance, for an increase in parking spaces of 10% or more than those required before the change or enlargement, such additional spaces shall be provided on the basis of the change or enlargement. No additional spaces shall be required for the first change or enlargement which would result in an increase of spaces of less than 10% of those required before the change or enlargement, but this exception shall not apply to a series of changes or enlargements which together result in a need for an increase in parking space of 10% or more.

9.3.11 Whenever a building is built or enlarged or it is changed or enlarged in floor area, number of employees, number of dwelling units, seating capacity or otherwise to create a need, under the requirements of this Ordinance, for an increase in parking spaces and is located in the Historic District of New Market, a variance may be sought to relieve the property owner of some or all of the parking space requirements. The Board may grant such a variance if it finds that adequate public parking exists within three hundred fifty feet of the proposed building or that providing a parking lot in the historical area would do substantial and irreparable harm to the Historic District area.

9.4 Required Off-Street Parking Spaces. Unless otherwise expressly stated in this Ordinance, off-street parking spaces shall be provided in accordance with Schedule A. For uses classified as commercial, the number of spaces shown on the table shall be considered the maximum allowed for such uses.

Off-Street Parking Schedule A		
Use Category	Use Type	Number of Spaces
Residential Uses	Single- Family Detached Dwelling	2 per du
	Duplex Dwelling	2 per du
	Attached Dwelling	2 per du + 0.5 per bedroom over 2 bedrooms
	Multi-family Dwelling	2 per du + 0.5 per bedroom over 2 bedrooms
	Commercial & Residential Uses located on the same lot in the RM District	1 per du + 1 per non-resident employed on the premises
	Residential Use in Non-residential Building	2 per du + 0.5 per bedroom over 2 bedrooms (1 per du)
	Townhouse	2 per du + 0.5 per bedroom over 2 bedrooms
	Mobile Home	2 per du
	Accessory dwelling unit	1 per bedroom
Residential Special Uses	Bed and Breakfast/Guest House	2 per dwelling & 1 per guest room
	Boarding House	1 per sleeping room
	Group Home	0.25 per resident + 1 per staff person
	Life Care Community	.05 per resident + 1 per staff person (1 per 5 beds)
	Nursing Home	0.25 per resident + 1 per staff person (1 per 5 beds)

Off-Street Parking Schedule A		
Use Category	Use Type	Number of Spaces
Public Uses	Athletic Field, Public	1 per 5,000 sq ft of land area
	Community Center	See Schedule C
	Community Garden	See Schedule C
	Library	1 per each 200 sq ft (10 per use + 1 per 300 over 1000)
	Museum	1 per each 500 sq ft (10 per use + 1 per 300 over 1000)
	Neighborhood Recreation Center, Public	1 per each 250 sq ft
	Park, Public	See Schedule C
	Public Safety Station	1 per each 500 sq ft
	Public Heliport	See Schedule C
	Public Utility Facility	See Schedule C
	Resource Conservation Facility	See Schedule C
Institutional Uses	Club, Lodge, Hall	1 per every 3 persons of maximum fire-rated capacity + parking for other uses as may be necessary (1 per 10 active members)
	College	1 per classroom + 1 per every 2 students (1 per 5 seats in auditorium)
	Elementary or Middle School	2.25 per classroom (1 per 10 seats in assembly room)
	General assembly	1 per every 3 persons of maximum fire-rated capacity (1 per 5 seats)
	Hospital	1 per patient bed + 1.25 per full-time employee (total number of full-time employees regardless of shift size) [1 per two beds]
	Place of Worship (does not apply to the expansion of churches existing at the time of passage of this Ordinance)	1 per every 3 persons of maximum fire-rated capacity in the assembly area or sanctuary + the minimum number of spaces required for any associated use
	Senior High	1.5 per classroom + 1 per every 5 students (1 per 5 seats in auditorium)
Government Services	Government Office	1 per every 200 gross sq ft of floor area used by the public + 1 per each 600 gross sq ft of floor area not used by the public
Non-government	Utility Facility, Major	See Schedule C

Off-Street Parking Schedule A		
Use Category	Use Type	Number of Spaces
Utilities	Transportation Facility, Major	See Schedule C
	Utility Substation, Minor	See Schedule C
Non-Residential Uses	Amusement Establishment, Indoor	1 per each 50 sq ft or 1 per every 4 persons of maximum fire-rated capacity, whichever is greater (1 per 100)
	Auction House	See Schedule C
	Auto Body Shop	1 per 300 sq ft + 2 per bay
	Auto/Junk/Salvage Yard	See Schedule C
	Auto Sales/Rental	1 per each 300 sq ft of enclosed floor area
	Bakery	1 per each 200 sq ft
	Bank with Drive-thru Service	1 per each 300 sq ft + 1 lane per each drive-up window and/or ATM
	Bank without Drive-thru Service	1 per each 300 sq ft
	Bar, Tavern, Nightclub, indoor and outdoor	1 per each 50 sq ft or 1 per every 4 persons of maximum fire-rated capacity, whichever is greater
	Building Material Sales	1 per each 200 sq ft
	Business Services	See Schedule C
	Camp Ground	See Schedule C
	Car Wash	2 per bay
	Cemetery	See Schedule C
	Clinic, Medical or Dental	See Schedule C
	Commercial Use without a dwelling unit on the same lot in the RM District	1 per each employee
	Contractor Yard	See Schedule C
	Convenience Store	1 per each 150 sq ft
	Construction Services	See Schedule C
	Day Care Center	1 per each 200 sq ft
	Day Care, Home, Small	3 per home
	Equipment Sales - Leasing	1 per each 400 sq ft of enclosed floor area
	Food and Beverage Services	1 per each 200 sq ft
Funeral Home	1 per each 200 sq ft (1 per 50 sf of public area with minimum of 30)	

Off-Street Parking Schedule A

Use Category	Use Type	Number of Spaces
	Gasoline Service Station	1 per each 250 sq ft or retail + 4 per service bay
	Golf Course, Privately Owned	6 per hole (1 per 5 members)
	Golf Driving Range	3 per hole or tee
	Health and Fitness Club	1 per every 3 persons of maximum fire-rated capacity, whichever is greater (1 per 100)
	Hotel or Motel	1 per sleeping room + 1 per 4 seats in meeting or assembly rooms (1 per sleeping room)
	Kennel, Indoor Only	1 per each 400 sq ft
	Kennel, Indoor-Outdoor	1 per each 400 sq ft of indoor space
	Lumber Yard	See Schedule C
	Office, Business or Professional	1 per each 300 sq ft (1 per 400, minimum of 3)
	Personal Services	1 per each 200 sq ft (1 per 200)
	Produce Stand	See Schedule C
	Recreation Facilities, Commercial and Neighborhood	1 per each 250 sq ft
	Restaurant with or without Drive-in	1 per each 150 sq ft or 1 per every 3 persons of maximum fire-rated capacity, whichever is greater (1 per 100, minimum of 3)
	Retail Sales and Service	1 per each 200 sq ft
	School, Trade or Professional	See Schedule C
	Shopping center	1 per each 200 sq ft
	Theater	1 per every 4 seats (1 per 5 seats)
	Vehicle Repair, Heavy	1 per 200 sq ft + 4 per bay
	Veterinary Hospital-Office with Indoor Kennel	1 per each 300 sq ft (1 per 400)
	Veterinary Hospital-Office with Outdoor Kennel	1 per each 300 sq ft (1 per 400)
	Warehouse Retail	1 per each 200 sq ft
Industrial Service	General Industrial Service	See Schedule B
	Research Lab	1 per each 500 sq ft

Off-Street Parking Schedule A		
Use Category	Use Type	Number of Spaces
Manufacturing and Production	Manufacturing, Light	1 per 2 employees + trucks
	Manufacturing, Heavy	See Schedule B
Warehouse and Freight	Mini-storage	1 per every 5 storage bays
	Outdoor Storage	See Schedule B
	Warehousing and Distribution Establishment	See Schedule B
	Wholesale Establishment	See Schedule C

9.4.1 Schedule B. Uses subject to off-street parking schedule “B” shall provide the following minimum number of off-street parking spaces:

Offstreet Parking Schedule B	
Activity	Number of spaces required
Office or administrative area	1 per 300 sq ft
Indoor sales area	1 per 200 sq ft
Outdoor sales or display area (3,000 sq ft or less)	1 per 750 sq ft
Outdoor sales or display area (over 3,000 sq ft)	1 per 1,000 sq ft
Indoor storage/warehousing/vehicle service/manufacturing area:	
Less than 3,000 sq ft	1 per 250 sq ft
3,001 - 5,000 sq ft	1 per 500 sq ft
5,001 - 10,000 sq ft	1 per 750 sq ft
10,001 + sq ft	1 per 1,250 sq ft

9.4.2 Schedule C. Uses that reference Schedule “C” have widely varying parking and loading demand characteristics, making it impossible to specify a single off-street parking or loading standard. Upon receiving a development application for a use subject to “Schedule C” standards, the Administrator shall apply the off-street parking and loading standard specified for the listed use that is deemed most similar to the proposed use or establish minimum off-street parking requirements on the basis of a parking and loading study prepared by the applicant. Such a study shall include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the Administrator, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study shall document the source of data used to develop the recommendations.

9.5 Parking Alternatives

9.5.1 Reduction in Number of Required Off-Street Parking Spaces

a. As part of its review and approval of a site plan for a development, the Planning Commission may allow a reduction of up to 25% in the number of designated parking spaces upon finding that such reduced number will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated, the times of day when the use generates the most trips, the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments, and the availability of nearby on-street spaces or public parking facilities

b. In cases where no site plan is required, or where a site plan previously approved remains in effect for the property, the Planning Commission may grant a waiver from the requirements of Schedule A and Schedule B only upon finding that the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments, and the availability of nearby on-street spaces or public parking facilities, in addition to finding that the variance meets the general standards for variances set forth in Article III.

9.6 Joint Use of Parking Facilities By Non-Residential Uses

9.6.1 All parking spaces required herein shall be located on the same lot with the building or use served, except that, where an increase in the number of spaces is required by a change or enlargement of use or where such spaces are provided collectively or used jointly by two or more buildings or establishments, the required spaces may be located and maintained at a distance not to exceed three hundred feet from an institutional building or some other non-residential building served.

9.6.2 Up to 50% of the parking spaces required for theaters, public auditoriums, dance halls and nightclubs and up to 100% of the parking spaces required for a church auditorium may be provided and used jointly by banks, offices, retail stores, repair shops, service establishments and similar uses not normally open, used or operated during the same hours as theaters, public auditoriums, bowling alleys, dance halls and nightclubs, and up to 100% of parking spaces required for schools may be provided and used jointly by a church auditorium; provided, however, that written agreement thereto is properly executed and recorded as specified below.

9.6.3 In any case where the required parking spaces are not located on the same lot with the building or use served or where such spaces are collectively or jointly provided and used, such parking space shall be established by a recorded covenant or agreement as parking space to be used in conjunction with the principal use and shall be reserved as such through an encumbrance of the title of the property to be designated as required parking space, such encumbrance on the title of the property to be valid for the total period the use or uses for which the parking is needed are in existence. A certificate of recording of the covenant or agreement shall be furnished to the Administrator.

9.8 Parking Structures. The off-street parking required by or provided under this section may be located in a parking structure, whether on the same or on a different lot than the uses which it serves. Ground floor parking provided in a parking structure shall be screened, insofar as practicable, from surrounding uses and from public view. In addition, for uses located on the same lot as the structure, the conditions required under 9.6 above shall apply. For uses located on a different lot as the structure, the conditions required under 9.7 Above shall apply.

9.9 Other Eligible Alternatives. The Planning Commission may approve any other alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates to the satisfaction of the Commission that the proposed plan will protect surrounding neighborhoods, maintain traffic circulation patterns, and promote quality urban design to at least the same extent as would strict compliance with otherwise applicable off-street parking standards.

9.10 Design Standards for Parking

9.10.1 Minimum area. For the purpose of these regulations, an "off-street parking space" is an all-weather, surfaced area, not in a street or alley, having an area of not less than 180 square feet, exclusive of driveways, permanently reserved for the temporary storage of one vehicle and connected with a street or alley by a paved driveway which affords ingress and egress for an automobile without requiring another automobile to be moved.

9.10.2 Drainage and maintenance. Off-street parking facilities shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys. Off-street parking areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and shall not be used for the sale, repair or dismantling or servicing of any vehicles, equipment, materials or supplies.

9.10.3 Separation from walkways and streets. Off-street parking spaces shall be separated from walkways, sidewalks, streets or alleys by a wall, fence, curbing or other approved protective device or by distance so that vehicles cannot protrude over publicly owned areas.

9.10.4 Entrances and exits. The location and design of entrances and exits shall be in accord with the applicable requirements of Town traffic regulations and standards. Landscaping, curbing or approved barriers shall be provided along lot boundaries to control the entrance and exit of vehicles or pedestrians.

9.10.5 Interior drives. Interior drives shall be of adequate width to serve the particular design arrangement of parking spaces.

9.10.6 Marking. Parking spaces in lots of more than five spaces shall be marked by painted lines or curbs or other means to indicate individual spaces. Signs or markers shall be used as necessary to ensure efficient traffic operation of the lot. Signs, markers and pavement markings shall conform with the standards approved by the Maryland State Highway Administration.

9.10.7 Lighting. Adequate lighting shall be provided if off-street parking spaces are to be used at night. The lighting shall be arranged and installed to eliminate glare on property in any residential district.

9.10.8 Screening. When off-street parking areas for five or more automobiles are located next to a residential district or to any lot upon which there is a dwelling as a permitted use under these regulations and where such parking areas are not entirely, visually screened from such lot by an intervening building or structure, there shall be provided a continuous visual screen with a minimum height of six feet. Such screen may consist of a compact evergreen hedge or foliage screening or a wall or fence.

9.10.9 Landscaping. In off-street parking areas of five or more spaces, the Planning Commission shall require landscaping.

9.11 Special District Requirements

9.11.1 Parking in the HD District

a. In the HD District, except as provided in subsection 9.11.1 b., it shall be unlawful to park, store, maintain or repair on any lot in the Historic District any of the following:

- (1) Any vehicle having a manufacturer's rated capacity in excess of one ton or a gross vehicle weight in excess of 10,000 pounds;
- (2) Any vehicle having more than 2 axles; or any utility trailer in excess of 8 feet in length.

b. Section 9.11.1 a. shall not apply to the following vehicles;

- (1) Vehicles being used for public safety, protection or other emergency or public utility;

- (2) Any vehicle not exceeding 16,000 pounds in gross vehicle weight provided that such vehicle is owned and operated by a business properly operating within the District and provides services to that business.
- (3) One trailer as defined in the Code of New Market, Article III, Misdemeanors, Section 8, Trailers shall not exceed 20 feet in length.

9.11.2 Parking in the Residential Districts

- a. In any Residential District, except as provided in subsection 9.11.2 b., it shall be unlawful to park, store, maintain or repair on any lot any of the following:
 - (1) Any vehicle having a manufacturer's rated capacity in excess of one ton or a gross vehicle weight in excess of 10,000 pounds;
 - (2) Any vehicle having more than 2 axles;
 - (3) Any trailer used for commercial purposes.
- b. Section 9.11.2 a. shall not apply to the following vehicles:
 - (1) Vehicles being used for public safety, protection or other emergency;
 - (2) One recreational vehicle or one boat recreational trailer none of which to exceed 20 feet in length;
 - (3) Any commercial vehicle and/or trailer parked, stored, or maintained on a lot upon which a business is properly operating at the time of the enactment of this Ordinance; provided however, that if such business ceases to operate for a period of 12 consecutive months, this exemption shall lapse;
 - (4) Any vehicle not exceeding 16,000 pounds in gross vehicle weight provided that such vehicle is owned and operated by a business properly operating within the district and provides services to that business.

9.11.3 Parking spaces may be provided in side and rear yards in the R and MRS Districts and in any yard in MC, and MCI Districts except that in the MC, and MCI Districts, no parking space may be provided in a front yard unless the building is set back at least 50 feet from the street.

9.11.4 Parking space for any use specifically permitted in an R District may be provided on a lot adjoining that use provided there is compliance with all requirements.

9.11.5 Existing buildings not complying with off-street parking requirements may be remodeled, repaired, and structurally altered, but any structural enlargement, except as otherwise exempted above, must provide the required parking spaces for said enlargement.

9.12 Off-Street Loading Regulations

9.12.1 Applicability. Except as otherwise provided in this Ordinance, when any building or structure is hereafter erected or structurally altered to the extent of increasing the floor area by twenty-five percent (25%) or more or any building is hereafter converted for the uses listed in Off-Street Loading Schedule D and when such buildings contain the floor areas specified in such table, accessory, off-street loading spaces shall be as required in such table or as required in subsequent sections of this Ordinance.

Off-Street Loading Schedule D	
Gross Floor Area in square feet	Minimum Number of Loading Berths
Less than 40,000	1
40,000-100,000	2
100,000-160,000	3
160,000-240,000	4
240,000-320,000	5
320,000-400,000	6
Above 400,000	1 per each 90,000 above 400,000 gsf of area

9.12.2 Buildings containing mixed uses. Where a building is used for more than one use or for different uses and where the floor area used for each use for which loading space is required is below the minimum for required loading spaces but the aggregate floor area used is greater than such minimum, then off-street loading space shall be provided as if the entire building were used for that use in the building for which the most spaces are required. In such cases, the Administrator may make reasonable requirements for the location of required loading spaces.

9.12.3 Design standards for Loading Spaces

- a. For the purpose of these regulations, a "loading space" is a space within the main building or on the same lot which provides for the standing, loading or unloading of trucks and has a minimum area of 540 square feet, minimum width of 12 feet, a minimum depth of 35 feet and a vertical clearance of at least 14.5 feet.
- b. Loading spaces for a funeral home may be reduced in size to 10 x 25 feet and the vertical clearance reduced to 8 feet.
- c. Off-street loading facilities shall be drained to eliminate standing water and prevent damage to abutting property and/or public streets and alleys and shall be surfaced with erosion-resistant material in accordance with applicable specifications. Off-street loading areas shall be maintained in a clean, orderly and dust-free condition at the expense of the owner or lessee and shall not be used for the repair, dismantling or servicing of any vehicles, equipment, materials or supplies.
- d. The location and design of entrances and exits shall be in accord with applicable requirements of traffic regulations and standards. Where the entrance or exit of a building is designed for truck loading and unloading, such entrance or exit shall be designed to provide at least one off-street loading space.
- e. To the maximum extent possible, all loading berths shall be located between the building and the rear lot line of the property, and/or shall be screened from the view of the street and adjacent properties. The details of such location and screening shall be reviewed and approved as part of the site and/or subdivision plan.

9.12.4 Waiver or Modification of Requirements. As part of the review and approval of a site plan, the Planning Commission may waive or modify the requirements of this section upon finding that the use does not require loading spaces of a number or size required by this section, given the particular operational characteristics of the use and its need or lack thereof for the delivery or shipments of goods to and from the site.

ARTICLE VI. STANDARDS FOR SUBDIVISIONS AND USES REQUIRING SITE PLANS

1.0 GENERAL SUBDIVISION REQUIREMENTS

1.1 Requirements for Preparation

1.1.1 In the preparation of a subdivision plat, the subdivider shall comply with the general principles of design and minimum requirements for the layout of subdivisions as set forth in this Ordinance and with the rules and regulations concerning required improvements as set forth in this Ordinance and in any standards and specifications for improvements as adopted by the Mayor and Council, and in every case, the preparation of such plat shall be in accordance with the procedures of this Ordinance.

1.1.2 Preliminary conference. Before undertaking the preparation of a subdivision plat, the subdivider shall have prepared a sketch of the property in question, being drawn to approximate scale and showing the boundaries, general topography, important physical and environmental features and other significant information, as well as the proposed scheme for development of the property, including the proposed street and lot locations, areas to be reserved for environmental conservation, public use, and proposed improvements. The subdivider shall then consult with the Planning Commission or its staff in order to ascertain the location of proposed major streets, highways, parks, playgrounds, school sites and other planned public improvements and to determine the zoning regulations and other requirements relating to, affecting or applying to the proposed subdivision. The subdivider shall also consult with the Town Engineer and the appropriate Health Officer on the proposed street layout and the proposed facilities for sanitary sewage disposal, storm drainage and water supply to serve the proposed subdivision. The subdivider shall also consult with the local fire department and police department as well as the local school and library system to determine any needs or limitations they may identify. The purpose of these consultations is to assist the subdivider by furnishing information and advice in order to expedite matters for the subdivider, save him unnecessary expense and promote the best coordination between the plans of the subdivider and those of the town.

1.2 Subdivider Must Prepare and Record Plat of Subdivision. From and after the adoption of these regulations, any owner or proprietor of any tract of land located in the territory to which these regulations may apply, who creates a subdivision, shall cause a plat of such subdivision to be made in accordance with the regulations set forth herein and in Sections 5.01 - 5.07 of Article 66B of the Annotated Code of Maryland, as amended. After having secured the approval thereof by the Planning Commission, the subdivider shall cause a copy of the same plat to be recorded in the office of the Clerk of the Court. Any subdivision or portion thereof which may be in process of development, but has not had a plat recorded at the time of adoption of these regulations, shall also be subject to the requirements and procedures contained herein.

1.3 Approval of Plat Required. No plat of any subdivision shall be recorded until it shall have been submitted to and approved by the Planning Commission as provided herein. The Planning Commission shall not approve said plat unless it is satisfied that the requirements of these regulations have been complied with.

1.4 Timing of Development. The Planning Commission reserves the right to determine the rate of development based upon the health, safety and welfare of the community, economic and other factors, and availability of water and sewer for development.

1.5 Annexation. Any subdivision having a part of its platted land outside the corporate limits cannot have that part approved by the Planning Commission of New Market unless that land is annexed by the Town.

1.6 Additions to Lots.

1.6.1 The transfer of land solely for the purpose of adding to adjacent holdings and/or creating a buildable lot shall not constitute a subdivision. When the owner of a lot or parcel wishes to add additional land to said lot or parcel the following requirements only need apply:

- a. Boundary survey of original parcel plus addition. Acreages and road access should also be shown.
- b. Signature of registered surveyor certifying it is an accurate survey.
- c. Note on plat stating the following: "Application is hereby made for your approval of the indicated transfer of adjacent land solely for adding to holdings and/or the creation of a buildable lot. Any future subdivision of this land or building development will be submitted in the regular manner for approval in accordance with the provisions of the appropriate Regulations".
- d. No transfer of land shall be approved if the original lot from which the transfer was made, causes said lot to be less than the minimum lot size for its zoning district.
- e. The Planning Commission Chairman shall be empowered to approve land transfers described in Section 1.6 and upon approval shall notify by letter the Clerk of the Frederick County Circuit Court to accept the deed of transfer.

1.7 Technical Advisory Committee. In order to assist developers in getting information concerning these regulations, the Planning Commission may organize a Technical Advisory Committee. The Committee will meet at intervals necessary to enable developers to conveniently contact all departments involved. The developer shall prepare a preliminary plat before meeting with the Committee.

2.0 PROCEDURES

2.1 General Requirements for Subdivisions. In planning and developing a subdivision the subdivider or his agent shall comply with the general principles of design and minimum requirements for the layout of subdivisions set forth in this Article and with the regulations concerning public improvements set forth in Section 5.0 of this Article of these regulations, and in every case he shall observe the procedures outlined in Section 2.0 this Article.

2.2 Submission of Preliminary Plat of Subdivision for Approval

2.2.1 The subdivider shall prepare a preliminary plat of the proposed subdivision conforming with the requirements set forth in Section 4.0 of this Article.

2.2.2 At least sixty (60) days prior to a regularly scheduled meeting of the Planning Commission, fifteen (15) black line or similar prints of the plat along with the appropriate fee shall be filed with the Planning Commission staff; however, if a State road is involved, two (2) additional prints shall be provided. Distribution shall be made to the appropriate agencies for their comments. A copy of the plat shall be retained in the file.

2.2.3 In case any part of the proposed subdivision is located within the jurisdiction of Frederick County and annexation of that part is proposed, an additional two (2) copies of the preliminary plat shall be filed.

2.2.4 The preliminary plat will be checked as to its conformity with the Comprehensive Plan(s), the Town Zoning Ordinance, and other applicable provisions, and the principles, standards, and requirements herein set forth. Copies will be distributed to any other County or State agencies who may be concerned with public improvements or health requirements.

2.2.5 At a regular Planning Commission meeting held not less than sixty days following the filing date the Planning Commission staff shall submit its findings and recommendations together with those of the other agencies to whom copies were distributed, and the Planning Commission shall approve or disapprove the preliminary plat, or may approve it subject to specific changes or modifications. Reasons for disapproval will be noted on the plat or by letter and shall be stated upon the records of the Planning Commission. No plat shall be approved that is in conflict with these subdivision regulations, the zoning ordinance or with any part of the officially adopted Comprehensive Development Plan.

2.2.6 Approval of a preliminary plat shall be valid for not more than one year unless extended in writing by the Planning Commission upon written request. Such extension will be granted if the Commission finds that neither plans for nor conditions in the neighborhood have changed substantially since the original approval. The Planning Commission may enter into an agreement with the developer for longer validity periods in the case of a planned unit development or where the Commission otherwise finds it advisable to do so in order to maintain the integrity of an overall plan.

2.3 Public Improvement Plans

2.3.1 Upon approval of the preliminary plat the subdivider shall prepare and submit to the Planning Commission plans for the installation of public improvements in accordance with the requirements of Section 3.0 of this Article. Such plans shall be sufficient to show the proposed location, size, type, grade, elevation, and other significant characteristics of each public improvement. All such public improvements shall be designed in compliance with and to the standards, plans, and specifications set forth in these regulations. Copies of such public improvement plans will be distributed by the Planning Commission to the appropriate county and state agencies for study and recommendations. Said recommendation shall be submitted to the Planning Commission which will then approve or disapprove the plans and notify the subdivider of its decision. Plans for the installation of public improvements need not be prepared at any one time to cover more than the portion of the subdivision which is to be included in a final plat.

2.4 Approval of Final Plat

2.4.1 Upon approval of plans for public improvements, the subdivider shall prepare a final plat for submission to the Planning Commission in accordance with the requirements specified in Section 5.0 of this Article of these regulations.

2.4.2 A final plat may include all of the property covered by the preliminary plat, or may be limited to any portion thereof that is intended to be developed as a first unit. Additional final plats may be submitted later, covering additional units of the property, provided that the preliminary plat is still valid or its approval has been extended and is still valid. Every final plat shall be substantially in accordance with the approved preliminary plat including such changes or additions as may have been required by the Commission as a condition to its approval. Any other deviations from the preliminary plat that were not approved by the Planning Commission must be submitted to it for its approval or disapproval. In this case, the subdivider shall submit a revised preliminary plat in accordance with procedures outlined in Section 1.0 and 2.0 of this Article.

2.4.3 The subdivider or his agent shall file with the Planning Commission at least two weeks prior to its regularly scheduled meeting, one mylar final plat and eight black line paper prints along with the appropriate fee.

2.4.4 The plat shall be checked by the Planning Commission staff for compliance with these regulations and with the conditions of the preliminary plat approval.

2.4.5 At a regular Planning Commission meeting held at least two weeks after the filing under 2.4.3 above, the Planning Commission staff shall submit its findings and recommendations. If it is found by the Planning Commission that the final plat is in conformance with the approved preliminary plat and all applicable regulations, it shall approve the plat and obtain the signature of the Planning Commission Chairman on the plat. In case of the disapproval of any plat the specific nonconformance causing same shall be stated upon the records of the Planning Commission. The subdivider shall be notified in writing of the decision of the Planning Commission.

2.5 Recording Final Plat

2.5.1 If approved, the subdivider shall then submit to the Planning Commission an appropriate fee as set forth in Section 9.0 of this Article for the printing, distribution and recording of the approved plat. The mylar copy will be retained in the Planning Commission's Office and eventually recorded on microfilm.

2.5.2 If not recorded within six (6) months, the above-mentioned approval of the final plat shall

expire. No zoning certificate or building permit will be issued on any lot until the requirements of this Article have been met.

2.6 Guarantee of Public Improvements

2.6.1 In the event public improvements are required to be installed in any subdivision, the Planning Commission shall withhold approval of final plats until receipt by the commission of proof that the following has been accomplished:

a. Acceptance by the Mayor and Town Council of one of the approved guarantees noted below. The guarantee shall become effective simultaneously with the recording of the final plat. Said guarantee shall be renewed annually until the improvements are completed and accepted by the Mayor and Town Council.

(1) Completion of public improvements in the area covered by the final plat.

(2) Sufficient funds placed in escrow with an escrow agent satisfactory to the Mayor and Town Council, with an agreement between the escrow agent and the Mayor and Town Council that the funds will be released from escrow in part from time to time as requested by the developer to pay invoices for work completed in the installation of the public improvements in the area covered by the final plat.

(3) An irrevocable letter of credit from a Maryland lending institution satisfactory to the Mayor and Town Council or any recognized lender satisfactory to the Mayor and Town Council, guaranteeing payment for the installation of the public improvements in the area covered by the final plat.

(4) A cash bond in an amount sufficient to cover the cost of the improvements in the area covered by the final plat.

b. Acceptance by the government agency as may from time to time have jurisdiction, of funds for the design and installation of sewer and water facilities. Said funds shall be sufficient to cover all costs as determined by the said agency or commission.

c. The guarantee for construction of improvements required by the State Highway Administration shall be approved by the State Highway Administration and such guarantee shall be sufficient for that purpose.

2.6.2 If not acted upon within six (6) months, the above-mentioned approval of the plat shall expire. No zoning certificate or building permit will be issued on any lot until the requirements of this Article have been met. It shall be the responsibility of the Planning Commission to determine the appropriate amount of guarantee to be offered for acceptance to the Mayor and Town Council after consultation with other appropriate agencies (provided, however, that the amount need not exceed the actual contract amount).

2.7 Sale of Lots and Houses. No lot or house shall be sold and no zoning certificate or building permit shall be issued until a final plat of the subdivision shall have been recorded in accordance with these regulations and the provisions of the State Code.

2.8 Public Release. Upon completion of the public improvements required in accordance with specifications in effect at the time the work is undertaken, the Town Council shall accept by duly executed deed the lands dedicated to public use and the improvements thereon.

2.9 Penalties. Any subdivider who violates this ordinance shall be subject to the penalties prescribed in Section 5.05 and 5.06 of Article 66B of the Annotated Code of Maryland, as amended.

2.10 Resolution of Dispute. The proper remedies for a party seeking resolution of a dispute concerning a decision involving a subdivision plat is mandamus or appropriate equitable relief.

3.0 PRINCIPLES AND STANDARDS OF SUBDIVISION DESIGN

In laying out a subdivision, the subdivider shall comply with the following general principles and requirements:

3.1 General

3.1.1 Conformance With Master Plans - The subdivision layout shall conform to the official County Master Highway Plan and the Comprehensive Plan and Development Ordinance of New Market.

3.1.2 Reservation of Right-of-Way

a. When it appears that a proposed subdivision includes any part of a proposed major road or street as designated in the Major Streets Plan of the Comprehensive Development Plan of New Market, the Planning Commission must notify the Town Council. The Town Council, within sixty (60) days thereafter, must either purchase, condemn or enter into an agreement with the developer concerning the right-of-way involved, otherwise the developer may proceed without regard to the Major Streets Plan except that rights-of-way for existing highways, roads, streets or alleys must be reserved and setback requirements for the same must be maintained in accordance with the Town Zoning Ordinance.

b. In any case where a new right-of-way is proposed or required that is not in a subdivision, the location of such right-of-way must be approved by the Planning Commission Staff. However, in this case, the subdivider need not submit engineering or design information other than the width and location of such right-of-way.

3.1.3 Improve Adverse Physical Conditions. A plat of a proposed subdivision located in an area having poor drainage or otherwise adverse physical conditions may be approved, provided the subdivider agrees to make such improvements as in the judgment of the Planning Commission render the subdivision substantially safe and otherwise acceptable for residential use, and furnishes a performance bond or gives other guarantee satisfactory to the Planning Commission and Town Council, sufficient to cover the cost of such improvements as estimated by the officials having jurisdiction.

a. Wetlands Regulations

(1) On all preliminary and final subdivision plans, site plans and improvement plans, the plans shall show any wetlands present on the site.

(2) For initial indication of the presence of wetlands, the developer shall consult one or more of the following:

(i) Soils classified as hydric by Frederick County or the U.S. Soil Conservation Service;

(ii) Mapped wetlands on the National Wetlands Inventory;

(iii) Mapped wetlands on any maps which may hereafter be prepared by the State of Maryland or Frederick County; or

(iv) The presence of wetland vegetation and/or wet soils as delineated by a qualified individual, as classified by the Maryland Department of Natural Resources' Field Guide to Nontidal Wetland Identification.

(3) If any of the above indicates the presence of wetlands, it shall be the responsibility of the developer to have the wetlands delineated by a qualified individual satisfactory to the Planning Commission.

(4) A protective buffer area of 25 feet from the upland limits of any wetland shall be shown on any preliminary or final subdivision plan, site plan or improvement plan.

(5) No grading, filling, construction or other alteration shall take place within a delineated wetland or buffer area except for construction of roads, utilities or facilities for stormwater management when no feasible alternative location exists outside the wetlands. The Town may require mitigation or replication of the affected wetlands.

(6) When any construction or grading is proposed within a delineated wetlands or buffer area, all required permits shall be obtained from the Army Corps of Engineers, Maryland Division of Natural Resources and/or such other agencies as may be authorized to regulate activity in wetlands. Application shall be made to the appropriate agencies at the time of submission of the preliminary plan. Any required wetlands permits shall be obtained prior to the recording of lots.

b. Floodplain Regulations

- (1) On all preliminary and final subdivision plans, site plans and improvement plans, the plans shall show all annual floodplain as determined by floodplain soils and one hundred (100) year storm or less floodplain as determined by the engineering standards set by the Maryland Water Resources Administration.
- (2) A protective buffer area of 25 feet from the floodplain shall be shown on all plans.
- (3) No grading, filling or construction shall occur within the annual, or one hundred year or less floodplain and the buffer area so as to increase the area of impervious surface and the rate of water runoff.
- (4) Lots lying entirely within a floodplain may not be created.
- (5) The floodplain may be included within the boundary of the lot if the area of the lot is expanded by an amount sufficient to allow construction of a house, accessory structures, well, septic (if applicable) and drainage field (if applicable).

3.2 Road Design Standards

3.2.1 The arrangement, character, extent, width, grade, and location of all roads shall conform to a plan for the most safe and advantageous development of adjoining areas and the entire neighborhood.

3.2.2 All roads shall be considered in their relation to:

- a. Existing and planned streets
- b. Topographical conditions
- c. Public conveniences and safety
- d. Uses of the land

3.2.3 Where such is not shown on the Master Plan, the arrangement of streets in a subdivision shall either:

- a. Provide for the continuation or appropriate projection of existing streets; or
- b. Conform to a plan for the neighborhood approved or adopted by the Planning Commission to meet a particular situation where topographical or other conditions make continuance or conformance to existing streets impracticable.

3.2.4 Where a subdivision abuts or contains an existing or proposed principal highway or other disadvantageous use, the Commission may impose requirements concerning streets, access roads, service roads, reverse frontage lots, or any other such requirements as may be necessary to insure the character of the neighborhood.

3.2.5 Alignment

- a. Where appropriate to design, proposed roads shall be continuous and in alignment with existing, planned, or platted roads with which they are to connect.
- b. Road jogs with center line offsets of less than 125 feet shall be avoided.
- c. When connecting road lines deflect by more than 10 degrees and not more than 45 degrees, they shall be connected by a curve with a radius of not less than 100 feet for local streets and 300 feet for collector streets.
- d. The radii of curves on the center lines shall not be less than the following:
 - (1) Collector streets: 200 feet
 - (2) Local Access streets and Service roads: 200 feet
- e. Between reverse curves on collector and local access streets there shall be a tangent at least 100 feet long.
- f. Minimum sight distances shall be 150 feet on local streets and 200 feet on collectors.

3.2.6 Alleys. Alleys shall be included in all commercial and industrial areas if no other provisions are made for adequate access to parking and loading spaces. Alleys will not be approved in residential districts. In the absence of alleys, easements will be required for utility lines or drainage.

3.2.7 Cul-de-sac. Cul-de-sac type streets shall be no longer than six hundred (600) feet, unless the Planning Commission feels that due to topography a longer cul-de-sac would be appropriate. All

cul-de-sacs shall be provided with a turnaround at the closed end having a minimum right-Of-way radius of fifty (50) feet and a minimum roadway width of forty (40) feet to the exterior curb line.

3.2.8 Grades

a. Grades will not be less than 1/2 of one percent in order to promote proper drainage. Unless approved by the Planning Commission grades shall not exceed.

- (1) Local access streets, service roads and alleys: 10%
- (2) Collector Streets: 7%
- (3) Minor arterial street 7%
- (4) Principal highway 5%
- (5) Crosswalks: 10% (steps shall be used for steeper ascent)

b. All changes in grade shall be connected by vertical curves of sufficient radius to provide smooth transition and proper sight distances.

c. Grades at the point of intersection of two roads shall be three (3) percent or less for a distance of thirty (30) feet in all directions from the point of intersection.

3.2.9 Half-Width Streets. Subdivisions adjoining dedicated, reserved or platted and recorded half-width streets or alleys shall dedicate or reserve an additional right-of-way width sufficient to bring the overall street to the width requirements of this ordinance.

3.2.10 Spacing. Streets shall be spaced to allow for blocks meeting the dimensional requirements specified in Section 3.3 of this Article. The number of intersections along principal highways, minor arterial streets and parkways shall be held to a minimum, normally spaced as indicated in K following.

3.2.11 Minimize Interference With Through Traffic

a. Vehicular access to any individual lots which abut Interstate Highways, County Major and Minor Arterial Streets and Parkways as shown on the Master Highway Plan and the Town Major Streets Plan shall be prohibited by a parkway easement between the lots, and aforesaid roads, covered by deed restrictions.

b. Land abutting the Interstate Highways, County Major and Minor Arterial Streets and Parkways as designated by the County Master Highway Plan and the Town Major Streets Plan shall be platted with the view of making the lots, fit for residential use, desirable for such use by cushioning the impact of heavy traffic upon them; also minimizing the interference with traffic on such highways and roads as well as accident hazards from all kinds of subdivisions. One or more of the following ways or other comparable method(s) shall be used to accomplish this:

- (1) By providing a service road parallel to, but separated from the principal highway, minor arterial road or parkway. The service road or any other entrance shall connect the principal highway, minor arterial road or parkway at infrequent intervals.
- (2) By placing the lots so that they front on and have access from a parallel collector road or local access street.
- (3) By arranging the lots around a series of loop streets or dead-end streets stemming from a collector street. Such loops or dead-ends shall be one lot depth away from the principal highway, minor arterial road or parkway.

c. The choice between the foregoing or other methods for accomplishing the desired purpose in a specific case must necessarily be made in consideration of topography and other physical conditions, the character of existing and contemplated developments, and other pertinent factors. In all cases the minimum distance between road connections shall generally conform to the following distances:

State Highways	Variable
County Major Arterial	500 feet
County Minor Arterial	400 feet
Roads within the corporate limits	300 feet

3.2.12 Outlots. Outlots shall be provided where necessary for access to adjoining properties or to provide an appropriate future road pattern.

3.2.13 Private Streets. Private streets will not be approved. This condition will be noted on the final plat, however, common driveways leading to individual lots or driveways leading to common

parking areas such as in commercial, industrial, townhouse or multi-family residential projects shall be permitted subject to approval, but not accepted for public maintenance.

3.2.14 Road Names. Road names shall not duplicate or closely approximate existing road names in the County or Town except for extension of existing roads.

3.2.15 Curbs, Gutters and Sidewalks. Curbs, gutters and sidewalks shall be provided in all new residential streets and in front of all new nonresidential lots. The face of the curb shall be located on the line of the outside edge of the required pavement. The construction of these facilities shall be in conformity with the specifications and standards adopted by the Town or County. Sidewalks may be located in easements or common property owned and maintained by a Home Owners Association on the interior of a block (s). Where this is the case, they need not be located alongside a street.

3.2.16 Road Construction. All roads shall be of closed section construction. Specifications and standards for paving shall be in conformity with those adopted by the Town or County.

3.2.17 Right-of-Way (ROW); Pavement Width. Minimum widths for the right-of-way of streets, alleys and easements shall be as follows (extra widths may be required where necessary):

	ROW (feet)	Pavement (feet)
Major Arterial Streets	100-500	Two 32' lanes separated by a 14' concrete island.
Minor Arterial Streets	80	40
Collector Streets	60	34* or 40**
Local Access Streets		
SF Detached & Two-Fam	50	32*
Townhouse see 3.2.18		
Multi-family see 3.2.18		
Commercial	50	40
Industrial	50	40
Service Roads	40	24
Cul-de-sacs	50 radius	40 radius
Alleys	20	--
Crosswalks	10 see 3.3.4	
Easements (utility)	6	
Easements (drainage)	20 min.	See 3.4.3

3.2.18 Right-of-Way (ROW); Pavement Widths for Townhouse and Multi-family Development

	Public Street	Private Street*
ROW**	40 feet	None
Pavement	24 feet	24 feet
Curb (6")	Yes	Yes
Sidewalk (adjacent to curb)	Yes	Variable

*Private street refers to those streets serving rental projects or serving as parking bays. It is not a Town policy to maintain said streets.

**An easement or additional right-of-way may be required in addition for the placement of public utilities.

3.2.19 Intersections

a. Road intersections shall be as nearly at right angles as is possible and in no case shall be less than 60 degrees nor greater than 120 degrees (requirements for intersection with State Highways shall not be less than 70 degrees or greater than 110 degrees). The block corner of road intersections with Town roads, County Roads, or State Highways shall be rounded on the right-of-way line with a curve having a radius of not less than 25 feet; at local access street intersections the minimum radius shall be not less than 20 feet; except that in a business district a chord may be substituted in lieu of the arc.

b. Curbs at road intersections shall be rounded off concentrically with the property line. At road intersections with State Highways the road curb or edges of paving shall be rounded off by an arc, the minimum radius of which shall be 30 feet. A road intersection

- with the State Highway will be subject to the rules and regulations of the Maryland State Highway Administration.
- c. Intersections of more than two (2) roads at a point shall be prohibited.

3.3 Block Design Standards

- 3.3.1 The lengths, widths, and shapes of blocks shall be determined with regard to:
 - a. Provision of adequate building sites suitable to the special needs of the type of use contemplated.
 - b. Needs for convenient access, circulation, control and safety of road traffic.
 - c. Limitation and opportunities of topography.
- 3.3.2 Block lengths shall not exceed 1,800 feet, or be less than 300 feet.
- 3.3.3 Business and industrial blocks may be specially designed to serve their particular purposes, which designs shall be subject to approval by the Planning Commission.
- 3.3.4 Crosswalks - In any block more than 1,000 feet long, a cross-walk may be required to improve access to a school, church, playground, bus stop, or other pedestrian objective.

3.4 Lot Design Standards

- 3.4.1 Size and Shape
 - a. Lots shall be of such size, shape, and orientation as will be appropriate for the location, and for the type of development contemplated.
 - b. Excessive depth in relation to width shall be avoided. A proportion of two and one-half (210 in depth to one (1) in width shall normally be considered as a desirable maximum.
 - c. Residential lots shall comply with at least the minimum size area requirements of the Zoning District in which located, unless otherwise approved by the Planning Commission.
 - d. Corner lots shall have widths sufficient to meet the yard requirements of such lots in the Land Development Ordinance.
 - e. All lot measurements shall be net measurements, not including any part of any street, alley, or crosswalkway. Easements, however, shall be regarded as within the lots.
 - f. Where unusual soil conditions or other physical factors exist which may impair the health and safety of the residents of the neighborhood in which a subdivision may be located, the Planning Commission may increase lot area requirements.
- 3.4.2 Access. Every lot shall abut on a public road. However, this requirement may be waived under Section 7.3 of this Article. Double frontage lots (extending through the block), should be avoided, unless such are desirable for the proper development of the tract because of topography or other planning considerations.
- 3.4.3 Building Setback Lines. Building setback lines shall be shown on the plat, as required in each case by the applicable zoning regulations. The locations of these lines shall be clearly indicated by dimensions.

3.5 Easements

- 3.5.1 Easements shall be provided for utilities along all lot lines other than those abutting a street right-of-way line and shall be centered on rear and side lot lines. Such easements shall be designed to provide continuity from block to block.
- 3.5.2 An easement running along the lot line shall be a minimum of 6 feet on each side of the line.
- 3.5.3 Where a subdivision is traversed or borders a stream or water course, there shall be provided a storm water easement or drainage right-of-way not less than twenty (20) feet wide dedicated to the Town of New Market.

3.6 Large Lot Subdivisions. Whenever the area is divided into lots larger than ordinarily used in the area for building purposes, and there is reason to believe that such lots will eventually be re-subdivided into smaller building lots, consideration shall be given to the road and lot arrangement of the original subdivision so that additional roads can be opened which will permit a logical arrangement of smaller lots.

Easements or deeds providing for the present or future opening and extension of such roads may, at the discretion of the Planning Commission, be made a condition of the approval of the plat.

3.7 Public Sites and Open Spaces. Where a proposed park, playground, school or other public use shown on the Comprehensive Plan for New Market is located in whole or in part in a subdivision, such sites shall be indicated on the subdivision plat. School, park and other public sites are to be reserved and negotiated within one (1) year of the recording date of the subdivision.

4.0 THE PRELIMINARY PLAT

The preliminary plat of the proposed subdivision shall comply with the following requirements and contain the following information:

4.1 General Style and Form

4.1.1 Provide Information. It shall provide all the pertinent information as to existing site conditions, property ownership, and similar pertinent data that may be necessary for the Planning Commission to properly consider the proposed subdivision. This information shall be accurate and reliable.

4.1.2 Show Plan of Development. It shall show the general plan of ultimate development for the property, covering the entire tract of land or so much of it as may be considered to be necessary for an adequate consideration of the part to be subdivided. This information shall be drawn to scale.

4.1.3 Drawing Material. It may be drawn in pencil or ink, on a reproducible material, and shall be at a scale no smaller than one inch per 100 feet.

4.1.4 Include Key Map. It shall include a small scale key map showing the location of the property in the community and its relation to other known subdivisions, roads, streams, etc.

4.1.5 Title Information.

- a. Proposed subdivision name, which shall not duplicate nor closely approximate the name of any other subdivision within Frederick County.
- b. Names, addresses and signatures of Owner, Subdivider or Developer, and the Designer, Surveyor, or Engineer.
- c. Description of subdivision location by road, tract, political subdivision, etc.
- d. Scale, north point, and date.

4.2 Information As To Existing Physical Conditions

4.2.1 Boundaries. Boundaries of the land being subdivided in heavy outline, and the acreage therein.

4.2.2 Topography. Topographic contours at five (5) foot intervals. Contours shall extend one hundred (100) feet beyond the subdivision boundary except across a public road bounding the subdivision.

4.2.3 Physical Features. All water courses, wooded areas, building, transmission lines, pipe lines, other utilities, bridges, and any other significant physical items, with the sizes and grades of any water and/or sewer lines.

4.2.4 Streets and Roads. Locations, widths, and names of all existing roads, streets, alleys, or other public ways within or adjoining the subdivision or intersecting any street that bounds it, including those recorded but unimproved (shown by dotted lines); parks, and other public spaces; subdivisions, lots, and property lines; corporate lines; and the locations and outlines of permanent building(s).

4.3 Information As To Proposed Development

4.3.1 Street Pattern. Layout, widths, and center lines of proposed roads, streets, alleys, crosswalks, and easements.

4.3.2 Lots. Layout, numbering, and dimensions of proposed lots or parcels.

- 4.3.3 Open Spaces. Parcels of land intended to be conveyed or temporarily reserved for public use or for the joint use of property owners, with an explanation of the provisions or conditions of such conveyance or reservation and the proposed arrangements for ownership and maintenance.
- 4.3.4 Street Grades. Tentative grades on each street.
- 4.3.5 Utilities. Locations for utilities and drainage facilities with six (6) foot easements for same on each side of rear and side lot lines.
- 4.3.6 Building Setback. Proposed building setback lines along all roads and streets, with the amount of setback indicated.
- 4.3.7 Proposed Zoning Change. Proposed uses of property and any proposed zoning changes.
- 4.3.8 Description of Public Improvements. General description of roads and other public improvements proposed to be installed in accordance with the provisions of Article VIII. Detailed plans for these not be prepared until after approval of the preliminary plat.

5.0 PUBLIC IMPROVEMENTS

5.1 Public Improvements Required. The developer shall provide public improvements and services conforming with these standards and specifications, and any other requirements which may be adopted by the Town of New Market, or by other governmental agencies having jurisdiction over each facility, as stipulated below. Nothing, however, shall be construed as prohibiting a subdivider from installing public improvements of a higher type than the minimum required herein.

5.2 Minimum Requirements

5.2.1 General

- a. The developer shall provide curb and gutter along all new roads.
- b. The developer shall provide all storm drains necessary to give adequate drainage within the subdivision.
- c. All water and sewer lines in the development shall be installed under the authority of and according to the specifications of the governmental agency having jurisdiction. The cost of these improvements shall be born by the developer in accordance with said agency's policy. All taps shall be made by said agency and the appropriate tap fees shall be imposed.
- d. All engineering services necessary for the installation of roads, curb and gutter, or other improvements (excluding water and sewer) shall be provided by the developer with the approval of the town.
- e. All new roads shall be graded and drained, base material applied, curb and gutter constructed, surface treatment applied and utilities installed at the expense of or by the developer, all in accordance with the standards of design and construction adopted by the Town of New Market. Existing alleys and streets, within a proposed subdivision, that do not meet these specifications as to width or construction shall be brought up to standards at the expense of or by the developer when development takes place within the proposed subdivision.

5.2.2 Water Facilities

- a. All requests for wells and plans showing the location thereof shall be submitted to the Frederick County Health Department and appropriate state agencies at least sixty (60) days prior to a regularly scheduled monthly Planning Commission meeting at which the subdivision request is to be heard. In no case shall a multi-family or townhouse development be approved on individual wells.
- b Sewer Facilities - All development shall be provided with a complete sanitary sewer system connected to the disposal plant for the Town of New Market. It shall be constructed to meet the standards and requirements of that system and shall become a part thereof. All plans shall be submitted to the governmental agency having jurisdiction at least sixty (60) days prior to the regularly scheduled monthly Planning Commission meeting at which the subdivision request is to be heard. A recommendation shall be made to the Planning Commission in writing by the agency having jurisdiction.

5.2.3 Drainage. Every subdivision shall be provided with storm drains, culverts, drainageways, or other works adequate to collect and dispose of all water originating on or flowing across the property, without inundating or damaging roads, lots or other properties. The construction of these facilities shall be in conformity with the standards and specifications adopted by the County. An Engineer shall review the plans of these facilities and give his recommendations to the Planning Commission.

5.2.4 Topsoil. Topsoil shall not be removed from residential lots or used as spoil, but shall be redistributed to its former depth and in all cases, good soil conservation practices shall be used to prevent soil erosion and siltation during and after subdivision development.

5.2.5 Trees. Tree cover shall not be removed from subdivided land except in areas where structures are planned or roads are platted.

5.2.6 Street Signs. A name sign of an approved design shall be erected at each new road intersection.

5.2.7 Monuments and Pipes

a. Permanent monuments shall be placed, as required for markers in Article 21, Section 3-108 of the Annotated Code of Maryland.

b. Iron marker pipes shall be set along the property lines of all roads at points of intersection, curvature or tangency, and at such points along the subdivision boundaries not already marked by monuments.

c. After grading is completed, the subdivider shall verify that the monuments and/or pipes are at their proper locations.

5.2.8 Street Lighting. Appropriate street lighting, approved by the town, shall be installed at the expense of the developer.

5.2.9 Underground Utilities

a. The installation of underground utilities shall be governed by the rules and regulations of the Maryland Public Service Commission adopted November 1, 1968 and as amended from time to time.

b. Before a building permit will be issued, the Zoning Administrator shall be in receipt of a letter from the appropriate utility companies stating that said companies have received from the developer the necessary guarantees for placing the utilities underground as required by the Public Service Commission.

5.2.10 Other Facilities. If other facilities are contemplated, easements and lands devoted to such uses shall be clearly indicated. Plans for such facilities shall be checked and recommendations given by the appropriate agencies.

5.3 Public Improvement Plans. Plans for the foregoing public improvements shall be prepared by a registered professional engineer for review by the appropriate public authorities, as required in Section 2.0 of this Article prior to construction. Such plans shall be sufficient to show the proposed location, size, type, grade, and design features of each facility, including the following:

5.3.1 Profiles. Profile of each road center line, with grades (including projections beyond the subdivision boundaries where significant), and showing water and sewer lines, manholes, culverts, streams, etc. Scale: not smaller than 1 inch to 50 feet horizontal, 1 inch to 5 feet vertical.

5.3.2 Cross-Sections. Typical street cross-sections for all roads at a scale not smaller than 1 inch to 5 feet, showing width of roadway, type of paving, locations and widths of curbs, sidewalks, trees, utilities, etc. Where considerable cuts or fills are required, special cross-sections shall be shown on the plan. A grading plan showing existing and proposed contours may be furnished in lieu of special cross-sections.

5.3.3 Sanitary and Storm Drains. Location plans and profiles for proposed sanitary and storm sewers or drains, with grades and pipe sizes indicated.

5.3.4 Water System. Location plan of proposed water distribution system showing pipe sizes and locations for valves and fire hydrants.

5.4 Inspection and Acceptance

5.4.1 All construction work on improvements required herein shall be inspected during and upon completion of construction. Improvements to be accepted by the Town shall be inspected by an authorized engineering representative of the Town. All other improvements will be subject to inspection by the appropriate agency responsible for their acceptance.

5.4.2 When construction work is complete the developer shall file a written request for final inspection with the Town Council and its authorized engineering representative. Upon completing the final inspection, the said engineering representative shall recommend acceptance of said improvements to the Town Council, in writing, if such construction is found to be in accordance with the approved plan. If the construction is not found to be in accordance with the approved plan, the engineering representative shall recommend to the Town Council, in writing, that they not accept said improvements. If final inspection and recommendation is not made within sixty (60) days after the written request for inspection has been filed by the developer, the said improvements shall be deemed approved by default and a request for acceptance may be sent to the Town Council. The Town Council shall accept said public improvements by duly executed deed within sixty (60) days of the receipt of the recommendation or request for acceptance. Failure to do so shall be deemed acceptance by default and a duly executed deed shall be provided upon demand.

5.4.3 Costs of on site inspection, and/or review of feasibility or construction plans shall be born by the developer. Said costs shall be paid prior to the issuance of a zoning certificate or building permit.

6.0 THE FINAL PLAT

The Final Plat of the subdivision shall comply with the following requirements and contain the following information:

6.1 General Style and Form

6.1.1 Drawing. It shall be legibly and accurately drawn on tracing linen or mylar sheets no larger than 20" x 24" in size, and at a scale of one inch to fifty (50) feet, or one inch to one hundred (100) feet, depending upon the size and nature of the subdivision. If more space is needed, additional sheets shall be used.

6.1.2 Meet Platting Requirements - It shall conform in all respects to the requirements of Article 21, Section 3-108, of the Annotated Code of Maryland, which relates to the making, filing, and recording of plats. Among other things, the Section cited above, requires that plats for recording must be surveyed and certified by a registered surveyor.

6.1.3 Title Information

- a. Subdivision name.
- b. Location by election district, city, county and state.
- c. Names and addresses of the owners of record, the subdivider, and the engineer or surveyor.
- d. Scale, date, and north point.
- e. A map to scale showing location in the Town of New Market.

6.2 Graphic Information

6.2.1 Boundaries. Exact boundaries of the area included within the subdivision with dimensions to hundredths of a foot and bearings to half minutes. These boundaries shall be determined by an accurate survey in the field, which shall be balanced and closed with an error of closure not to exceed one in 5,000.

6.2.2 Bearings and Distances. Bearings and distances to the nearest recorded property corners or other monuments which shall be located or accurately described on the plat.

6.2.3 Monuments. The accurate locations and descriptions of all permanent monuments. Where

applicable and feasible the coordinates of all permanent markers or monuments should be based on the Maryland Coordinate System (Lambert Conformal Conic Projection, adopted by Act of General Assembly 1939, Chapter 628).

6.2.4 Adjoining Owners. Names and locations of adjoining subdivisions and the locations and ownership of adjoining unsplit property.

6.2.5 Adjoining Roads. Exact locations, width, and name of each existing or recorded road adjoining or intersecting the boundaries of the tract.

6.2.6 Survey Data. The exact location and width of every road, easement, or other public or private way within the tract, with the length and bearing of every tangent, length of arc(s), radii, internal angles, points of curvature, and any other necessary engineering data; the names of such ways, the purpose of easements or other ways and accurate location of every lot line with its dimension to hundredths of a foot and bearings to minutes.

6.2.7 Road Names. A name must be given to all new roads according to the requirements in Section 3.0 of this Article.

6.2.8 Setback Lines. Minimum building setback lines on all lots.

6.2.9 Numbering. Blocks lettered in alphabetical order, and lots numbered in numerical order.

6.2.10 Public Lands. Accurate outlines of any areas dedicated or reserved for public use, or for any other purpose except sale, with the purpose indicated.

6.2.11 Lot Area. Accurate area of each lot or parcel, other than public ways.

6.2.12 Municipal Lines. Accurate location of the municipal or district line traversing or closely related to the tract.

6.2.13 Drainage Lines. Existing and relocated water-courses and other drainage lines traversing the tract, with the right-of-way or easement lines provided therefor.

6.3 Certificates and Other Information

6.3.1 Owner's Certificate. Owner's certificate, signed and notarized, acknowledging ownership of the property and agreeing to the subdividing thereof as shown on the plat; also offering for dedication all roads and other ways and places intended for public use.

6.3.2 Surveyor's Certificate. Certificate of the surveyor to the effect that the plat represents a survey made by him, that it is accurate to the best of his knowledge, and that all monuments and iron marker pipes indicated thereon actually exist and their locations and descriptions are correctly shown, and that all requirements of these Subdivision Regulations and of other applicable laws and ordinances have been fully complied with.

6.3.3 Agencies Approvals. Spaces shall be provided for Certificate of Approval by the Planning Commission, the County Health Department and the Metropolitan Commission, or other such agency having jurisdiction over public water and sewer.

6.3.4 Protective Covenants. Protective covenants which apply to all the area as shown by the recorded plat shall be part of the recorded plat.

7.0 MODIFICATIONS AND EXCEPTIONS

7.1 Variations for Self-Contained Developments. The general principles and standards of subdivision design stipulated in this Article may be varied by the Planning Commission if unusual physical conditions exist or the subdivision is large enough to constitute a more-or-less self-contained neighborhood or PDD, the Planning Commission may permit the subdivision to be developed in accordance with a comprehensive plan safeguarded by appropriate restrictions, which in the judgment of the Planning Commission makes adequate provision for all essential community requirements. However, no modifications shall be granted which would conflict with the intent of the Master Highway Plan or of any other part of the Comprehensive Development Plan, or with the intent and purpose of this ordinance and the Zoning Ordinance. In no case will the Town of New Market be obligated to accept any improvements constructed under the permission granted through this article, except those which conform to all requirements stipulated in Sections 3.0 and 5.0 of this Article.

7.2 Lot Reduction and Public Sites

7.2.1 How Provided For. Due consideration may be given to the allocation of areas suitable and of adequate size for open space, playgrounds or parks for unrestricted local or neighborhood use, to be offered for conveyance to the Town Council or other public agencies authorized to accept and maintain such or to be reserved for common use of all property owners within the proposed subdivision by deed covenants. If reserved for use of persons within the subdivision, provisions shall be made to maintain such open spaces, playgrounds or parks through an organization such as a Home Owners Association to which each property owner shall be required to contribute toward the maintenance of such. Said maintenance shall meet the minimum maintenance standards in effect for parks, playgrounds and open spaces publicly owned within the Town of New Market.

7.2.2 Standards For Open Space. If a subdivider chooses to provide open space he may reduce lot sizes according to the following, provided the space saved is to be used for recreation or like purposes:

Single-family and two-family development	15 percent
Multi-family development	20 percent

7.2.3 Not In Conflict With Zoning Ordinance and Health Requirements. The above reductions shall not change the overall density requirements of the district as established by the New Market Zoning Ordinance or conflict with the health requirements of the Frederick County Health Department.

7.3 Hardship. Where the Planning Commission finds that unusual hardships may result from strict compliance with these regulations, it may vary the regulations so that substantial justice may be done and the public interest secured. An application and accompanying justification for a hardship variation must be submitted in writing at least thirty (30) days prior to a regularly scheduled Planning Commission Public Meeting. The decision of the Planning Commission shall be issued in writing and a copy placed in the Applicant's file.

8.0 SITE PLAN REQUIREMENTS

8.1 Procedures for preparation and processing.

8.1.1 Procedure for preparation.

- a. Site plans shall be prepared and certified by an engineer, architect, landscape architect, or land surveyor duly registered to practice in the State of Maryland or equivalent certification.
- b. All site plans shall clearly show the information required by this section.
- c. If such plans are prepared in more than one sheet, match lines shall clearly indicate where the several sheets join, and an index sheet shall be provided.
- d. Every site plan shall show the name and address of the owner and developer, North point, date, scale of the drawing, and the number of sheets. Six clearly legible copies of all site plans shall be submitted to the New Market Planning Commission (which may require that additional copies be provided when necessary).

8.1.2 General Requirements: The following information is required for the site plan:

- a. An area or vicinity map at a scale of not smaller than one inch equals two thousand feet, and showing such information as the names and numbers of adjoining roads, streams, bodies of water, railroads, subdivisions, election districts, or other landmarks sufficient to clearly identify the location of the property.
- b. A boundary survey plat of the entire site at a scale not smaller than one inch equals one hundred feet, unless otherwise specified by the Planning Commission, showing the following:
 - (1) Existing topography at two- or five-foot contour intervals.
 - (2) Existing and proposed regraded surface of the land.

- (3) The location of natural features, such as streams, major ravines, forests, wetlands, and drainage patterns within the area to be disturbed by construction.
- (4) Floodplain boundaries.
- c. A detailed drawing showing:
 - (1) The location, proposed use and height of all building (delineate all existing buildings and structures).
 - (2) The location of all parking and loading areas with ingress and egress drives thereto.
 - (3) The location of outdoor storage (if any).
 - (4) The location and type of recreational facilities and open spaces (if any).
 - (5) The location of all existing or proposed site improvements, including storm drains, culverts, retaining walls, fences, and stormwater management facilities, as well as any sediment and erosion control structures.
 - (6) Description, method and location of water supply and sewerage disposal facilities.
 - (7) The location, size, and type of all signs.
 - (8) The location, size, and type of vehicular entrances to the site.
- d. Computations of:
 - (1) Total lot area.
 - (2) Building floor area for each type of proposed use.
 - (3) Building ground coverage (percentage).
 - (4) Road area.
 - (5) Number and area of off-street parking and loading spaces.
- e. Commercial or industrial uses must include:
 - (1) Specific types of uses proposed.
 - (2) The maximum number of employees for which buildings are designed.
 - (3) The type of energy to be used for any manufacturing processes.
 - (4) The type of wastes or by-products to be produced by any manufacturing process.
 - (5) The proposed method or disposal of such wastes or by-products.
 - (6) The location and type of outdoor lighting facilities.
- f. In addition to the information above, site plans shall be accompanied by the following:
 - (1) A stormwater management plan.
 - (2) A sediment and erosion control plan.
 - (3) A planting plan.
 - (4) If the property is scheduled for phased development, the proposed layout of the total project development shall be indicated, and each phase's projected scope and time period indicated to the extent possible.

8.1.3 Procedure for processing.

- a. Upon receipt of the site plan, the Planning Commission shall conduct a review, soliciting comments from appropriate technical advisors, governmental agencies, and officials, as it deems appropriate.
- b. The Planning Commission shall provide the public the opportunity to comment to the Commission on the site plan at a Planning Commission meeting.
- c. The site plan shall be approved if it meets the requirements of this Article, the other requirements of this Ordinance, and all other Federal, State and Town regulations, and all necessary permits and approvals have been obtained.
- d. The Planning Commission shall approve, conditionally approve, or reject a site plan within 120 days from the filing of the application.
- e. Notice of such action shall be given in writing to the applicant.
- f. When a Special Exception is required in addition to a site plan, the site plan shall incorporate any conditions and safeguards specified by the Board of Appeals.

8.1.4 Construction of required improvements.

- a. Upon approval of a site plan, the applicant shall then secure the necessary construction permits from appropriate agencies before commencing work. The applicant may construct only such improvements as have been approved by the Planning Commission.

- b. Inspection: During construction and after construction has been completed, inspection of site improvements shall be made by the Zoning Administrator and the Town Engineer.
- c. Installation of Improvements: The installation of improvements shall not bind the Town to accept such improvements or the maintenance, repair, and operation thereof. Requirements for said improvements shall be in addition to (and not in lieu of) any other legal requirements.

8.1.5 Approval of site plans shall be for a one-year period, and shall expire at the end of that period unless building construction has begun. Upon written request by the applicant, within ninety days prior to the expiration of said approval, a one-year extension may be given by the Planning Commission. Such request shall be acknowledged and a decision rendered thereupon not more than forty-five days after filing of said request.

9.0 FEE SCHEDULE FOR SUBDIVISIONS AND SITE PLANS

9.1 Fee Schedule. The fees to be paid by the subdivider shall be established from time-to-time by the Mayor and Council.

9.2 Administrative Fees. The filing fee will include review by the Town's consultants, 15% of the actual cost incurred will be added to the charges to cover administrative overhead. At the conclusion of the review process, the Town will review the charges incurred and if greater, the subdivider shall pay the additional amount.

9.3 Engineer Review Fee. In addition to the filing fees, the subdivider shall pay to the Town, prior to plat approval, all costs associated with review and inspection by the Town Engineer of the subdivision plat and required improvement plans for engineering details for conformance with Town's regulations. Any additional costs associated with the inspection of improvements shall be paid prior to acceptance of said improvements by the Mayor and Town Council.

9.4 Recording and Materials Fee. A recording fee for each final plat shall be paid for transmittal to the Clerk of the Circuit Court for Frederick County. The subdivider shall bear the cost of all materials required for recording and distribution.

ARTICLE VII. SIGN REGULATIONS

1.0 GENERAL

1.1 Approval Required. All signs, permanent or temporary, must be approved by the Zoning Administrator, and in the Historic District or the Architectural Review District, must also be approved by the Historic District Commission or the Architectural Review Commission. Signs shall not be painted on the exterior wall of any structure. All signs shall be maintained in good condition and appearance. The Town may cause to be removed any sign which shows gross neglect or becomes dilapidated or where the area immediately around such sign is not well maintained after due notice has been given.

1.2 Permitted signs. The following signs are permitted in any district according to the provisions of this Ordinance.

- 1.2.1 Personal service sign for professional office or to a home occupation; unlighted or indirectly lighted not to exceed 2 square feet in size.
- 1.2.2 Farm sign, displaying the name of the owner, the nature of the farm and advertising only those products produced on the premises, not to exceed 8 square feet in size.
- 1.2.3 Temporary real estate sign, not exceeding 6 square feet in size, advertising sale or lease only of the premises on which such sign is displayed.
- 1.2.4 Temporary real estate sign, not exceeding 100 square feet in size, advertising the opening of a subdivision within which such sign is located. A V-shaped sign shall be considered as one sign, so long as the interior angle does not exceed 30 degrees. Such sign shall not be located within 200 feet of a principal building on an adjoining lot.
- 1.2.5 A sign identifying a non-profit organization and giving directions thereto, containing no commercial advertising, not exceeding 10 square feet in size.
- 1.2.6 Temporary sign noting an event of general interest such as a locally sponsored carnival, such signs to be removed within 10 days after the event. The date of the event must be noted upon the sign.
- 1.2.7 One bulletin board on church, school or college property, not over 30 square feet in area.
- 1.2.8 Directional, informational, or warning in character, involving no advertising, and each not exceeding 6 square feet in area.
- 1.2.9 Any Town identification signs erected by or at the direction of the Town Council, of a size to be determined by the Town Council. The sign is also subject to the approval, if appropriate, of the Historic District Commission or Architectural Review Committee.
- 1.2.10 Free-standing signs (not attached to a building) as permitted in the particular district may project into the front yard; however, no free-standing sign shall be permitted in the MRS District.
- 1.2.11 Off-premise signs which direct attention to a business, product, or service conducted, sold, or offered at a location other than on the premises on which the sign is located must be approved on a case-by-case basis by the Planning Commission and in the Historic District or the Architectural Review District, must also be approved by the Historic District Commission or the Architectural Review Commission. Conditions may be imposed to mitigate any potential adverse effects of the sign proposed.

2.0 BUSINESS SIGNS

2.1 Business Signs. Business signs which call attention to a business, service, or industry conducted on the premises upon which the sign is located are permitted subject to approval of the Zoning Administrator, the Historic District Commission, or the Architectural Review Commission with the following conditions:

- 2.1.1 No signs may extend over a building line or public right-of-way more than 3 feet. Signs shall be placed at a minimum height of 7 feet above the ground or sidewalk measured from the bottom of the sign, unless it is attached flat against a building or does not project over the building line or public right-of-way.

- 2.1.2 All signs on or in front of the building shall be immobile, non-flashing, and in no way resemble traffic signals or other warning devices. They shall be lighted indirectly or from within during business hours only.
- 2.1.3 The total area for all signs on an individual, commercial or industrial premise shall not exceed 25 square feet, with no individual sign exceeding 12 square feet.
- 2.1.4 An identification sign for a shopping center or industrial park or other integrated group of commercial buildings shall not exceed 150 square feet in area, and shall be subject to setback requirements for the district in which located.
- 2.1.5 All free-standing signs shall be so located and shall be placed as to allow ample visual sight lines for driveways, street and alleys leading into intersecting thoroughfares. Free-standing signs may be used only at commercial establishments with no more than one sign per 50 feet of frontage permitted. A free-standing sign is one that is attached to a pole or poles planted in the ground.
- 2.1.6 In no case shall any sign attached to a building project more than 3 feet above a roof line.
- 2.1.7 In no case shall a free-standing sign exceed 15 feet in height above average grade of the site.
- 2.1.8 Sign colors shall be compatible with color schemes used on the particular building or structure upon which the sign is affixed.
- 2.1.9 No sign shall be placed upon a balcony, gallery, canopy, shed or roof, nor door or window or placed in any manner whatsoever so as to disfigure or conceal any architectural features or details of any building.

2.2 RM Business Signs. In the Residential Merchant District business signs which call attention to a business, service, or industry conducted on the premises upon which the sign is located are permitted subject to approval of the Zoning Administrator, the Historic District Commission, or the Architectural Review Commission with the following conditions:

- 2.2.1 An individual building may have multiple identifying signs, not to exceed twelve square feet in combined area.
- 2.2.2 Permitted uses may have one open/closed sign, not to exceed one square foot in area.
- 2.2.3 Permitted uses may have an additional unlit sandwich board sign or unlit menu sign up to three square feet in area during business hours only.
- 2.2.4 Permitted uses may have an "Open" flag.
- 2.2.5 Within the Residential Merchant District only, approval of not more than two business directional signs may be granted by the Town of New Market through the Planning Commission and the Historic District Commission, if all of the following criteria are met:
 - a. Sign must pertain to one or more permitted business uses located off Main Street, within Town limits.
 - b. One additional directional sign at or near Emory Lane facing west in line with Rt. 144, and one directional sign at or near Prospect Alley pointing east in line with Rt. 144.

2.3 HD Signs. In the Historic District, approval of the display of a sign shall be granted by the New Market Historic District Commission only when such signs and the plans therefore so far as they relate to the appearance, color, size, position, method of attachment, texture of materials and design conform to the historic period, and distinctive character of the building or structure, and/or do not injuriously affect the same, and/or do not impair the value to the community of those buildings having historic and/or architectural worth.

- 2.3.1 Any sign displayed which no longer advertises a bona fide business conducted upon the premises as specified above, shall, upon notification by the New Market Historic District Commission (or its agent, the Zoning Administrator), be taken down within 10 days of such notification. Failure to so comply on the part of the owner, occupant, agent, or person having the beneficial use of any building or premises upon which sign may be found shall cause the Town, through its attorney, to seek compliance.
- 2.3.2 A temporary business sign may be permitted for sixty days pending Historic District Commission Approval of the permanent sign, unless extended by the Historic District Commission.

ARTICLE VIII: FOREST CONSERVATION

1.0 PURPOSE.

The Town Council has determined that to meet the requirements of Natural Resources Article, §§5-1601--5-1612, Annotated Code of Maryland, the provisions of this Ordinance must be enacted.

Furthermore, the Town Council finds that the preservation, protection, and planting of trees aids in the stabilization of soil by the prevention of erosion and sedimentation; reduces stormwater runoff and the potential damage it may create; aids in the removal of pollutants from the air and assists in the generation of oxygen; provides a buffer and screen against noise and pollution; provides protection against severe weather; aids in the control of drainage and restoration of denuded soil subsequent to construction or grading; provides a haven for birds and other wildlife and otherwise enhances the environment; provides shade and shelter for the populous, thus mitigating heat islands; protects and increases property values; conserves and enhances the Town's physical and aesthetic appearance; and generally protects the public health and safety as well as the general welfare. This Ordinance is enacted in order to both preserve the agricultural heritage of the community and to protect and conserve the existing forest resource against further degradation.

2.0 FOREST AND TREE CONSERVATION DEFINITIONS. See Article XIII.

3.0 APPLICATION

3.1 Except as provided in Section 3.2 of this article, this Ordinance applies to:

3.1.1 Any person, including the Town and its units, who has applied for subdivision but not received final plat approval prior to July 1, 1991 or who has applied for planned unit development approval but not received final plat approval as required under the Town Subdivision Regulations prior to December 31, 1991, or who applies after the effective date of this Ordinance for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land of more than 10,000 square feet or greater; and

3.1.2 Any person, including the Town and its units, who has applied for subdivision but not received final plat approval prior to July 1, 1991 or who has applied for planned unit development approval but not received final plat approval as required under the Town Subdivision Regulations prior to December 31, 1991, or who applies after the effective date of this Ordinance for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land more than 5 years after the area has been cleared for an agricultural activity, subject to a declaration of intent, in accordance with an exemption under Paragraph C of Subsection 3.2, which application has not been denied.

3.1.3 Any public utility not exempt under Section 3.2 D and E of this article.

3.1.4 Applicants under this Ordinance are hereby given notice that all projects that ultimately require approval of subdivision, stormwater management plan, sediment control, or grading permits must comply with the requirements of the Forest Conservation Program.

3.2 This Ordinance does not apply to:

3.2.1 Highway construction activities under Natural Resources Article, §5—103, Annotated Code of Maryland.

3.2.2 Commercial logging and timber harvesting operations, including any harvesting conducted under the forest conservation and management program under Tax-Property Article, §8-211, Annotated Code of Maryland, that:

a. Were completed before July 1, 1991; or

b. Were completed on or after July 1, 1991, and the property on which the cutting is conducted is not the subject of an application for a grading permit for development within 5 years after the logging or harvesting operation, and;

- c. Are subject to a declaration of intent as provided for in Section 33 of this article by the landowner and approved by the local soil conservation district or sediment control agency;
- 3.2.3 Any agricultural activity that does not result in a change in land use category, including agricultural support buildings and other related structures built using accepted best management practices, as long as a declaration of intent has been filed with the Office, which includes:
- a. A statement that the landowner or landowner's agent will practice agriculture on that portion of the property for 5 years from the date of the declaration; and
 - b. A statement that no development will take place for 5 years after an agricultural activity has cleared forest; and
 - c. A sketch map of the property which shows the area to be cleared;
- 3.2.4 The cutting or clearing of public utility rights-of-way licensed under Article 78, §§ 54A and 54B or §54-I, Public Utility Companies, §§7-207 or 7-208 or 7-205, Annotated Code of Maryland or land for electric generating stations licensed under Article 78 §§54A and 54B or §54-I, Public Utility Companies §§7-207 or 7-208 or 7-205 Annotated Code of Maryland, if:
- a. Any required certificates of public convenience and necessity have been issued in accordance with Natural Resources Article, §5-1603(f), Annotated Code of Maryland; and
 - b. Cutting or clearing of the forest is conducted so as to minimize the loss of forest, under the supervision of the Town Forestry Consultant;
- 3.2.5 Any routine maintenance or emergency repairs of existing public utility rights-of-way initially constructed under the guidelines of this Ordinance;
- 3.2.6 Any residential construction activity conducted on a single existing lot of any size provided that the activity on the lot.
- a. will not result in the cumulative cutting, clearing, or grading of more than 10,000 square feet of any forest;
 - 3.2.6.2 will not result in the cumulative cutting, clearing, or grading of any forest that is subject to the requirements of a previous forest conservation plan prepared under this Ordinance; and
 - b. is subject to a declaration of intent stating that the lot will not be the subject of a regulated activity within 5 years of the cutting, clearing, or grading of forest.
- 3.2.7 An activity required for the purpose of constructing a dwelling house intended for the use of the owner, or a child or a grandchild of the owner, if the activity:
- a. does not result in the cumulative cutting, clearing or grading of more than 10,000 square feet of forest; and
 - b. is the subject to a declaration of intent filed with the Office as provided for in Section 3.3 of this article, which states that transfer of ownership may result in a loss of exemption.
- 3.2.8 A real estate transfer to provide a security leasehold, or other legal or equitable interest, including a transfer of title, of a portion of a lot or parcel, if:
- a. The transfer does not involve a change in land use, or new development or redevelopment, with associated land-disturbing activities; and
 - b. Both the grantor and the grantee file a declaration of intent, as provided for in Section 3.3 of this article.
- 3.2.9 A final subdivision plat, project plan, grading plan, stormwater management or sediment control plan approved before July 1, 1991.
- 3.2.10 A planned unit development (PUD) that by December 31, 1991, has: 1) met all requirements for approval, and 2) obtained final plat approval by the Office.

3.3 Declaration of Intent.

- 3.3.1 The purpose of the declaration of intent is to verify that the proposed activity is exempt under Natural Resources Article, Sec. 5—103 and 5-1601--5—1612, Annotated Code of Maryland, and this Ordinance.

- 3.3.2 A person seeking an exemption under Section 3.2 B, C, F, G, and H of this article shall file a declaration of intent with the Town.
- 3.3.3 The declaration of intent is effective for 5 years.
- 3.3.4 The existence of a declaration of intent does not preclude another exempted activity on the property subject to a declaration of intent, if the activity: 1) Does not conflict with the purpose of any existing declaration of intent, and 2) Complies with the applicable requirements for an exempted activity.
- 3.3.5 If a regulated activity on the area covered by the declaration of intent occurs within 5 years of the effective date of the declaration of intent:
- a. There shall be an immediate loss of exemption, or
 - b. There may be a noncompliance action taken by the Town, as appropriate, under, this Ordinance.
- 3.3.6 An applicant may apply for a regulated activity on that area of the property not covered under the declaration of intent if the requirements of this Ordinance are satisfied.
- 3.3.7 The Town may require a person failing to file a declaration of intent or found in noncompliance with a declaration of intent to:
- a. Meet the retention, afforestation and reforestation requirements established in Articles III-XIII of this Ordinance;
 - b. Pay a noncompliance fee of 30 cents per square foot of forest cut or cleared under the declaration of intent;
 - c. Be subject to other enforcement actions appropriate under Natural Resources Article, Sec. 5-1601-5-1612, Annotated Code of Maryland, and this Ordinance: or
 - d. File a declaration of intent with the Town.
- 3.3.8 In its determination of appropriate enforcement action, the Town may consider whether failure to file a declaration of intent by a person required to file is a knowing violation of this Ordinance.
- 3.3.9 Commercial Logging and Timber Harvesting. The requirements for a declaration of intent may be satisfied by a forest management plan for the entire tract, prepared by a forester licensed in Maryland according to Business Occupations and Professions Article, Title 7, Annotated Code of Maryland, which outlines management practices needed to meet the stated objectives for a minimum of 5 years.
- 3.3.10 Agricultural Activities or Commercial Logging and Timber Harvesting. A declaration of intent may be part of an amended sediment and erosion control plan which ensures that the activity meets the conditions for an exemption as stated in *Article III, §3.2C and D of this Ordinance*.

4.0 GENERAL REQUIREMENTS

4.1 Any person, including the Town and its units, who has applied for subdivision but not received final plat approval prior to July 1, 1991 or who has applied for planned unit development approval but not received final plat approval as required under the Town Subdivision Regulations prior to December 31, 1991, or who applies after the effective date of this Ordinance for subdivision, stormwater management approval, a grading permit, or a sediment control permit for an area of land of more than 10,000 square feet or greater shall, for the lot or tract on which the development is located:

- 4.1.1 Submit to the Office, no less than 20 days prior to a regularly scheduled meeting of the Planning Commission: 1) a Forest Stand Delineation: and 2) a Forest Conservation Plan;
- 4.1.2 Not perform any construction activity in the drip line of a tree that is to be retained; unless identified on the Forest Conservation Plan and approved by the Office;
- 4.1.3 Use methods approved by the Office, as provided in the Town of New Market Forest Conservation Technical Manual, to protect retained forests and trees during construction.
- 4.1.4 If a local agency of person using state funds makes application to conduct a regulated activity, the provision of COMAR 08.19.04.01D--G apply.
- 4.1.5 A substantively complete application for final plat approval shall include those requirements as provided for in the Town of New Market Subdivision Regulations.
- 4.1.6 Applicants for stormwater management approval, sediment control plan approval, or grading

permit must fulfill the requirements established for same by the Frederick County Department of Public Works until such time as the Town and/or its agent assumes responsibility.

5.0 FOREST STAND DELINEATION

5.1 Criteria.

5.1.1 A Forest Stand Delineation shall be submitted at the initial stages of subdivision or project plan approval or stormwater management approval, before a grading permit application, or before a sediment control application is submitted for the tract being developed.

5.1.2 The Delineation shall be prepared by a registered licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01[B], according to criteria stated in the Town of New Market Forest Conservation [Manual] Ordinance, Article XVII.

5.1.2.1 The Delineation is subject to review by the Town Forestry Consultant.

5.1.3 The Delineation shall be used to determine the most suitable and practical areas for forest conservation and shall include:

- a. A topographic map identifying intermittent and perennial streams, steep slopes over 25%, floodplains, 100-year floodplains, and wetlands; and
- b. A soils map delineating soils with structural limitations, hydric soils, or soils with a soil K value greater than 0.35 on slopes of 15% or more; and
- c. Forest stand maps indicating species, location, average diameter of trees and describing and delineating overstorey and understorey forest types; and
- d. Information required by the Town of New Market Forest Conservation Manual; and
- e. Any other information required by the Office.

5.1.4 If approved by the Office, a simplified delineation may be submitted for an area:

1) When no forest cover is disturbed during a construction activity; and 2) Designated to be under a long term protective agreement.

5.1.5 The Office shall consider a simplified forest stand delineation complete if it includes:

- a. All requirements under *Section 5.1C(1), (2), and (4)* of this article;
- b. A map showing existing forest cover as verified by field inspection; and
- c. Other information required by this Ordinance.

5.1.6 Time for Submittal

- a. Within 30 calendar days after introduction of the forest stand delineation, the Office shall notify the applicant whether the forest stand delineation is complete and correct.
- b. If the Office fails to notify the applicant within 30 days, the delineation shall be treated as complete and correct.
- c. The Office may require further information or extend the deadline under extenuating circumstances.

5.1.7 An approved forest stand delineation may remain in effect for a period not longer than 5 years.

6.0 FOREST CONSERVATION PLAN

6.1 The Forest Conservation Plan shall be prepared, subject to review by the Town Forestry Consultant, and signed by a registered licensed forester, licensed landscape architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01[B], who shall:

6.1.1 Refer to the approved Forest Stand Delineation developed for this site according to criteria stated in the Town of New Market Forest Conservation Manual;

6.1.2 Give priority to techniques for retaining existing forest on the site.

6.1.3 Present a completed Forest Stand Delineation;

6.1.4 Prepare reforestation and afforestation plans as stated in Articles VII and VIII of this Ordinance;

6.1.5 Prepare graphic indication of forest protection and retention areas and all methods inclusive therein;

6.1.6 Review impact of development on forested area;

6.1.7 Prepare forest inventory using forest measurement equipment; approved by the Office if the professional satisfies the following criteria:

a. A Forest Conservation Plan shall:

(1) Be submitted with the first of the following submitted for the site:

- i. A preliminary subdivision plat;
- ii. An application for stormwater management approval;
- iii. An application for a grading permit; or
- iv. An application for a sediment control permit;

b. Include a map of the site drawn at the same scale as the grading or stormwater management plan or subdivision plat;

c. Include a table that lists, in square feet:

- i. The net tract area; and
- ii. The total area of forest conservation that the applicant proposes to provide, including both on-site and off-site areas;

d. Include a clear graphic indication of the forest conservation provided on the site, showing areas where retention of existing forest or reforestation or afforestation is planned;

e. Include a construction timetable showing the sequence for tree conservation procedures;

f. Include a reforestation and/or afforestation plan prepared by a registered, licensed forester, approved by the Office, with a timetable, description of site, site preparation methods, species, size of planting stock, spacing, and any other information required by the Office;

g. Show locations and types of protective devices to be used during construction activities to protect trees and areas of forest designated for conservation;

h. Show the planned limits of disturbance;

i. Show proposed stockpile areas;

j. Incorporate a commitment to complete all required afforestation and reforestation within 2 years of the issuance of a grading permit for the applicable phase of the development project;

k. Incorporate a binding 3—year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including: 1) watering; and 2) reinforcement planting provision if survival rates fall below required standards, as set forth in the Town of New Market Forest Conservation Manual;

l. Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that: 1) provides protection for areas of forest conservation, including areas of reforestation, afforestation, and retention; 2) provides a legally protective agreement for areas of forest conservation via conservation easements, deed restrictions, and covenants or other similarly effective means which shall provide preservation in perpetuity, and 3) limits uses in areas of forest conservation to those uses that are consistent with forest conservation, including recreational activities and any forest management practices that are used to preserve forest; and

m. Include the substantive elements required under *Section 6.1A, G1.c--i,n, 6.2A--8, and 6.3A--D*.

n. Any other information the Office or Town of New Market Forest Conservation Manual requires.

6.2 In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site.

6.2.1 If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Office:

a. How techniques for forest retention have been exhausted;

- b. Why the priority areas specified in Natural Resources Article, Sec. 5-1607(c), Annotated Code of Maryland, cannot be left in an undisturbed condition;
- c. How the sequence for consideration of priority areas was determined; and
- d. Where on the site in priority areas afforestation and reforestation will occur in compliance with Natural Resources Article Sec. 5-1607, Annotated Code of Maryland.

6.2.2 The applicant shall demonstrate to the satisfaction of the Office that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished in accordance with Article 14 of this Ordinance if the applicant proposes to make a payment into the local forest conservation fund instead of afforestation or reforestation.

6.3 Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under [Natural Resources Article, Sec. 8-1201—1211,] Environment Article, Title 9, Annotated Code of Maryland, [and COMAR 08-05-04] is subject to both the nontidal wetlands regulatory requirements and the requirements of this law, subject to the following:

6.3.1 Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted toward forest conservation requirements under this subtitle.

6.3.2 For the purpose of calculating reforestation mitigation under this Ordinance, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under [COMAR 08.05.04] Environment Article, Title 9, Annotated Code of Maryland, shall be shown on the forest conservation plan and subtracted on an acre for acre basis from the total amount of forest to be cut or cleared as part of a regulated activity.

6.3.3 Nontidal wetlands shall be considered to be priority areas for retention and replacement.

6.3.4 Forested nontidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to the nontidal wetlands and to avoid delay in the approval process.

6.4 Within 45 calendar days after introduction of the Forest Conservation Plan, the Office shall notify the applicant whether the forest Conservation plan is complete and approved.

6.5 If the Office fails to notify the applicant within 45 calendar days, the plan shall be treated as complete and approved.

6.6 The Office may require further information or extend the deadline under extenuating circumstances.

6.7 The Office's review of a Forest Conservation Plan shall be concurrent with the review of the subdivision plat.

6.7.1 In cases of staged development, each plat application must be accompanied by an approved Forest Conservation Plan already submitted for the project.

6.8 The Forest Conservation Plan must be resubmitted along with the plat for final plat approval.

6.9 The Office may revoke an approved Forest Conservation Plan if it finds that:

6.9.1 Any provision of the plan has been violated;

6.9.2 Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, or omission of a relevant or material fact; or

6.9.3 Changes in the development or in the condition of the site necessitate preparation of a new or amended plan.

6.10 The Office may issue a stop work order against any person who violates a provision of this Ordinance or any regulation, order, approved plan, or management agreement.

6.11 Before revoking approval of a Forest Conservation Plan, the Office shall notify the violator in writing and provide an opportunity for a hearing.

6.12 If a Forest Conservation Plan is required by this Ordinance, a person may not cut, clear, or grade on the development site until the Office has approved the plan or the person will be in violation.

6.13 The Plan cannot be altered without approval from the Office.

7.0 AFFORESTATION AND RETENTION

7.1 Afforestation Requirement. A person making application after the effective date of this Ordinance for subdivision or stormwater management plan approval, a grading permit, or a sediment control permit for an area of land of 10,000 square feet or greater, shall:

7.1.1 Conduct afforestation on the lot or tract in accordance with the following:

a. A tract having less than 20 percent of its area in forest cover shall be afforested up to at least 20 percent.

7.1.2 Comply with the following when cutting into forest cover that is currently below the afforestation percentage described in Section 7.1 (A) of this article:

a. The required afforestation level shall be determined by the amount of forest existing before cutting or clearing begins; and

b. Forest cut or cleared below the required afforestation level shall be reforested or afforested at a ratio of 2 acres planted for each acre removed below the threshold and added to the amount of afforestation necessary to reach the minimum required afforestation level, as determined by the amount of forest existing before cutting or clearing began.

7.2 Retention. The following trees, shrubs, plants, and specific areas are considered priority for retention and protection and shall be left in an undisturbed condition unless the applicant has demonstrated, to the satisfaction of the Office, that reasonable efforts have been made to protect them:

7.2.1 Trees, shrubs, and plants located in sensitive areas including the annual and 100-year floodplains, streams and their buffers, steep slopes, wetlands, and critical habitats;

7.2.2 Contiguous forest that connects the largest undeveloped or heavily vegetated tracts of land within and adjacent to the site;

7.2.3 Trees, shrubs, or plants identified on the list of rare, threatened, or endangered species of the United States Fish and Wildlife Service or State of Maryland Department of Natural resources;

7.2.4 Trees that:

a. Are part of a historic site;

b. Are associated with a historic structure; or

c. Have been designated by the state or the Office as a national, state, county or municipal champion tree; and

7.2.5 Any tree having a diameter measured at 4.5 feet above the ground of:

a. 30 inches or more; or

b. 75% of the diameter, measured at 4.5 feet above the ground, of the current state, county, or municipal champion tree of that species as designated by the State of Maryland Department of Natural Resources, or the Town.

8.0 REFORESTATION

8.1 Forest Conservation Threshold.

8.1.1 [Any land which is deforested, regardless of its zoning category, shall be reforested, at a ratio of one acre planted for every acre removed, or portion thereof removed] There is a forest conservation threshold established for all land use categories, as provided in Subsection B of this

article. The forest conservation threshold means the percentage of the net tract area at which the reforestation requirement changes from a ration of ¼ acre planted for each acre removed above the threshold to a ratio of 2 acres planted for each acre removed below the threshold.”

8.1.2 After every reasonable effort to minimize the cutting or clearing of trees and other woody plants is exhausted in the development of a subdivision plat, stormwater management plan, grading and sediment control plans, and implementation of the forest conservation plan, the forest conservation plan shall provide for reforestation, or payment into the forest conservation fund, [as specified in A. above] according to the formula set forth in Subsections B and C of this article and consistent with §6.2 of this article, and the following forest conservation thresholds for the applicable land use category:

Category of Use Percentage Threshold

(1) Agricultural and conservation areas	50 percent;
(2) Medium density residential areas	25 percent;
(3) Institutional development areas	20 percent;
(4) High density residential areas	20 percent;
(5) Mixed use and planned unit development areas	15 percent;
(6) Commercial and industrial use areas	15 percent.

8.1.3 Calculations.

- a. For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area above the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of ¼ acre planted for each acre removed.
- b. Each acre of forest retained on the net tract area above the applicable forest conservation threshold shall be credited against the total number of acres required to be reforested under paragraph (1) of this subsection. The calculation of the credit shall be according to the criteria provided in the Town of New Market Forest Conservation Technical Manual.
- c. For all existing forest cover measured to the nearest 1/10th acre cleared on the net tract area below the applicable forest conservation threshold, the area of forest removed shall be reforested at a ratio of 2 acres planted for each acre removed below the threshold.

9.0 PRIORITIES AND TIME REQUIREMENTS FOR AFFORESTATION AND REFORESTATION

9.1 The required sequence for Afforestation and Reforestation, after techniques for retaining existing forest on the site have been exhausted, is as follows:

- 9.1.1 Selective clearing and supplemental planting on-site;
- 9.1.2 On—site afforestation or reforestation, using transplanted or nursery hardwood stock that is greater than 1.5 inches diameter measured at 4.5 feet above the ground or conifers which are at least 3 feet in height;
- 9.1.3 On—site afforestation or reforestation, using whip stock or seedlings.
- 9.1.4 Landscaping of areas under an approved landscaping plan which establishes a forest that is at least 35 feet wide and covering 2,500 square feet or more of area;
- 9.1.5 Off-site afforestation or reforestation within the Town, including appropriate Town public easement and/or property (e.g., Town public park/ recreational areas), shall be as specified for on-site reforestations;
- 9.1.6 Off—site afforestation or reforestation densities will be as specified in the Town of New Market Forest Conservation Manual, including within appropriate Town public easement and/or property (e.g., Town public park/ recreational areas);
- 9.1.7 Natural regeneration on—site;
- 9.1.8 Natural regeneration off-site;
- 9.1.9 Street trees as a permissible step in the priority sequence for afforestation or reforestation and with a mature canopy coverage may be granted full credit as a mitigation technique;

9.1.10 Acquisition of an off-site protection easement on existing forested areas not currently protected as a mitigation technique, in which case the afforestation or reforestation credit granted may not exceed 50 percent of the area of forest cover protected;

9.1.11 When all other options, both on-site and off-site, have been exhausted, landscaping as a mitigation technique conducted under an approved landscaping plan that establishes a forest at least 35 feet wide and covering at least 2,500 square feet of area.

9.2 The following shall be considered priority for reforestation or afforestation:

9.2.1 To establish or enhance forest buffers adjacent to streams to widths of at least 50 feet;

9.2.2 To establish or enhance existing nonforested areas on 100—year floodplains;

9.2.3 To establish or increase existing forested corridors to connect existing forests within or adjacent to the site to facilitate wildlife movement, where practical, a minimum of 300 feet wide;

9.2.4 To establish or enhance forest buffers adjacent to critical habitats where appropriate;

9.2.5 To establish plantings to stabilize slopes of 25% or greater and slopes of 15% or greater with a soil K value great than 0.35 including the slopes of ravines or other natural depressions;

9.2.6 To establish buffers adjacent to areas of differing land use where appropriate, or adjacent to highways or utility rights of way;

9.2.7 To establish forest areas adjacent to existing forests so as to increase the overall area of contiguous forest cover, when appropriate.

9.2.8 Use native plant materials for afforestation or reforestation when appropriate.

9.3 The Town may determine the necessity for and approve of a sequence other than the one described in Section 9.1 of this Article for a specific project.

9.4 A person required to conduct afforestation or reforestation under this article shall accomplish it within 2 years following issuance of a grading permit, taking into consideration the phasing of the development project.

10.0 PAYMENT INSTEAD OF AFFORESTATION AND REFORESTATION

10.1 Forest Conservation Fund.

10.1.1 If a person subject to this Ordinance demonstrates to the satisfaction of the Office that reforestation or afforestation on-site or off-site cannot be reasonably accomplished in accordance with the provisions of Article 14 of this Ordinance, the person shall contribute money, at a rate of \$1.00 per square foot of the area of required planting, into the Town forest conservation fund.

10.2.2 Money contributed instead of afforestation or reforestation under this article shall be paid at issuance of the grading permit for the development project.

10.2.3 The Town shall accomplish the reforestation or afforestation for which the money is deposited within 3 years, as appropriate, after receipt of the money.

10.2.4 Money contributed under this article:

a. May be used only for costs directly related to afforestation or reforestation, including consultation, site identification, acquisition, preparation and maintenance;

b. Shall be deposited in a separate forest conservation fund; and

c. Shall not revert to the general fund.

10.2.5 The reforestation or afforestation requirement under this article shall occur in the Town, and in the watershed in which the project is located.

10.2.6 If the reforestation or afforestation cannot be reasonably accomplished in the Town and watershed in which the project is located, then the reforestation or afforestation shall occur in the following prioritized order:

a. Afforestation/reforestation efforts occur within sub-watershed in the Town

b. Afforestation/reforestation efforts occur within the watershed in the Town

c. Afforestation/reforestation efforts occur within the watershed in the County

d. Afforestation/reforestation efforts occur using Town's Fee-In Lieu program.

11.0 RECOMMENDED TREE SPECIES

11.1 Tree species used for afforestation or reforestation [shall be native to the county, when appropriate,] may be selected from the Maryland DNR Tree List and Planting Guide website at www.dnr.state.md.us/forests. Species may be chosen from the recommended tree list made available from Maryland DNR according to COMAR 08.07.02.02.B(8) or from Exhibit L, List of Native Trees in Frederick County, of the Frederick County Forest Resource Ordinance Program (see website link www.co.frederick.md.us/govt/DevReview/FROUpdate/FRO D/Exhibit L.pdf). New Market Planning and Zoning board must approve species that reside or stray from the Maryland DNR tree lists. [and selected from a list of approved species established by the Office.] (November 2005 Revision)

11.2 The Office shall adopt a list of tree species to be used and incorporation it into the Town of New Market Forest Conservation Manual.] (November 2005 Revision)

12.0 FINANCIAL SECURITY FOR AFFORESTATION AND REFORESTATION

12.1 A person required to conduct afforestation or reforestation under this article shall furnish security in the form of a cash bond, an irrevocable letter of credit from a Maryland lending institution or any recognized lender satisfactory to the Town, or other security approved by the Town. The surety shall:

- 12.1.1 Assure that the afforestation, reforestation, and the associated management plan are conducted and maintained in accordance with the approved forest conservation plan;
- 12.1.2 Be in the amount equal to the estimated cost, as determined by the Office; and
- 12.1.3 Be in a form and of a content approved by the Town Attorney.

12.2 After two years, the person required to furnish security under Section 12.1 of this article may request reduction of the amount of the financial security by submitting a written request to the Office with a justification for reducing the amount including estimated or actual costs to ensure afforestation and reforestation requirements are met.

- 12.2.1 The Office shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:
 - a. The number of acres;
 - b. The proposed method of afforestation or reforestation;
 - c. The cost of planting materials or replacement materials;
 - d. The cost of maintenance of the afforestation or reforestation project; and
 - e. Other relevant factors.

12.3 If, after 3 years, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Town of New Market Forest Conservation Manual, the remaining amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.

12.4 A local Forest Conservation Program may incorporate the financial security set forth in Section 12 of this article.

13.0 STANDARDS FOR PROTECTING TREES FROM CONSTRUCTION ACTIVITIES

13.1 The Town shall adopt the standards for the protection of trees from construction activity that are at least as effective as the standards provided in the State of Maryland Department of Natural Resources Forest Conservation Manual.

13.2 Before cutting, clearing, grading, or construction begins on a site for which a forest conservation plan is required by this Ordinance, the applicant shall demonstrate to the Office that protective devices have been established.

14.0 VARIANCES FROM THE FOREST CONSERVATION ORDINANCE

14.1 Procedure.

14.1.1 A person may request a variance from this Ordinance or the requirements of Natural Resources Article, Sec. 5-1601--5-1612, Annotated Code of Maryland, if the person demonstrates that enforcement would result in unwarranted hardship to the person.

14.1.2 An applicant for a variance shall:

- a. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
- b. Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
- c. Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
- d. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant;
- e. Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
- f. Verify that the granting of a variance will not adversely affect water quality.

14.1.3 The Office shall make findings that the applicant has met the requirements of Subsections A and B of this article before the Office may grant a variance.

14.1.4 Notice of a request for a variance shall be given to the Department of Natural Resources within 15 days of receipt of a request for a variance.

14.1.5 There is established by this Ordinance the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial or other original proceeding or appeal in the State concerning an approval of a variance under Natural Resources Article Sec. 5—16—1--5—1612, Annotated Code of Maryland, or this Ordinance.

15.0 PENALTIES

15.1 A person found to be in noncompliance with this Ordinance, regulations adopted under this Ordinance, the forest conservation plan, or the associated 3-year management agreement, shall be assessed by the Office the penalty of 30 cents per square foot per day of the area found to be in noncompliance with required forest conservation.

15.2 Money collected under Subsection 14.1 of this article shall be deposited in the forest conservation fund required by this Ordinance, and may be used by the Office for purposes related to implementing this Ordinance including payment of consultant fees required for same.

15.3 In addition to the provisions under Subsection 14.1 of this article, a person who violates any provision of this Ordinance or a regulation or order adopted or issued under this Ordinance is liable for a penalty not to exceed \$10,000 which may be recovered in a civil action brought by the Office.

15.3.1 Each day a violation continues is a separate offense.

15.4 The Town may seek an injunction requiring the person to cease violation of this Ordinance and take corrective action to restore or reforest an area.

15.4.1 The violator is responsible for any fees incurred in recovery and civil actions required.

16.0 FOREST CONSERVATION MAINTENANCE AND MANAGEMENT AGREEMENT

16.1 Short Term Protective Agreements.

16.1.1 Maintenance Agreements.

- a. Application. A person required to conduct afforestation or reforestation under a local or State program shall, include in the forest conservation plan a binding maintenance agreement for the length of 3 years, as specified in the Town of New Market Forest Conservation Manual.
- b. Approval procedures and timing shall be consistent with the procedures provided in the local program.
- c. The maintenance agreement shall detail how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment of forest and shall follow the standards provided in Chapter 3 of the Town of New Market Forest Conservation Manual.
- d. The person required to conduct the afforestation or reforestation, after this referred to as the “obligee”, shall present evidence of a legal right to implement the proposed maintenance agreement on a selected site by providing:
 - (1) An executed deed conveying title to a selected site to the obligee;
 - (2) An executed conservation easement agreement;
 - (3) Written evidence of the landowner’s consent to the use of a selected site;
 - (4) A fully executed option agreement, long—term lease agreement, or contract of sale for a selected site; or
 - (5) Other written evidence of a possessory or ownership interest in a selected site.
- e. The Town of New Market shall be a signatory to the maintenance agreement, or shall be designated a third-party beneficiary of the agreement.
- f. The Office or local authority may not release a cash bond or end monitoring without receipt of a legally binding deed, long-term lease, or conservation easement agreement on those lands where afforestation or reforestation will occur.
- g. The maintenance agreement shall provide for access by the Office or local authority to the afforestation or reforestation site.

16.2 Bonding.

16.2.1 Application.

- a. A person required to conduct afforestation or reforestation, or to deposit money into a state or local fund under the State or local program pursuant to Article 14 of this Ordinance shall include a cash bond or other financial security as an element of a forest conservation plan.
- b. This section does not apply to agencies of any federal, state, county or municipal government.

16.2.2 Requirements. A financial security shall be furnished in the form of:

- a. A cash bond which shall be made payable to the Town of New Market:
- b. An irrevocable letter of credit which shall:
 - (1) Be equivalent to the required bond,
 - (2) Be issued by a financial institution authorized to do business in Maryland approved by the Town,
 - (3) Expressly state that the total sum is guaranteed to be available and payable directly to the Town of New Market on demand in the event of forfeiture, and
 - (4) Be in force until all mitigation for reforestation and afforestation and monitoring requirements have been fulfilled to the satisfaction of the Town of New Market or until all contributions have been made to the State or local fund pursuant to Article 14 of this Ordinance; or

- c. Other security approved by the Town of New Market.
- 16.2.3 The financial security shall:
- a. Ensure that:
 - (1) The afforestation, reforestation and associated maintenance agreement are conducted and maintained in accordance with the approved forest conservation plan, or
 - (2) Contributions have been made to the State or local fund pursuant to Article VIII of this Ordinance;
 - b. Be in the amount equal to the estimated cost of afforestation and reforestation, or the amount of the contribution due, as determined by the Town of New Market;
 - c. Be in a form and content approved by the Town's Attorney.
- 16.2.4 The value of the financial security:
- a. Shall be based on:
 - (1) The cost to perform all work required by the afforestation or reforestation plan if the work had to be performed by or contracted out by the Town of New Market, or
 - (2) When appropriate, the amount due for a fund contribution pursuant to Article VIII of this Ordinance;
 - b. May be adjusted according to the actual cost of mitigation for afforestation and reforestation or, if the cost of future mitigation work changes, the Town of New Market shall notify the obligee of a proposed adjustment and provide an opportunity for an informal conference on the adjustment; and
 - c. May be reduced if the obligee proves to the Town of New Market that the costs to complete the mitigation project have been reduced.
- 16.2.5 A surety bond or other alternative form of security may not be canceled by the surety, bank, or other issuing entity unless both of the following conditions are satisfied:
- a. The surety notifies the Town of New Market and the obligee of its intent to cancel the bond, in writing, by registered mail, not less than 90 days before cancellation; and
 - b. At least 45 days before the cancellation date indicated in the notice, the obligee files a commitment from a surety, bank, or other issuing entity, approved by the Town, to provide a substitute security which will be effective on the cancellation date indicated in the notice.
- 16.2.6 After one growing season or two years, whichever is the greater period of time, the person required to file a bond or other financial security under this Ordinance may request reduction of the amount of the bond or other financial security by submitting a written request to the Town of New Market with a justification for reducing the bond or other financial security amount, including estimated or actual costs to ensure that the afforestation or reforestation requirements are met.
- 16.2.7 The Town of New Market shall determine whether a lesser amount is sufficient to cover the cost of afforestation or reforestation, taking into account the following:
- a. The number of acres;
 - b. The proposed method of afforestation or reforestation;
 - c. The cost of planting materials or replacement materials;
 - d. The cost of maintenance of the afforestation or reforestation project; and
 - e. Other relevant factors.
- 16.2.8 If, after 3 years, the plantings associated with the afforestation or reforestation meet or exceed the standards of the Forest Conservation Manual, the remaining amount of the cash bond, letter of credit, surety bond, or other security shall be returned or released.
- 16.2.9 Bond Release.
- a. The bond shall be released on receipt of written notice from the Town of New Market stating that all afforestation or reforestation requirements have been met.
 - b. The written notice shall be sent at the end of the required 3-year monitoring and management period, as provided in the maintenance agreement.
 - c. If the Town of New Market fails to send written notice within 60 days after the end of the monitoring and management period, the bond shall be automatically released.

16.2.10 Financial Security Forfeiture.

- a. The bond or other financial security may be subject to forfeiture if the obligee fails to comply with:
 - (1) Revocation of the forest conservation plan;
 - (2) An administrative order; or
 - (3) An element of the afforestation or reforestation plan:
- b. The Town of New Market shall notify the obligee, by certified mail, of the intention of the Town to initiate forfeiture proceedings.
- c. The obligee has 30 days from receipt of the notice of forfeiture to show cause why the bond or other financial security may not be forfeited.
- d. If the obligee fails to show cause, the bond or other financial security shall be forfeited.

16.3 Long-Term Protective Agreements.

16.3.1 An applicant under the State or local program shall have in effect at all times a long—term protective agreement as provided for in Natural Resources Article, §5-1607, Annotated Code of Maryland, and §§B--D of this Ordinance to preserve and protect areas retained, afforested, or reforested.

16.3.2 Approved Forest Management Plan.

- a. Procedure for Approval.
 - (1) An application for approval of a forest management plan shall include all information required in the Forest conservation Manual.
 - (2) The forest management plan shall be:
 - (i) Legally binding from the date of approval;
 - (ii) Prepared by a licensed professional forester;
 - (iii) Submitted to the Maryland Department of Natural Resources' forester assigned to the county where the property is located; and
 - (iv) May be amended periodically, as provided for in §B(2) of this Ordinance.
 - (3) The Maryland Department of Natural Resources' forester shall review the plan to ensure that it is complete and consistent with the State or local program.
 - (4) The Town of New Market shall notify the applicant whether the forest management plan has been approved.

16.3.3 Procedure for Amendment of an Approved Forest Management Plan.

- a. An approved forest management plan may be amended if there is a change in site conditions or landowner objectives.
- b. Amendments shall be prepared by a licensed professional forester.
- c. The amendment shall be submitted to the Maryland Department of Natural Resources' forester assigned to the county where the property is located.
- d. The forester shall review the amendment to ensure that it is complete and consistent with the State and local program.
- e. The Town of New Market shall notify the applicant as to whether the amendment has been approved.
- f. The applicant shall sign the amendment.

16.4 Forest Conservation and Management Agreement. An applicant may satisfy the requirement for long-term protection under Natural Resources Article, §5—1607(e), Annotated Code of Maryland, by executing a Forest conservation and Management Agreement, as provided in Tax-Property Article, §8-211, Annotated Code of Maryland, and COMAR 08.07.03.

16.5 Other Legally Binding Protective Agreements.

16.5.1 Other legally binding protective agreements include:

- a. Covenants running with the land;

- b. Deed restrictions;
- c. Conservation easements; and
- d. Land trusts.

16.5.2 Other legally binding agreements shall provide:

- a. Protection for land forested, afforested, or reforested under Natural Resources Article, §§5-1601--5—1612, Annotated Code of Maryland, and this subtitle; and
- b. Limitation on the uses of forest to those that are consistent with forest conservation.

16.6 Within 30 days of execution, an applicant shall record legally binding protective agreement under this section in the Frederick County land record office.

16.7 Procedure for a Timber Harvesting Plan.

16.6.1 An individual may harvest timber on forested, reforested, or afforested areas protected under an approved forest conservation plan provided that the harvest:

- a. Is consistent with the intent of an approved forest management plan, forest conservation management agreement, or other long term protective agreement;
- b. Is subject to a timber harvest plan;
 - (1) Prepared by a licensed professional forester,
 - (2) Submitted to the local Forest Conservancy District Board for review and approval, and
 - (3) That remains in effect for 2 years; and
- c. Is consistent with the intent and requirements of the approved forest conservation plan.

16.6.2 The local Forest Conservancy District Board shall notify the individual whether the timber harvest plan under §E(1) of this Ordinance has been approved.

17.0 ADDITIONAL REQUIREMENTS FOR STATE OR LOCAL PROGRAMS

17.1 Approved Qualified Professional.

17.1.1 An individual may prepare a forest stand delineation or a forest conservation plan, if the individual:

- a. Is a licensed forester;
- b. Is a licensed landscape architect; or
- c. Meets the requirements of §B of this Ordinance.

17.1.2 An individual may be approved by the Maryland Department of Natural Resources as a qualified professional if the individual:

- a. Possesses a 4-year degree in the natural resources sciences, natural resource management, landscape or environmental planning;
- b. Has the following:
 - (1) 2 years of professional experience in natural resources sciences, natural resource management, landscape planning or environmental planning, or its equivalent, as determined by the State, or
 - (2) A graduate degree in natural resources and 1 year of professional experience;
- c. Has the ability to meet the obligations required by the Forest Conservation Manual to prepare a forest stand delineation and a forest conservation plan; and
- d. Satisfactorily completes a forest conservation course offered by the Maryland Department of Natural Resources.

17.1.3 The Maryland Department of Natural Resources shall offer forest conservation courses on a regular basis, which shall demonstrate how to:

- a. Develop and interpret a forest stand delineation and forest conservation plan according to criteria stated in the Forest Conservation Manual;
- b. Prepare and interpret soils, topography, floodplain, wetlands, and site maps;
- c. Prepare afforestation and reforestation plans according to criteria stated in the Forest Conservation Manual;

- d. Prepare a sketch map of a site, showing areas of forest retention, proposed reforestation, or afforestation;
- e. Identify and evaluate protection measures that may be appropriate for forested areas that are sensitive to disturbance;
- f. Identify flora and fauna, including trees, woody shrubs, plants, and wildlife;
- g. Diagnose and treat forest pest and disease problems; and
- h. Understand ecosystem interactions including:
 - (1) Water regime impacts,
 - (2) Soil variations as they affect existing trees and species selection for afforestation and reforestation,
 - (3) Wildlife habitats,
 - (4) Multi-storied plant canopies, and
 - (5) Forest successional stages.

17.2 Training.

17.2.1 Seminars for Local Officials.

- a. The Maryland Department of Natural Resources shall provide a training program to assist local officials in the development of local programs, including one seminar per year for each geographic region of the State for the calendar years of 1992 and 1993.
- b. For the purposes of this training program the geographic regions are:
 - (1) Central Region -- Baltimore, Carroll, Cecil, Harford, Howard, Kent, Montgomery and Queen Anne's counties and Baltimore City;
 - (2) Eastern Region -- Dorchester, Somerset, Talbot, Wicomico and Worcester counties;
 - (3) Southern Region -- Anne Arundel, Calvert, Charles, [Howard, Montgomery,] Prince George's, and St. Mary's counties; and
 - (4) Western Region -- Allegany, Frederick, Garrett, and Washington counties.

17.2.2 Additional Seminars.

- a. The Maryland Department of Natural Resources may offer additional annual seminars to assist local officials, developers, planners, surveyors, engineers, foresters, biologists, and landscape architects in the development, review, or approval of forest stand delineations and forest conservation plans.
- b. The Maryland Department of Natural Resources may sponsor additional seminars in conjunction with other professional and trade organizations.

17.3 Enforcement.

17.3.1 Application.

- a. The provisions of this chapter apply to a person under the State program making application for subdivision or project plan, grading or sediment control permit, on areas 10,000 square feet or greater.
- b. A local authority may adopt the provisions of this chapter for the enforcement of a local program.

17.3.2 Complaints and Orders.

- a. In addition to sanctions authorized by Natural Resources Article, §5-1612, Annotated Code of Maryland, the Town of New Market may serve a written complaint on an alleged violator if the Town determines that there has been a violation of:
 - (1) A provision of Natural Resources Article, §§5—1601--5—1611, Annotated Code of Maryland;
 - (2) A regulation of this Ordinance;
 - (3) A forest stand delineation or forest conservation plan;
 - (4) An administrative order.
- b. The complaint shall:
 - (1) Identify the violator and the location of the violation;

- (2) State the provision violated;
- (3) State the specific facts on which the complaint is based; and
- (4) Provide an opportunity to request a hearing to contest the complaint.

17.3.3 Corrective Action.

- a. At any time, including during an enforcement action, the Town of New Market may issue an administrative order requiring the violator to take corrective action within a certain time period.
- b. The corrective action may include an order to:
 - (1) Stop the violation;
 - (2) Stabilize the site;
 - (3) Stop all construction work at the site of a regulated activity;
 - (4) Restore or rectify unlawfully cleared areas; or
 - (5) Submit a written report or plan concerning the violation.

17.3.4 Service.

- a. A complaint, order, or other administrative notice issued by the Town of New Market shall be served:
 - (1) On the violator personally;
 - (2) On the violator's agent at the activity site; or
 - (3) By certified mail to the violator's last known address.
- b. An order issued under this Ordinance is effective immediately, according to its terms, when it is served.

17.3.5 Hearings.

- a. The Town of New Market shall give notice and hold a hearing under this chapter in conformance with State Government Article, §§10-210--10—217, Annotated Code of Maryland.
- b. Within 10 calendar days of receiving a complaint, order, or notice under this chapter, the violator may request a hearing, in writing.
- c. If a person has been served with an order for corrective action, the person may request a stay in conjunction with a request for a hearing.
- d. A request for stay may be heard before or during a hearing on the complaint. At the request of a violator, a request for stay may be heard within 10 business days of the Town of New Market's receipt of the request.
- e. Administrative Action for a Forest Conservation Plan or Bond. The Town of New Market may suspend or revoke a forest conservation plan or forfeit a bond on a forest conservation plan on failure of the violator to comply with the requirements of an administrative order.

f. Statutory Remedies. The provisions of this subtitle may not be construed to limit or affect the authority of the Town of New Market to proceed against violators under Natural Resources Article, §5—1612, Annotated Code of Maryland.

17.4 Plan Suspension and Revocation. The Town of New Market may suspend or revoke a plan after notice to the violator and opportunity for a hearing has been provided if the Town of New Market determines that one or more of the following has occurred:

- 17.4.1 Failure of a violator to post a bond required under COMAR 08.19.05.01B;
- 17.4.2 Failure to comply, with the requirements of an administrative action or order issued under this subtitle, or for a violation of Natural Resources Article, §§5-1601—5-1612, Annotated Code of Maryland;
- 17.4.3 Misrepresentation in the application process or failure to disclose a relevant or material fact;
- 17.4.5 Violation of a forest conservation plan requirement;
- 17.4.6 Substantial deviation from the conditions, specifications, or requirements of a plan;
- 17.4.7 Changes in site conditions, new information, or amended regulatory requirements necessitate revocation before a person's rights under a plan have vested.

17.5 Notice. Except as provided under §G of this Ordinance, the Town of New Market may not suspend or revoke a forest conservation plan unless the Town first gives the violator written notice by certified mail of the specific facts that warrant suspension or revocation, and an opportunity to be heard.

17.6 Contested Case Hearings.

17.6.1 On receipt of written notice to suspend or revoke a forest conservation plan, the violator has 10 calendar days to request a contested case hearing.

17.6.2 A hearing under this Ordinance shall be conducted in conformance with State Government Article, §§10-201--10-217, Annotated Code of Maryland.

17.6.3 If the Town of New Market does not receive a request for a hearing, the forest conservation plan shall be suspended or revoked.

17.7 Emergency Action.

17.7.1 The Town of New Market may order the immediate suspension of a forest conservation plan if the Town finds that the public health, safety, or welfare imperatively requires the emergency suspension.

17.7.2 The Town of New Market shall promptly give the violator written notice that the emergency action has been taken.

17.7.3 A notice of emergency action shall include a statement of:

- a. Specific facts on which the emergency suspension is based; and
- b. The violator's opportunity to be heard.

17.8 Statewide Forest Resource Inventory.

17.8.1 By December 31, 1992, the Maryland Department of Natural Resources of Natural Resources shall prepare and provide to local authorities a statewide forest resource inventory that includes:

- a. A list of priority areas for reforestation or afforestation of both publicly and privately owned land on a county by county basis; and
- b. Specific areas which contain plants and animal species to be considered as priority areas for forest retention and protection under Natural Resources Article, §5-1607(c), Annotated Code of Maryland.

17.8.2 The Maryland Department of Natural Resources shall update the statewide forest resource inventory at least every 5 years or as considered appropriate.

18.0 ANNUAL REPORT

18.1 On or before March 1 of each year, the Office shall submit to the Department of Natural Resources a report on:

- 18.1.1 The number, location, and type of projects subject to the provisions of this Ordinance;
- 18.1.2 The amount and location of acres cleared, conserved, and planted in connection with a development project;
- 18.1.3 The amount of reforestation and afforestation fees and noncompliance penalties collected and expended; and
- 18.1.4 The costs of implementing the Forest Conservation Program.

19.0 BIENNIAL REVIEW BY THE MARYLAND DEPARTMENT OF NATURAL RESOURCES

19.1 The Office shall submit the necessary documentation to comply with COMAR 08.19.02.04.

ARTICLE IX. FLOODPLAINS

1.0 PURPOSE AND AUTHORITY

The purposes of this Ordinance are to protect human life and health, minimize property damage, encourage appropriate construction practices to minimize future damage, protect individuals from unwittingly buying land subject to flood hazards, and to protect water supply, sanitary sewage disposal, and natural drainage. The prevention of unwise development in areas subject to flooding will reduce financial burdens to the community and the State, and will prevent future displacement and suffering of its residents. This protection is achieved through the review of all activities proposed within identified floodplains and by the issuance of permits for those activities that comply with the objectives of this Ordinance.

Floodplains are an important asset to the community. They perform vital natural functions such as temporary storage of floodwaters, moderation of peak flood flows, maintenance of water quality, groundwater recharge, prevention of erosion, habitat for diverse natural wildlife populations, recreational opportunities, and aesthetic quality. These functions are best served if floodplains are kept in their natural state. Wherever possible, the natural characteristics of floodplains and their associated wetlands and water bodies should be preserved and enhanced.

This Ordinance provides a unified, comprehensive approach to floodplain management which addresses these natural floodplain functions and the Federal and State programs concerned with floodplain management. These programs are: the National Flood Insurance Program (44 CRF 59-79); the State's Waterway Construction Permit Program for nontidal floodplains; the State's Tidal and Nontidal Wetlands Permit Programs; the U.S Army Corps of Engineers' Section 10 and 404 Permit Programs; the State's Coastal Zone Management Program; and the Maryland Economic Growth, Resource Protection, and Planning Act of 1992. Decisions to alter floodplains, especially floodways and stream channels, should be the result of careful planning processes which evaluate resource conditions and human needs.

1.1 Abrogation and Greater Restrictions

This Ordinance supersedes any ordinance in effect in flood-prone areas. However, any other ordinance shall remain in full force to the extent that its provisions are more restrictive.

1.2 Applicability

Any person or entity proposing to do any development within the floodplain zone regulated by this Ordinance must first obtain a permit for that development from the local permitting agency, and must comply with all provisions of this Ordinance.

1.3 Partial Invalidity and Severability

If any part of this Ordinance is declared invalid, the remainder of the Ordinance shall not be affected and shall remain in force.

1.4 Disclaimer of Liability

The degree of flood protection provided by this Ordinance is considered reasonable for regulatory purposes and is based on engineering experience and scientific methods of study. Floods of greater magnitude may occur or flood heights may be increased by man-made or natural causes. This Ordinance does not imply that flooding will not occur outside of the delineated floodplain zone, nor that permitted development and land uses within the floodplain will be free of flooding and associated flood damage. This Ordinance does not create liability on the part of the Community, any officer, or employee thereof for any damage which may result from reliance on this Ordinance.

2.0 DEFINITIONS. See Article XIII.

3.0 PERMIT AND SUBDIVISION REVIEW PROCEDURES

3.1 General

A permit is required for all development in any Floodplain Zone. It shall be granted only after all necessary permit applications are submitted to federal and State agencies. A permit issued by the local permitting official under this Ordinance is not valid until all necessary permits for development are obtained. Receipt of federal or State permits does not exempt development from the provisions of this Ordinance.

3.2 Information for a Permit

3.2.1 Applications for a Building Permit shall contain, at a minimum, the following information:

- a. name, address, and phone number of applicant (owner or agent of owner);
- b. name, address, and phone number of owner, if different;
- c. name, address, and phone number of contractor
- d. legal description of site location;
- e. proposed uses for the site;
- f. type, dimensions, and estimated cost of development proposed;
- g. site characteristics and improvements; and
- h. other information deemed appropriate by the local permitting official.

3.2.2 All permit applications must have a site plan drawn to scale which shows:

- a. dimensions of site;
- b. size and location of existing and proposed structures or alterations;
- c. setbacks;
- d. elevation contours in mean sea level (NGVD);
- e. delineation of the 100-year flood elevation and boundary; and
- f. proposed elevation of the lowest floor and method of elevation, if applicable.

3.2.3 The local permit official may require plans for tree maintenance, stormwater management, revegetation, establishment of vegetated buffers, and final grading as part of the permit application process.

3.2.4 All applicants shall agree in writing to provide an Elevation Certificate completed by a registered professional engineer or surveyor to certify the as-built lowest floor of any structure which must be elevated to or above the Flood Protection Elevation.

3.2.5 An Elevation Certificate must be submitted before a Certificate of Occupancy or Use may be issued. Work undertaken prior to submission of the certification is at the applicant's risk. For enclosed areas below the Flood Protection Elevation, a Nonconversion Agreement may be required, which includes an agreement to install water equalizing vents as specified in Section 6.2 of this Ordinance.

3.2.6 If an improvement to an existing structure is proposed, adequate information on the cost of the improvement and the market value of the structure before the improvement must be supplied to the local permitting official to allow a determination of substantial improvement. The local permitting official may use tax assessment records to determine substantial improvement. In floodway and coastal high hazard areas, permits shall be tracked by property location to determine if the cumulative value of improvements constitutes substantial improvement of a structure.

3.3 Issuance of Permit Considerations

3.3.1 Considerations

Prior to issuance of a permit, the local permitting official shall determine the location of the project relative to floodplains and shall note on the permit the proper elevation to which the lowest floor of proposed structures must be elevated. In approximate floodplains where an elevation is not available, the applicant shall be required to obtain such elevation. The applicant must agree to secure all other required permits, an Elevation Certificate, Floodproofing Certificate, engineering analysis, or other required verifications deemed appropriate by the local permitting official.

Permits shall be granted by the local permitting official only after determining that the proposed development will be in complete conformance with the requirements of this Ordinance and all other applicable local codes and ordinances. All other necessary permits or approvals must be applied for or granted. Permits are valid only after all other necessary permits are granted.

3.3.2 Dam Safety

Caution should be exercised when approving development downstream of existing or proposed dams. The condition of the dam, as well as the design criteria, hazard class, and the danger reach, should be investigated to avoid increasing potential hazards. Dams must meet design criteria based on the potential impacts downstream of the dam. Downstream development within the dam break flood wave shall be denied unless the dam meets the design standards for a high hazard dam.

3.3.3 After Issuance and During Construction

After issuance of a permit, no changes of any kind shall be made to the application, permit, or any of the plans, specifications, or other documents submitted with the application without the written approval of the local permitting official. A copy of the permit or other verification must be displayed at the construction site during construction activity.

Work on the permitted activity shall begin within 180 days of the issuance of the permit, or the permit shall expire, unless a written extension is granted by the local permitting official. Work shall be completed within one year of the date of the permit unless a greater time is specified in the permit or a written extension is granted.

During construction, the local permitting official or an authorized representative shall inspect the site to determine that the work is in compliance with the permit. Any work found to be noncompliant must be corrected before any additional work is undertaken.

3.3.4 Record of Permits

A record of all floodplain permits shall be maintained and be available upon request by the Federal Emergency Management Agency or its authorized agent (NFIP Coordinating Office, Maryland Department of the Environment) during periodic assessments of this community's participation in the National Flood Insurance Program. All documents needed to support any permit action, such as Elevation Certificates, map amendments or revisions, variance actions, shall be available for review during these assessments.

3.4 Conditioned Permits for Accessory Structures and Garages

A conditioned permit may be issued at the discretion of the local permitting official to allow accessory structures up to a total size of 600 square feet below the 100-year elevation. In order to qualify, the structure's use must be incidental to the primary structure, and it can be used only for limited storage and parking of vehicles. The provisions of Section 6.6 must be met, including anchoring, water equalizing venting, and proper elevation of all electrical equipment. A Nonconversion Agreement or Declaration of Land Restriction must be completed prior to permit issuance.

3.4.1 For accessory structures up to 300 square feet in area - structure must be anchored, vented, and Nonconversion Agreement completed.

3.4.2 For accessory structures 300-600 square feet in area - structure must be anchored, vented, and a Declaration of Land Restriction recorded.

3.4.3 For accessory structures greater than 600 square feet, the same conditions as in (b) above apply, plus a variance as described in Section 7.2 must be issued.

3.5 Fees

A fee may be charged at the time of application.

3.6 Penalties

A person who does not comply with a permit issued pursuant to the provisions of this Ordinance is guilty of a misdemeanor. Alternatively or in addition, the violation may be considered a civil infraction and a fine imposed, but a fine does not excuse the violation. Each day a violation continues is a separate offense. The violation must be corrected prior to any further work progressing on the project.

The Federal Insurance Administrator and the NFIP Coordinating Office, Maryland Department of the Environment must be notified by the local permitting official within 30 days after issuance of the citation of any violation which requires a fine or court appearance. New or renewal federal flood insurance may be denied any structure remaining in violation of this Ordinance. The violation may also violate State law, may be subject to separate action, and may incur a separate penalty.

3.7 Subdivision Review and Approval Requirements

3.7.1 Requirement for Study and Delineation of Floodplains

A subdivision consisting of more than 5 lots or 5 acres is required to submit a flood study to delineate the floodplain and provide base flood elevations for any unstudied portion of a stream in that subdivision. Methods used to develop the floodplain and base flood elevations must be approvable by FEMA. No plan for a subdivision containing floodplain shall be reviewed unless the floodplain zones (floodway and floodplain, as applicable) and 100-year flood elevations are clearly delineated in the plan. The plan shall demonstrate how development in the floodplain will be avoided, and the floodplain maintained in a natural state to the extent possible.

3.7.2 Changes to Mapped Floodplains

If site studies indicate that the FEMA mapped floodplain is incorrectly delineated, revisions shall be made by through a Conditional Letter of Map Revision (CLOMR), Letter of Map Revision (LOMR), or Letter of Map Amendment (LOMA) issued by FEMA prior to subdivision approval. If required, as-built data must be provided to FEMA, and a Letter of Map Revision (LOMR) issued prior to any structures being permitted. Floodplain changes should be authorized only when the actual conditions are not reflected in the mapped floodplain or for necessary public infrastructure. Fill to bring lots above the flood elevation should only be authorized in tidal floodplain areas.

3.7.3 Requirement to Preserve Floodplains and Natural Features

In all floodplain subdivisions, site constraints shall be resolved in the placement of lots, and plans for maintenance of forest cover, flood protection setbacks, revegetation, accommodation of stormwater runoff, prevention of erosion, and other plans required by the local permitting official must be submitted with subdivision proposals. The plans shall be evaluated as a whole to achieve maximum preservation of the natural and beneficial floodplain functions, desirable resources, and characteristics of each site. The plan for utility ingress, stormwater structures, road access, and other rights of way shall be evaluated in light of the site characteristics. Stormwater management devices may not encroach into the floodway, and should be kept out the floodplain, if possible. Floodplain areas and their natural vegetation shall be preserved and dedicated to natural buffer areas, open space, recreation, and similar compatible uses by deed restriction, restrictive covenants, or donation to a land trust to the extent possible. At a minimum, the area preserved shall include the flood protection setback area, and, to the greatest extent possible, other floodplain areas. Steep slopes and forested areas adjacent to watercourses shall also be given high priority for

preservation. Some of these requirements may be waived at the discretion of the Planning staff, if a large portion of the site is floodplain, as may occur in tidal floodplains.

3.7.4 Building Sites Outside Floodplain

To achieve long-term flood damage avoidance and protection of the natural and beneficial floodplain functions, no new flood-prone building sites shall be created in any new subdivisions in nontidal floodplains regardless of size, number of lots, and location. Each lot platted must demonstrate that a building pad is outside of the 100-year floodplain, and the structure must be located on a flood-free portion of the site. The flood protection setback requirement of Section 5.4 shall be met. Consideration must be given to clustering development out of the floodplain. An access road at or above the elevation of the 100-year flood shall be provided. New subdivisions in tidal floodplains shall be designed to develop the highest natural land available before floodplain lots are platted. High priority should be given to clustering development out of the floodplain while preserving the low-lying land and forested areas in natural vegetation.

3.7.5 Fill

Fill may not be used to create additional building lots and flood storage capacity shall be maintained. Fill shall not cause any increase in flood heights anywhere in the nontidal floodplain. Fill in the nontidal floodplain may not be permitted without a variance. If a limited amount of fill is warranted or will result in a better site design, a variance may be considered. The developer should be prepared to provide compensatory storage or other concessions to protect the natural resources of the site to obtain the variance.

All other provisions of Section 3.0 and Section 6.0 apply to subdivisions. The local permitting official may specify additional provisions in the plan review.

4.0 ESTABLISHMENT OF FLOODPLAIN ZONES

4.1 Identification of Flood Zones

The regulatory floodplain shall be those areas of New Market which are subject to the 100-year flood, delineated on the most recent revision of the community's Floodway Maps and Flood Insurance Rate Maps (FIRM) and described in the Flood Insurance Study (FIS) prepared by the Federal Emergency Management Agency (FEMA). Floodway Maps and the FIS, if available for the community, must be used. Areas along nontidal streams that do not have FEMA delineations as described above are subject to regulation by this Ordinance and the State.

4.2 Floodplain Zones

New Market has the following floodplain zones:

4.2.1 Nontidal Floodplains consisting of approximate delineations only of the nontidal floodplain. Nontidal floodplains may have detailed engineering study data, profiles, and water surface elevations, or may have approximate delineations only.

4.3 Floodplain Boundaries

4.3.1 Floodplain Zone Determination

The local permitting official will determine the floodplain zone in which the development activity is proposed using the Floodway Maps and FIS if available, or, if not, by using the FIRM. Without prior approval from FEMA, the community shall use no other data to enforce floodplain management regulations. In cases where a site in the mapped floodplain is above the elevation of the 100-year flood, a Letter of Map Amendment (LOMA) should be obtained from FEMA.

4.3.2 Approximate Floodplain Determination

For development proposed in the approximate floodplain (no water surface elevations or floodway data provided), the applicant must use the best available information to determine the elevation of the 100-year flood and the extent of the floodway, and must delineate these on the site plan submitted for approval. For new subdivisions, the applicant must have the 100-year flood elevations certified by a registered professional engineer based on hydrologic and hydraulic analyses which include a floodway analysis. For individual lot development, if no data are available, methods described in FEMA Publication #265 *Managing Floodplain Development in Approximate Zone A Areas*, should be used to determine the 100-year flood elevation at the site.

4.3.3 Unmapped Streams

In cases in which development is proposed in the vicinity of unmapped streams, which have no delineated 100-year floodplain, the 50 foot flood protection setback from the banks of the stream described in Section 5.4.4 may be used. State permits may be required and applicants are advised to seek a determination from the State.

5.0 DEVELOPMENT REGULATIONS IN FLOODPLAIN ZONES

In order to prevent excessive flood damage and to allow for the protection of the natural and beneficial floodplain functions, the following provisions shall apply to all development, new construction, and substantial improvements to existing structures in all floodplain zones. If a structure is in more than one zone, the more stringent provisions shall apply to the entire structure. The specific requirements contained in Section 6.0 also apply to development in this Section. Any approved development shall comply with all other zoning, environmental, water quality and sanitary regulations, as well as applicable State and federal requirements.

5.1 Watercourses

In all floodplain zones, any development which proposes to alter a watercourse must obtain a variance. All conditions for encroachment in the floodway must be met and adverse impacts to aquatic resources must be minimized. Adjacent communities and property owners, FEMA, and the Maryland NFIP Coordinating Office, Maryland Department of the Environment must be notified by the applicant before any modification may occur to watercourses. Any activity falling within the 100-year nontidal floodplain may require a waterway construction permit from the Water Management Administration, Maryland Department of the Environment.

5.2 Wetlands

Encroachment by development into wetlands is not allowed without State and federal permits. It is State and federal policy that disturbance of wetlands shall be avoided. The applicant must demonstrate that no alternatives exist and the encroachment is the minimum necessary. Mitigation may be required by the appropriate regulatory authorities.

5.3 Sediment and Stormwater Management

Any land disturbance permitted in the floodplain must have a stormwater management and sediment and erosion control plan as required by State and local regulations. The plan must include design of land contours that will not increase surface water runoff onto neighboring properties. Ground cover must be established immediately after disturbance, and a plan for permanent plantings, including trees, should provide for adequate vegetative cover within the flood protection setback from watercourses to prevent erosion.

5.4 Nontidal and Tidal Floodplain Zones

5.4.1 General

Development may not occur in the floodplain where alternative locations exist due to the inherent hazards and risks involved. Before a permit is issued, the applicant shall demonstrate that new structures cannot be located out of the floodplain and that encroachments onto the floodplain are minimized.

5.4.2 Elevation Requirements - New and Substantially Improved Structures

a. Residential Structures

All new, substantially improved, or repetitive loss residential structures, including manufactured homes, shall have the lowest floor elevated to or above the Flood Protection Elevation. Basements are not permitted. In nontidal floodplains, horizontal expansions which increase the footprint and that are less than substantial shall also have the lowest floor elevated to or above the Flood Protection Elevation. The elevation of the lowest floor shall be certified by a registered surveyor or professional engineer on the Elevation Certificate, after the lowest floor is in place. Enclosures below the Flood Protection Elevation must be constructed with water equalizing vents to meet the specifications of Section 6.2.

b. Nonresidential Structures

All new, substantially improved, or repetitive loss nonresidential structures shall either be elevated as set forth above for residential structures or shall be floodproofed. Horizontal expansions in the nontidal floodplain which increase the footprint and that are less than substantial shall also have the lowest floor elevated to or above the Flood Protection Elevation. State regulations do not allow basements or the floodproofing option for new nonresidential structures in nontidal floodplains.

5.4.3 Fill

The placement of more than 600 cubic yards of fill per parcel/lot in the floodplain is prohibited except by variance. Elevating buildings by other methods must be considered unless 600 cubic yards or less of fill are required. An applicant shall demonstrate that fill is the only alternative to raising the building to at least the Flood Protection Elevation, and that the amount of fill used will not affect the flood storage capacity or increase flooding onto neighboring properties.

In the event buildings on adjacent properties are known or determined to be subject to flooding under current conditions, the local permitting official may require submission of hydrologic and hydraulic analyses to adequately demonstrate the effects of the proposed fill. The conditions described in Section 6.8 must be met whenever fill is used.

5.4.4 Flood Protection Setback Requirement

A minimum 100 foot flood protection setback shall be maintained from the edge of the banks of any watercourse delineated as having a floodplain on the Floodway Map or FIRM, except where the setback may extend beyond the floodplain. To prevent erosion, natural vegetation shall be maintained in this area. Where natural vegetation does not exist along the water course, and conditions for replanting are suitable, high priority shall be given to planting trees in the setback area to stabilize banks and enhance aquatic resources.

A minimum 50 foot flood protection setback shall be maintained from the top of the bank of any stream which has no designated floodplain. Natural vegetation shall be maintained and, if needed, trees planted.

The local permitting official may consider a variance if the applicant demonstrates that it is impossible to allow any development without encroachment into the flood protection setback area. The variance shall be the minimum necessary and shall be made only after due consideration is given to varying other siting standards, such as side, front, and back lot line setbacks. Necessary public works and temporary construction may be exempted from this Section.

6.0 SPECIFIC REQUIREMENTS

In addition to the requirements outlined in Section 5.0, the following specific requirements must be applied.

6.1 Placement of Buildings and Materials

In general, buildings and accessory structures should be located entirely out of the floodplain, out of the flood protection setback, or on land that is least susceptible to flooding. All structures permitted in the floodplain shall be oriented so as to offer the least resistance to the flow of flood waters.

Materials which are buoyant, flammable, explosive, hazardous to health, or which at times of flooding may be injurious to human, animal, or plant life, shall not be stored below the Flood Protection Elevation.

6.2 Enclosures Below Lowest Floor

Buildings which have been elevated and have fully enclosed areas below the Flood Protection Elevation, as well as garages and accessory structures which are not elevated (Section 6.6), shall be constructed with water equalizing vents which meet or exceed the following standards:

- 6.2.1 a minimum of two openings on different walls having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding;
- 6.2.2 the bottom of all openings shall be no higher than one foot above grade; and
- 6.2.3 openings may be equipped with screens, louvers, valves, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters to equalize hydrostatic forces on the walls.

Fully enclosed areas below the Flood Protection Elevation shall be used solely for parking of vehicles, access to the building, or storage. If such areas are enclosed, a Declaration of Land Restriction as described in Section 3.4 must be recorded against the deed to the property by the applicant.

In coastal high hazard areas, enclosures below the Flood Protection Elevation shall comply with the provisions of Section 5.6.2 of this Ordinance.

6.3 Manufactured Homes and Manufactured Home Parks

New manufactured homes and manufactured home parks are prohibited in the coastal high hazard area and in the floodway. In other floodplain zones, all new, replacement, or substantially improved manufactured homes, whether in a manufactured home park or not, shall comply with Section 5.4.2 of this Ordinance.

Methods of anchoring shall include use of over-the-top and frame ties to ground anchors. Pilings or columns shall be used to maintain storage capacity of the floodplain. Concrete block support pilings must be reinforced by placing reinforcing bars inside and extending them into the footing, filling the hollows with cement, and using mortar to cement the blocks together. FEMA Publication 85, "Manufactured Home Installation in Flood Hazard Areas", should be consulted for specific recommendations.

Manufactured homes repaired or replaced because of substantial damage due to flooding or other causes are considered to be new structures and must fully comply with Section 5.4.2.

Owners of manufactured home parks or subdivisions that are partially or fully within the floodplain must file an evacuation plan with the local emergency management agency. In nontidal floodplains, a flood free access road shall be provided in all new manufactured home parks and subdivisions.

6.4 Anchoring

All structures shall be firmly anchored in accordance with acceptable engineering practices to prevent flotation, collapse, and lateral movement during flooding. All air ducts, large pipes, and storage tanks located below the Flood Protection Elevation shall be firmly anchored to resist flotation.

6.5 Utilities

6.5.1 Electric

All electric utilities to the building side of the meter, both interior and exterior to the building, are regulated by this Ordinance. Distribution panel boxes must be at least 2 feet above the Flood Protection Elevation. All outlets and electrical installations, such as heat pumps, air conditioners, water heaters, furnaces, generators, distribution systems, including duct work, must be installed at or above the Flood Protection Elevation. Replacement HVAC equipment shall be elevated to the Flood Protection Elevation unless proven to be impractical.

6.5.2 Plumbing

Toilets, sinks, showers, water heaters, pressure tanks, furnaces, and other permanent plumbing installations must be installed at or above the Flood Protection Elevation.

6.5.3 Gas

Gas meters and gas appliances must be installed at or above the Flood Protection Elevation.

6.5.4 Fuel Tanks

All gas (propane) tanks installed in the floodplain are required to be anchored to prevent flotation in accordance with the National Fire Protection Association Code 58, Section 3-2.2.7 (h), which states: "Where necessary to prevent flotation due to possible high flood waters around aboveground or mounded containers, or high water table for those underground and partially underground, containers shall be secured." This Ordinance also requires that all tanks installed in floodplain areas be either elevated or adequately anchored to prevent flotation up to the Flood Protection Elevation.

All fuel oil storage tanks installed in the floodplain must be either elevated or securely anchored to prevent flotation up to the Flood Protection Elevation. Vent pipes must extend to or above the Flood Protection Elevation and fill caps below the Flood Protection Elevation must be screw type with a tight fitting gasket to prevent mixing of water with oil.

6.5.5 Water Supply and Sanitary Facilities

Water supply distribution and sanitary disposal collection systems must be designed to minimize or eliminate the infiltration of flood waters into the systems or discharges from the systems into flood waters and shall be located and constructed so as to minimize or eliminate flood damage. On-site sewage disposal systems shall meet these same standards.

6.6 Accessory Structures and Garages

Where feasible, accessory structures and garages should be located out of the floodplain or elevated to or above the Flood Protection Elevation. When these measures are not feasible the following apply: 1) the floor of the structure must be at or above grade; 2) the structure must be located, oriented, and constructed to minimize flood damage; and 3) the structure must be firmly anchored to prevent flotation.

6.6.1 Attached Garages

A garage attached to the main structure shall be elevated to the greatest extent possible, but may be permitted as an exemption to the strict elevation requirement if it is used solely for parking of vehicles, storage, or building access and is no more than 600 square feet in area. Attached garages must meet the venting requirements of Section 6.2, have all interior walls, ceilings, and floors below the Flood Protection Elevation unfinished, and have no machinery or electric devices or appliances located below the Flood Protection Elevation. A Declaration of Land Restriction as described in Section 3.4 must be recorded against the deed to the property by the owner stating that the garage may never be used for human habitation without first becoming fully compliant with this Ordinance for attached garages.

6.6.2 Detached Garages and Accessory Structures

An accessory structure or detached garage may be permitted below the 100-year flood elevation if it is less than 300 square feet, used solely for parking of vehicles and limited storage, meets the venting requirements of Section 6.2, has all interior wall, ceiling, and floor elements below the Flood Protection Elevation unfinished, and has no machinery, electric devices, or appliances located below the Flood Protection Elevation. A Nonconversion Agreement must be signed by the property owner.

An accessory structure or a detached garage between 300 and 600 square feet may be permitted below the Flood Protection Elevation only by a conditioned permit described in Section 3.4, and having a Declaration of Land Restriction recorded against the deed to the property prior to permit issuance.

Any accessory structure or garage larger than 600 square feet in area must be elevated properly or be able to meet all applicable requirements under the variance procedure in Section 7.1 and 7.2 of this Ordinance, and meet the conditions of the paragraph above.

6.7 Recreational Vehicles

Recreational vehicles located within the floodplain may be exempted from the elevation and anchoring requirements provided they are: 1) located on the site less than 180 consecutive days per year; 2) fully licensed and ready for highway use; and 3) properly permitted.

A recreational vehicle is ready for highway use if it is on its wheels and jacking system, is attached to the site only by quick disconnect type utilities and securing devices, and has no permanently attached additions. If it cannot meet all of these criteria, the recreational vehicle must be considered a manufactured home and is subject to the elevation and construction standards of this Ordinance.

6.8 Fill

Fill is discouraged because storage capacity is removed from floodplains. Other methods of elevating structures should be considered first, and fill used only if other methods are not feasible. Fill may not be placed in tidal or nontidal wetlands without the required State and federal permits.

Fill must consist of soil and rock materials only. Dredged material may be used as fill only upon certification of suitability by a registered professional geotechnical engineer. Landfills, rubble fills, dumps and sanitary fills are not permitted in the floodplain.

Fill used to support structures must be compacted to 95% of the maximum density obtainable by the Standard Proctor Test (ASTM Standard D-698), and its suitability to support structures certified by a registered professional engineer. Fill slopes shall be no greater than two horizontal to one vertical. Flatter slopes may be required where velocities may result in erosion.

The use of fill shall not increase flooding or cause drainage problems on neighboring properties.

7.0 VARIANCES

7.1 Reasons for Granting

The Appeal Board shall hear and decide appeals and requests for variances from the requirements of this Ordinance. Conditions may be attached to the variance action, and variance actions must be consistent with sound floodplain management. Variances may not be issued except as specified below, nor shall variances be issued for any encroachment in floodways if any increase in the 100-year flood levels will result. Historic structures may be granted variances consistent with regard to a proper balance between maintaining their historic nature and good floodplain management, provided that the proposed improvements will not affect their historic listing.

Variances shall only be issued upon: 1) a showing of good and sufficient cause; 2) a determination that failure to grant a variance would result in exceptional hardship (other than economic) to the applicant; and 3) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisances, cause fraud or victimization of the public, or conflict with existing local and State laws or ordinances.

The variance action shall be the minimum necessary, considering the flood hazard, to afford relief. In considering a variance action, comments from the NFIP Coordinating Office, Maryland Department of the Environment must be taken into account and maintained with the permit file.

7.2 Conditions

Variances may not be granted for the following: 1) placement of fill or any development in the floodway if any increase in flood levels would result; 2) placement of fill in the coastal high hazard area for structural support; 3) or new buildings in the floodway.

For any variance issued, a letter shall be sent to the applicant indicating the terms and conditions of the variance, the increased risk to life and property in granting the variance, and the increased premium rates for National Flood Insurance coverage. The applicant shall be notified in writing of the requirement for recordation of these conditions on the deed or Declaration of Land Restriction prior to obtaining a permit, and of the need to secure all necessary permits as conditions for granting a variance. The Declaration is described in Article 3-102 and 3-103 of the Real Property Article of the Annotated Code of Maryland.

The local permitting official shall maintain a record of all variance actions and the justification for their issuance, as well as all correspondence. This record must be available for periodic review by FEMA and its agents. The number of variance actions should be kept to a minimum.

7.3 Functionally Dependent Uses

Variances may be issued for new construction and substantial improvements for the conduct of a functionally dependent use. A functionally dependent use cannot perform its intended purpose unless it is located or carried out in close proximity to water. It includes only docking facilities, port facilities that are

necessary for the loading and unloading of cargo or passengers, and ship building and ship repair facilities, but does not include long-term storage or related manufacturing facilities. The variance may be issued only upon sufficient proof of the functional dependence. The provisions of Section 7.1 and 7.2 must be met and the structure must be protected by methods that minimize flood damage up to the Flood Protection Elevation and must create no additional threats to public safety. This may require methods of "wet floodproofing" which allow the structure to flood without significant damage. Methods of floodproofing must not require human intervention.

8.0 EFFECTIVE DATE AND SUBSEQUENT AMENDMENTS

This Ordinance shall be amended as required by the Federal Emergency Management Agency, 44 Code of Federal Regulations. All subsequent amendments to this Ordinance are subject to approval of the Federal Emergency Management Agency and the NFIP Coordinating Office, Maryland Department of the Environment.

ARTICLE X. SPECIAL EXCEPTIONS

1.0 PURPOSE

The purpose of the special exception process is to provide for certain uses which, because of their unique characteristics cannot be distinctly listed as a permitted use in a particular District. These Special Exceptions may be approved by the Board of Appeals after consideration, in each case, of the impact of such uses upon neighboring properties, the surrounding area, and the public need for the particular use at the particular location. Limitations and standards are herein established to ensure the use's consistency with the character, uses, and activities in the District.

2.0 APPLICATION AND APPROVAL STANDARDS

See Article III, Section 7.4 for application and approval procedures for special exceptions.

3.0 SPECIAL EXCEPTION USES

See the Table of Uses in Article IV for special exception uses in all Districts

4.0 SPECIFIC STANDARDS FOR SPECIAL EXCEPTION USES

[Reserved]

ARTICLE XI. NONCONFORMING USES, LOTS, AND STRUCTURES

1.0 PURPOSE

The purpose of this Article is to regulate and limit the development and continued existence of legal uses, structures, lots, and signs established either prior to the effective date of this Ordinance or the effective date of future amendments to this Ordinance that no longer conform to the requirements of this Ordinance. All such situations are collectively referred to as “nonconformities.”

While nonconformities may continue, the provisions of this Ordinance are designed to curtail substantial investment in nonconformities to bring about their eventual improvement or elimination in order to preserve the integrity of this Ordinance and the character of the Town. Any nonconforming use, structure, lot, or sign that lawfully existed as of the effective date of this Ordinance and that remains nonconforming, and any use, structure, lot, or sign that becomes nonconforming as a result of any subsequent rezoning or amendment to the text of this Ordinance, may be continued or maintained only in accordance with the terms of this Ordinance.

2.0 GENERAL PROVISIONS

2.1 Determination of Nonconformity Status. Whether a nonconforming use exists shall be a question of fact and the question of the classification of use shall be decided by the Board of Appeals after public notice and hearing and in accordance with the rules of the Board. The casual, intermittent, temporary or illegal use of land or buildings shall not be sufficient to establish the existence of a nonconforming use, and the existence of a nonconforming use on a part of a lot or tract shall not be construed to establish a nonconforming use on the entire lot or tract.

2.2 Change of Ownership or Tenancy. Changes of ownership, tenancy, or management of an existing nonconformity are permitted but such nonconformities shall continue to be subject to the provisions of this Ordinance.

2.3 Exception Due to Variance or Modification. This Ordinance shall not apply to any development standard or feature that is the subject of a variance granted by the Board of Appeals. Where a variance or modification has been granted for a development standard that does not otherwise conform to the requirements of this Ordinance, that development standard shall be deemed conforming.

2.4 Certificate of nonconforming status required. A certificate of nonconforming status shall be required for all nonconforming uses and signs. An application for a certificate of any nonconforming use shall be filed with the Administrator by the owner or his agent within twelve (12) months from the effective date of adoption of this Ordinance.

2.0 NONCONFORMING USE

2.1 A Nonconforming Use is a use lawfully in existence immediately prior to the effective date of this ordinance, but which does not conform to the use, area, setback or other provisions of this ordinance; the term also includes a use rendered nonconforming by amendment to this ordinance.

2.2 A nonconforming use shall be allowed to continue in existence in perpetuity, provided the use does not cease for a period of one (1) year. If a nonconforming use ceases for a period of one (1) year, the nonconforming use shall be presumed abandoned, and the provisions of the zoning ordinance then in effect shall apply, unless the Board of Appeals finds that the presumption of abandonment is rebutted by proof of intent to resume the use.

2.3 A nonconforming use interrupted by fire or other casualty may be restored and the nonconforming use shall not be considered abandoned, provided restoration of the nonconforming use occurs within eighteen (18) months of the time of interruption.

2.4 Upon application, the Board of Appeals may approve the substitution for an existing nonconforming

use of a use not otherwise permitted by the ordinance, if the Board finds that the use to be substituted is more compatible with the purpose and character of the zoning district and the uses of the adjacent and surrounding properties in the same zoning district than the nonconforming use.

2.5 Upon application, the Board of Appeals may approve enlargements of a nonconforming use, provided the floor area devoted to the nonconforming use shall not be cumulatively enlarged by more than twenty (20%) percent.

2.6 Once changed to a conforming use, no building, structure or lot shall be permitted to revert to a nonconforming use.

4.0 NONCONFORMING STRUCTURES

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

4.1 A building nonconforming only as to height, area, or bulk requirements may be altered or extended, provided that such alteration or extension does not increase the degree of nonconformity in any respect.

4.2 The continuation of a nonconforming use and maintenance or minor repair of a structure containing a nonconforming use are permitted, provided that the continuation, maintenance, or minor repair does not extend or expand the nonconforming use or structure. For the purposes of this section, "maintenance or minor repair" shall mean:

4.2.1 Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure;

4.2.2 Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and

4.2.3 Repairs that are required to remedy unsafe conditions that cause a threat to public safety.

4.3 No building which has been damaged by any cause whatsoever to the extent of more than 50% of the fair market value of the building immediately prior to damage shall be restored except in conformity with the regulations of this Ordinance, and all rights as a nonconforming use shall be terminated. This restriction shall not apply to structures listed on the National Register of Historic Places in New Market.

If a building is damaged by less than 50% of the fair market value, it may be repaired or reconstructed and used as before the time of damage, provided that such repairs or reconstruction is substantially completed within 12 months of the date of such damage.

5.0 NONCONFORMING LOTS

5.1 Development Prohibited

5.1.1 No use or structure shall be established on a lot of record that does not conform to the lot area and lot width requirements established in this Ordinance for the zoning district in which it is located, except as otherwise set forth in Article XI Section 5.2.

5.1.2 The prohibition of development in Section 5.1.1 shall not apply to lots that are rendered nonconforming by government action (such as by dedication or condemnation) or by other action outside the control of the property owner.

5.2 When a lot which is an existing lot of record at the time of adoption of this Ordinance does not comply with the area, yard or other requirements of this Ordinance, an application may be submitted to the Board of Appeals for a variance from the terms of this Ordinance in accordance with the procedure outlined in Article III. Such a lot may be used as a building site, provided, however, that the yard and other requirements of the district are complied with as closely as possible in the opinion of the Board of Appeals.

5.3 If two or more adjacent and vacant nonconforming lots are in single ownership at any time, and such lots individually have less frontage or area than the minimum requirements of the district in which such lots are located, then such lots shall be considered and treated as a single lot or several lots that meet the minimum requirements of this Ordinance for the district in which such lots are located. Any construction, replacement, or enlargement of a single-family dwelling shall require a recombination of all necessary lots in order to achieve compliance with the provisions of this section.

6.0 NONCONFORMING SIGNS

Where any sign does not comply with the provisions of this Ordinance, such sign and any supporting structures may be maintained but shall not be replaced, reconstructed, moved, structurally altered, repainted, or relighted except in compliance with the provisions of this Ordinance and may continue in use for three years, subject to earlier removal under other provisions of this Ordinance. Removal, replacement, reconstruction, moving or structural alteration for any cause whatsoever shall be considered as a loss of nonconforming status. Supporting structures for nonconforming signs may continue in use for a conforming sign if said supporting structures comply in all respects to the applicable requirements of these regulations and other codes and ordinances. No permits for additional signs shall be issued for any premises on which there are any nonconforming signs.

6.1 Limitations on Nonconforming Signs

6.1.1 Any sign related to a use or business that ceases to exist or operate for a continuous period of 90 days shall be considered nonconforming and shall not be reused for sign purposes unless and until it is in full conformity with the provisions of this Ordinance, subject to issuance of a new sign permit.

6.1.2 Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, shall be permitted, provided that repainting shall not include a change of copy or color, and provided further that no repairs shall be permitted where the cost of the repairs exceeds \$1,000.00 or 50% of the replacement cost of the sign.

6.1.3 No change of copy shall be permitted (except on a changeable copy sign) without bringing the sign into full conformance with this Ordinance.

6.1.4 For single-occupant properties, the issuance of a sign permit for a new or replacement sign shall be subject to the condition that all nonconforming signs on that property shall be removed or brought into conformance as part of the work of installing the new or replacement sign. For multi-occupant properties, the issuance of a sign permit for a new or replacement sign for any individual occupant shall be subject to the condition that all nonconforming signs for that occupant shall be removed or brought into conformance as part of the work of installing the new or replacement sign. This section shall not apply to the issuance of a permit for a temporary sign.

ARTICLE XII. ENFORCEMENT

1.0 COMPLAINTS, VIOLATIONS, AND PENALTIES

1.1 Remedies and Penalties

1.1.1 The owner or agent of a building or premises in or upon which a violation of any provision of this Ordinance has been committed or shall exist, or the lessee or tenant of an entire building or entire premises in or upon which violation has been committed or shall exist, or the agent, architect, building contractor or any other person who commits, takes part or assists in any violation or who maintains any building or premises in or upon which such violation shall exist, shall be guilty of a misdemeanor and shall be punished by a fine not to exceed \$500.00. Each and every day that such violation continues may constitute a separate offense.

1.1.2 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 Ordinance the appropriate authorities of the Town of New Market, in addition to other remedies, may institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance or use, or to correct or abate such violation, or to prevent the occupancy of said building, structure or land.

1.2 Municipal Infractions; equitable remedies

1.2.1 In addition to the penalties and remedies provided in paragraphs 1.1.1 and 1.1.2 above, any violation of any provisions of the Zoning Ordinance of the Town of New Market, of which this is a part, may, by the nature and circumstances of such violation, be determined to be a municipal infraction pursuant to Section 3 of Article 23A of the Maryland Code.

1.2.2 If the Zoning Administrator or other enforcement officer designated by the Mayor and Council believes that a violation of this Ordinance has occurred or is occurring, or on the basis of an affidavit submitted to the Zoning Administrator or other enforcement officer, citing the facts of the alleged violation, the Zoning Administrator or other enforcement officer may serve a municipal infraction citation upon any owner or other person believed to be committing or to have committed a violation of this Ordinance. The citation shall be served in accordance with Article 23A, §3 of the Annotated Code of Maryland, and may be preceded by such notices and advisories as the Zoning Administrator or other enforcement officer shall deem appropriate. The citation shall generally conform to the requirements of Article 23A, §3, and may be served with or without a summons. Proceedings on the citation shall be as set forth in Article 23A, §3.

1.2.3 A fine of \$500.00 is hereby imposed upon each person responsible for a municipal infraction under the Zoning Ordinance. Each day such violation is permitted to exist shall constitute and be considered a separate municipal infraction. All fines shall be payable to the Town of New Market.

1.2.4 The Town Attorney or any attorney designated by the Mayor and Council may prosecute a municipal infraction under this Ordinance.

1.2.5 The Town may seek abatement of the violation in accordance with Article 23A, §3.

1.2.8 Any person found to have committed a violation by the District Court shall be liable for all costs of such proceedings.

1.2.9 The Zoning Administrator, after consultation with the Town Attorney, shall have discretionary authority to reduce or suspend all or any portion of any fine payable for any violation.

1.3 Injunction, Equitable Remedies

1.3.1 In addition to other remedies, the Mayor and Council, the Zoning Administrator, or any adjacent or neighboring property owner or person with judicial standing may institute and pursue injunction, mandamus, abatement, or other appropriate action or proceedings to compel compliance with the provisions of this Ordinance.

1.4 Stop Work Orders

1.4.1 The Zoning Administrator or other enforcement officer designated by the Mayor and Council shall be authorized to issue a stop work order requiring the immediate cessation of any excavation, construction, moving, alteration or other similar work being conducted contrary to the provisions of the Zoning Ordinance or being conducted in an unsafe or dangerous manner. The stop work order shall be in and shall be delivered to the owner of the property, to the owner's agent, to the person performing such work or to any other individual who may be responsible for such work. Such notice shall identify the specific violation and shall state the conditions under which the work will be permitted to resume.

1.4.2 Any person who shall continue any work in violation of and after having been served with a stop work order, or any person who shall direct or allow that such work continue in violation of and after having been served with a stop work order shall be subject to the remedies and penalties set forth in the Zoning Ordinance. Each day that a violation of a stop work order continues shall be deemed a separate occurrence. The Zoning Administrator or other enforcement officer may direct a person to perform work in violation of a stop work order for the limited purpose of correcting or remedying a violation of the Zoning Ordinance or any unsafe or dangerous condition. Any person receiving a stop work order or any person charged with violating a stop work order shall be entitled to exercise those trial rights set forth in the New Market Zoning Ordinance. Pending trial, no work shall be performed, conducted or permitted in violation of the stop work order. Each day that work is conducted or performed in violation of the stop work order pending trial, shall constitute and be considered a separate violation.

1.5 Demolition by Neglect

1.5.1 In the event of demolition by neglect, the Planning Commission or the Historic District Commission may request the Zoning Administrator to notify, in writing, the property owner of record, any person having a right, title, or interest therein, and the occupant or other person responsible for the maintenance of the property, of the deterioration. The notice shall specify the minimum items of repair or maintenance necessary to correct the deterioration or prevent further deterioration.

1.5.2 Prior to the issuance of a written notice, the Commission may request the Zoning Administrator to establish a record of demolition by neglect. Such a record may include dated materials such as photographs and written reports of the condition of the property so as to record or measure the deterioration.

1.5.3 The notice shall provide that corrective action shall commence within thirty (30) days of the receipt of said notice and be completed within a reasonable time thereafter. The notice shall state that the owner of record of the property, or any person of record with any right, title, or interest therein, may, within ten (10) days after the receipt of the notice, request a hearing on the necessity of the items and conditions contained in the notice. In the event a public hearing is requested, it shall be held by the Commission upon thirty (30) days written notice being mailed to all persons of record with any right, title, or interest in the property and to all citizens and organizations which the Commission determines may have an interest in the proceedings.

1.5.4 If, after the public hearing, the Commission determines that the corrective actions remain necessary, the Commission may request the Zoning Administrator to issue a Final Notice to be mailed to the owner(s) of record and all parties of record with any right, title or interest in the subject property, advising them of the items of repair and maintenance necessary to correct or prevent further deterioration. The owner(s) shall institute corrective action to comply with the Final Notice within thirty (30) days of receipt of the Final Notice.

1.5.5 Upon failure, neglect, or refusal of the property owner or other responsible person, duly notified, to take the corrective action specified in the Final Notice within the time required, the Commission may request that the Zoning Administrator institute any of the remedies and penalties provided by law for such violations.

ARTICLE XIII. DEFINITIONS

For the purpose of this Ordinance certain terms or words used herein shall be interpreted as follows in **13.0 Word Usage, 13.1 General Definitions, 13.2 Floodplain Definitions, 13.3 Forest Conservation Definitions, 13.4 Historic District Definitions, 13.5 Lighting Definitions, and 13.6 Subdivision/Site Plan Definitions:**

13.0 Word Usage. Words used in the present tense include the future. All words in the singular include the plural and all words in the plural include the singular. The word "shall" is mandatory and not directory. The word "used" shall be deemed to include "designed, intended, or arranged to be used."

13.1 General Definitions

ACCESSORY STRUCTURE: A detached structure on the same parcel of property as the principal structure, the use of which is customary, incidental, and subordinate to the principal structure, *e.g.*, a shed or detached garage.

AGRICULTURAL USES: Activities that primarily involve raising, producing, or keeping plants or animals, or cultivation and management of other natural resources provided that the above uses shall not include the business of garbage feeding of hogs, fur farms or the raising of animals for use in medical or other tests or experiments. Accessory uses may include dwellings for proprietors and employees, barns, storage of grain, animal raising, feed preparation, and wholesale sales of products produced on-site.

ALLEY: A right-of-way which provides secondary service access for vehicles to the side or rear of abutting properties.

AMEND OR AMENDMENT: Any repeal, modification, or addition to this Ordinance; any new regulation; any change in the number, shape, boundary, or area of a zone; or any repeal or abolition of any map, part thereof, or addition thereto.

ARTISAN SHOP: A business in which an artist, craftsman, or designer engages in the production of marketable goods and services, creating individual pieces or products for produced for demonstration, retail sale, and which are consistent with the cultural, artistic and entrepreneurial heritage of the Town, such as upholstering, spinning, weaving, quilting, period tailoring, reproduction clothing, coppersmithing, tinsmithing, cabinetmaking, broommaking, cobbling, and caning.

BASEMENT: That portion of a building below the first floor joists at least half of whose ceiling height is above the mean level of the adjacent ground.

BED AND BREAKFAST: A manager or operator-occupied dwelling in which lodging is provided for up to twelve guests for a period of no more than fourteen days per occupancy, and which may include meals, as a part of the accommodations offered to such guests. The dwelling may also be the venue for weddings, small receptions, catered events, business meetings, retreats, and the like.

BLACKSMITHING: A commercial operation using a forge to produce, shape and repair iron and other metals.

BLOCK: That property abutting one (1) side of a street and lying between the two (2) nearest intersecting or intercepting streets or the nearest intersecting or intercepting street and railroad right-of-way, unsubdivided acreage, or live stream or between any of the foregoing divided acreage, river or live stream or between any of the foregoing and any other barrier to the continuity of development.

BOARD: The New Market Board of Appeals.

BUILDING: A structure having one (1) or more stories and a roof, designed primarily for the permanent shelter, support or enclosure of persons, animals or property of any kind.

BUILDING, ACCESSORY: A building subordinate to, and located on the same lot with a main building, the use of which is clearly incidental to that of the main building or to the use of the land, and which is not attached by any part

of a common wall or common roof to the main building. An accessory building shall be considered subordinate in size to the main building only if the area of the footprint of the foundation of the accessory building, as measured by the lengths and widths thereof, shall be less than the area of the footprint of the foundation of the principal building.(amended 11/11/98)

BUILDING, HEIGHT OF: The vertical distance measured from the level of approved street grade opposite the middle of the front of the building to the highest point of roof surface of a flat roof; to the deck line of a mansard floor; and to the mean height level between eaves and ridge of a gable, hip or gambrel roof.

BUILDING SETBACK LINE: A line beyond which the foundation wall and/or any enclosed porch, vestibule or other enclosed portion of a building shall not project as determined by the yard requirements.

CELLAR: That portion of a building below the first floor joists at least half of whose clear ceiling height is below the mean level of the adjacent ground.

COMMISSION: The New Market Planning and Zoning Commission.

COMPREHENSIVE PLAN: Any portion of a community plan which may consist of maps, data, and other descriptive matter, as a guide for the physical development of the town or any portion thereof, including any amendments, extensions or additions thereto adopted by the Commission, indicating the general locations for major roads, parks or other public open spaces, public building sites, routes for public utilities, zoning districts, or other similar information.

COUNCIL: The Town Council of New Market.

COUNTY: Frederick County, Maryland.

DEMOLITION BY NEGLECT: Any willful neglect in the maintenance and repair of an individually designated landmark, site or structure, or a site or structure within a designated preservation district, not including any appurtenances and environmental settings, that does not result from an owner's financial inability to maintain and repair such landmarks, sites, or structures, and which results in any of the following conditions:

1. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, so as to create or permit a hazardous or unsafe condition to exist; or
2. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, windows, the lack of adequate waterproofing, or the deterioration of interior features which will or could result in permanent damage, injury, or loss of or loss to foundations, exterior walls, roofs, chimneys, doors, or windows.

DWELLING: A building or portion thereof arranged or designed to provide living facilities for one (1) or more families, but not including a tent, cabin, mobile home, bus or a room in a motel or hotel.

DWELLING UNIT: A building or portion thereof arranged or designed for occupancy by not more than one (1) family for living purposes and having cooking facilities.

ESSENTIAL SERVICES: The erection, construction, alteration or maintenance, by public utilities or by municipal or other parties, of underground or overhead electrical, gas, communication, steam, water, or sewer transmission, distribution, collection, supply or disposal lines, including poles, crossarms, guy wires, towers, repeaters, boosters, switches, transformers, regulators, pumps, mains, drains, sewers, pipes, conduits, wires, cables, fire alarm boxes, police call boxes, traffic signals, hydrants and other similar accessories and equipment used in connection with and constituting integral parts of such lines and reasonably necessary for the furnishing of adequate service by such public utilities or municipal or other governmental agencies or for protection of public health, safety or general welfare, but not including buildings, yards, stations or substations for transforming, boosting, switching or pumping purposes when such facilities are constructed on the ground.

FAMILY: A person living alone or two (2) or more persons living together as a single housekeeping unit, but not including a group of persons occupying a boarding house, lodging house or hotel.

FINE ARTS EDUCATION: Training in the fields of dance, music, theater, visual arts, and other similar disciplines.

FIXTURE: The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

FLOOR AREA OF BUILDING, TOTAL: The total number of square feet of floor area in a building, excluding cellars, uncovered steps, and uncovered porches; but including the total floor area of accessory buildings on the same lot. All horizontal measurements shall be made between interior faces of walls.

FLOOR AREA RATIO: The Floor Area Ratio is the total building square footage (building area) divided by the site size square footage (site area). As a formula: Floor Area Ratio = (Total covered area on all floors of all buildings on a certain plot)/(Area of the plot). Thus, an FAR of 2.0 would indicate that the total floor area of a building is two times the gross area of the plot on which it is constructed, as would be found in a multiple-story building.

FRONTAGE: The length of the front property line of the lot, lots, or tract of land abutting a public street, road, or highway, or rural right-of-way.

HOMES ASSOCIATION: An incorporated, non-profit organization operating under recorded land agreements through which, (1) each lot and/or home owner in a planned unit or other described land area is automatically a member and (b) each lot is automatically subject to a charge for a proportionate share of the expenses for the organization's activities, such as maintaining a common property, and (c) the charge if unpaid becomes a lien against the property.

INDUSTRIAL PARK: A tract of land eminently suitable for industrial use subdivided and developed according to a Master plan for occupancy by a group of industries and equipped with streets and necessary utilities. Industries must agree to accept certain standards of performance that are designed to protect the environment of the community.

INTERIOR DECORATOR STUDIO: A business that provides by way of advice, consultancy, or technical assistance, services related to the planning, design, or beautification of man-made spaces, including illustrative non-inventory showrooms, samples and displays.

LOT: A parcel of land occupied or to be occupied by a building and its accessory buildings, together with such open spaces as required.

LOT AREA, NET: The total horizontal area included within the rear, side and front lot or proposed street lines of the lot excluding any streets or highways, whether dedicated or not dedicated to public use, but including off-street automobile parking areas and other accessory uses.

LOT CORNER: A lot abutting on two (2) or more streets at their intersection, where the interior angle of the intersection does not exceed one hundred thirty-five (135) degrees.

LOT, DEPTH OF: The average distance between the front lot lines and the rear lot lines.

LOT, FRONT OF: The side or sides of an interior or through lot which abut a street; in a corner lot, either side that abuts a street.

LOT, FRONTAGE, MINIMUM, AT BUILDING LINE: The least permissible width of a lot, measured horizontally along the front building line.

LOT, FRONTAGE, MINIMUM, AT FRONT LOT LINE: The least permissible width of a lot measured horizontally along the front lot line.

LOT LINE, FRONT: The street line running along the front of the lot separating it from the street. In a through lot, both lines abutting the street shall be deemed to be "front lot lines".

LOT LINE, REAR: The lot line or lines generally opposite or parallel to the front lot line, except in a through lot. If the rear lot line is less than ten (10) feet long or the lot comes to a point at the rear, said rear lot line is assumed to be a line not less than ten (10) feet long, lying wholly within the lot, parallel to the front lot line, or in the case of a curved front lot line, parallel to the chord of the arc of said front lot line.

LOT LINE, SIDE: Any lot line other than a front lot line or a rear lot line.

LOT, OUTLOT: A parcel of land which is shown on a record plat but which is not to be occupied by a building or otherwise considered as a buildable lot within the meaning of this Ordinance. No building permit shall be issued on any land so designated.

LOT, THROUGH: An interior lot, fronting on two (2) parallel or approximately parallel streets.

MAYOR AND COUNCIL: The elected legislative body of the Town.

NONCONFORMING USE: A use of a building or of land lawfully existing at the time of this or previous Ordinances or amendments thereto became effective and which does not conform with the use regulations of the zone in which it is located.

OFF-SITE SIGN: A structure on which is portrayed information which directs attention to a business commodity, service, or entertainment not situated on the premises upon which the sign structure is located.

OUTDOOR LIGHTING: The night-time illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

PERSON: Any individual, corporation, association, firm, partnership or the like, singular or plural.

PRIVATE CLUB: An incorporated or unincorporated association for civic, social, cultural, religious, literary, fraternal, political, recreational, or like activities, operated for the benefit of its members and not open to the general public.

RETAIL BAKERY: A business where products of a bakery are offered and kept for retail sale, including incidental baking.

ROAD: Includes street, highway, avenue, lane, marginal access street, service drive, alley, bridge, viaduct, or any segment thereof.

SEDIMENT CONTROL PERMIT: The authorization of an activity regulated under a sediment control plan as provided in the Environment Article, Title 4, Annotated Code of Maryland.

SIGN: Any structure, part thereof, or device attached thereto or painted or represented thereon or any material or thing, illuminated or otherwise, which displays or includes any numeral, letter, word, model, banner, emblem, insignia, device, trademark, or other representation used as, or in the nature of, an announcement, advertisement, direction, or designation of any person, firm, group, organization, place, commodity, product, service, business, profession, enterprise, or industry which is located upon any land, or any building, in or upon a window, or indoors in such a manner as to attract attention from outside the building.

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

SIGN, BUSINESS: A sign which directs attention to a business, commodity, service or other activity conducted upon the premises upon which the sign is located.

SIGN, DIRECTIONAL OR INFORMATION: A sign describing the location of a community or institution of public or quasi-public nature or the opening of an event of public interest, but not including signs pertaining to real estate.

SIGN, PERSONAL SERVICE: Name plates or signs designating home occupations, accessory uses, such as doctor's office, or similar use, or advertising exclusively the sale of farm products produced on the premises.

SIGN, BILLBOARD: See "Billboard".

SIGN, REAL ESTATE: A sign advertising for sale, lease, rental, or development of any particular premises or directing attention to the opening and location of a new subdivision, neighborhood or community.

STORY: That portion of a building included between the surface of any floor and the surface of the floor next above it or, if there be no floor above it, the space between such floor and the ceiling next above it. A basement shall be counted as a story, if it is used for business or dwelling purposes. A mezzanine floor shall be counted as a story if it covers more than one-third of the area of the floor next below it or if the vertical distance between the floor next below it and the floor next above it is twenty (20) feet or more.

STREET: A public or dedicated way, or a public proposed right-of-way, widening, or extension of an existing street or public way shown on any plan approved by the Commission.

STRUCTURAL ALTERATION: Any change in the structural members of a building, such as walls, columns, posts, beams, or girders.

STRUCTURE: An assembly of materials forming a construction for occupancy or use including among others, buildings, stadiums, gospel and circus tents, reviewing stands, platforms, stagings, observation towers, radio and T.V. broadcasting towers, water tanks, trestles, open sheds, coal bins, shelters, fences, walls, signs, power line towers, pipelines, railroad tracks and poles.

TOWN: The Town of New Market, Maryland.

USE: The principal purpose for which a lot or the main building thereon is designed, arranged, or intended and for which it is or may be used, occupied, or maintained.

USE, ACCESSORY: A use of a building, lot, or portion thereof, which is customary, incidental, and subordinate to permitted use of the main building or lot.

USE, SPECIAL EXCEPTION: The grant of a specific use enumerated in the Ordinance which would not be appropriate generally without restriction, and shall be based upon a finding by the Board that certain conditions governing special exceptions detailed in this Ordinance exist, that the use conforms to the Master Plan, and that the use proposed would not cause an adverse effect upon adjoining and surrounding properties unique and different, in kind or degree, than those adverse effects inherently associated with the use irrespective of its location within the zone.

USE, TEMPORARY: A land use or structure that is needed or in place only for short periods.

VARIANCE: With respect to the zoning provisions of this Ordinance, a modification of density, bulk, dimension, yard, setback, height or area requirements of the Ordinance, which shall be based upon a finding by the Board that the modification is not contrary to the public interest, and that, because of conditions peculiar to the property and not resulting from the actions of the owner or applicant, the literal enforcement of the Ordinance would result in practical difficulty.

YARD: Open space on the same lot with a building or group of buildings, lying between the building or outer building of a group and the nearest lot or street line, and unoccupied and unobstructed from the ground upward, except as provided in this Ordinance.

YARD, FRONT: Open space extending across the full width of lot between the front lot line or the proposed front street line and nearest line of the building or any enclosed portion thereof. The depth of such yard shall be the shortest horizontal distance between the front lot line or proposed front street line and the nearest point of the building or any enclosed portion thereof. Second story overhang, roof overhang, unenclosed porches, or similar architectural features are excluded from the measurement if they do not project more than six (6) feet.

YARD, REAR: Open space extending across the full width of lot between the rear line of the lot and the nearest line of the building, porch or projection thereof. The depth of such yard is the shortest horizontal distance between the rear lot line and the nearest point of the building.

YARD, SIDE: Open space between the side lot line, the side street line, or the proposed side street line, if such line falls within the lot, and the nearest line of the foundation of the building, porch or projection thereof, extending from the front yard to the rear yard, or, in the absence of either of such yards, to the front lot line and/or rear lot line. The width of a side yard shall be the shortest distance between the side lot line and the nearest point of the foundation of the building, porch or projection.

ZONE: An area within which certain uses of land and buildings are permitted and certain others required; lot areas, building height limits, and other requirements are established; all of the foregoing being identical for the zone in which they apply.

ZONING ADMINISTRATOR: An officer of the Town, appointed by the Mayor and confirmed by the Council, who administers the zoning regulations.

ZONING CERTIFICATE: A written statement issued by the Zoning Administrator, authorizing buildings, structures or uses consistent with the terms of this Ordinance and for the purpose of carrying out and enforcing its provisions.

ZONING MAP: The zoning map of the Town of New Market together with all amendments thereto subsequently adopted.

13.2 Floodplain Definitions

BASE FLOOD: The 100-year frequency flood event as indicated in the Flood Insurance Study, as amended, the elevation of which is used for regulatory purposes in this Ordinance.

BASEMENT: An enclosed area which is below grade on all four sides.

BREAKAWAY WALL: A wall that is not part of the structural support of a building and is intended to collapse under specific lateral loading forces without causing damage to the supporting foundation system of the building.

CERTIFICATE OF OCCUPANCY OR USE: A permit to legally occupy or use a building for the intended purpose.

DEVELOPMENT: Any man-made change to improved or unimproved real estate, including, but not limited to buildings and other structures, dredging, fill, grading, paving, clearing, excavation, dumping, extraction, or storage of equipment or materials. Development includes subdivision of land.

ELEVATION CERTIFICATE: A form supplied by the Federal Emergency Management Agency (FEMA) to certify as-built elevations of structures above mean sea level (NGVD).

FLOOD: General and temporary condition of partial or complete inundation of normally dry land areas from overflow of inland or tidal waters, or rapid unusual accumulation of runoff from any source.

FLOOD INSURANCE RATE MAP (FIRM): A map which depicts the minimum special flood hazard area to be regulated by this Ordinance (unless a Floodway Map is available).

FLOODPLAIN: That land typically adjacent to a body of water with ground surface elevations that are inundated by the base flood.

FLOODPROOFING: Any combination of structural or nonstructural changes which reduce or eliminate flood damage to improved property.

FLOODPROOFING CERTIFICATE: A form supplied by FEMA to certify that a building has been designed and constructed to be structurally dry floodproofed to the Flood Protection Elevation.

FLOOD PROTECTION ELEVATION (FPE): The elevation of the base flood plus two feet freeboard.

FLOODWAY: The channel and adjacent land area required to discharge the waters of the 100-year flood of a watercourse without increasing the water surface elevations more than a specified height.

FLOODWAY MAP: A map which depicts floodways and special flood hazard areas to be regulated by this Ordinance.

FLOODWAY FRINGE: That portion of the floodplain outside the floodway.

FREEBOARD: An increment of elevation added to the base flood elevation to provide a factor of safety for uncertainties in calculations, wave actions, subsidence, or other unpredictable effects.

HISTORIC STRUCTURE: A structure listed individually on the National Register of Historic Places, the Maryland Inventory of Historic Properties, a local inventory of historic places certified by the Maryland Historic Trust or the Secretary of the Interior, or preliminarily determined as meeting the requirements for such listing by the Maryland Historic Trust or the Secretary of the Interior, or determined as contributing to the historic significance of a historic district registered with Secretary of the Interior.

LOWEST FLOOR: The lowest floor of the lowest enclosed area, including basement. An unfinished enclosure constructed of flood resistant materials used solely for parking of vehicles, storage, or building access in an area other than a basement is not the lowest floor, as long as it is supplied with water equalizing vents.

MANUFACTURED HOME: A transportable structure which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities.

NEW CONSTRUCTION: A structure for which the start of construction commenced on or after the date of the adoption of the first effective Floodplain Management Ordinance adopted by the community, and includes any subsequent improvements.

NGVD: National Geodetic Vertical Datum of 1929 elevation reference points set by the National Geodetic Survey based on mean sea level.

ONE HUNDRED (100) YEAR FREQUENCY FLOOD: The Base Flood, having one chance in a hundred of being equaled or exceeded in any year.

PERMANENT STRUCTURE: Any structure occupying a site for more than 180 days per year.

RECREATIONAL VEHICLE: A vehicle built on a single chassis which is 400 square feet or less at the longest horizontal projection, self propelled or towable, and designed primarily for temporary living while traveling or camping.

REPETITIVE LOSS: Flood related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25% of the market value of the structure before the damage occurred.

START OF CONSTRUCTION: The date of issue of the building permit for any development, including new construction and substantial improvements, provided that the actual start of construction or improvement was within 180 days of permit issuance. The actual start of construction is the placement of the slab or footings, piles or

columns, or actual placement of a manufactured home.

STRUCTURE: A walled and roofed building, including, but not limited to, manufactured homes, gas and liquid storage tanks, garages, sheds, and barns.

SUBSTANTIAL DAMAGE: Damage of any origin sustained by a structure, whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50% of its market value before the damage occurred.

SUBSTANTIAL IMPROVEMENT: Any repair, reconstruction, alteration, or improvement of a structure, the cost of which equals or exceeds 50% of the market value of the structure (less land value) either: (a) before the improvement or repair is started; or (b) if the structure incurred substantial damage and has been restored, before the damage occurred. Substantial improvement occurs when the first alteration of any wall, ceiling, floor, or other structural part of the building commences. The minimum repairs needed to correct previously identified violations of local health, safety, or sanitary codes, and alterations to historic structures which do not preclude their continued designation as historic structures are not considered substantial improvements. The term also includes structures which have incurred repetitive loss or substantial damage, regardless of the actual repair work performed.

TEMPORARY STRUCTURE: Any structure completely removed within 180 days from issuance of the permit.

VARIANCE: The grant of relief from a term or terms of this Ordinance.

WETLAND: Any land which is: (1) considered private wetland or State wetland pursuant to Title 9, Wetland and Riparian Rights, Natural Resources Article, Annotated Code of Maryland; or (2) defined as wetland under the procedures described in the "Federal Manual for Identifying and Delineating Jurisdictional Wetlands" by the Federal Interagency Committee for Wetland Delineation, 1989, as amended.

13.3 Forest Conservation Definitions

AFFORESTATION: 1) Establishment of a forest on an area from which forest cover has been absent for a long period of time; 2) Planting of open areas which are not presently in forest cover; or 3) Establishment of a forest according to procedures set forth in the Town of New Market Forest Conservation Manual.

AGRICULTURAL ACTIVITY: Farming activities including plowing, tillage, cropping, installation of best management practices, seeding, cultivating, and harvesting for production of food and fiber products (except commercial logging and timber harvesting operations), the grazing and raising of livestock, aquaculture, sod production, orchards, nursery, and other products cultivated as part of a recognized agricultural commercial enterprise.

AGRICULTURAL AND CONSERVATION AREAS: For Undeveloped areas zoned for densities of less than or equal to one dwelling unit per 3 acres.

APPLICANT: A person who is applying for subdivision, project plan approval or a grading or sediment control permit, or who has received Town approval of a forest stand delineation or forest conservation plan.

APPROVED FOREST MANAGEMENT PLAN: A document: 1) Approved by the State Department of Natural Resources' forester assigned to the County in which the property is located; and 2) Which operates as a protective agreement for Forest Conservation as described in Natural Resources Article, §5-1607(e) and (f) of the Annotated Code of Maryland.

CALIPER: Tree diameter measured at 2 inches above the root collar.

CHAMPION TREE: The largest tree of its species within the United States, the state, county, or municipality, as determined pursuant to the criteria set forth in the Town of New Market Forest Conservation Manual.

CHAMPION TREE OF THE STATE: A tree which appears in the Town of New Market Forest Conservation Manual list of State champion trees.

COMMERCIAL LOGGING OR TIMBER HARVESTING OPERATIONS: The cutting and removing of tree stems from a site for commercial purposes, leaving the root mass intact.

CRITICAL HABITAT AREA: A critical habitat for an endangered species and its surrounding protection area. A critical habitat area shall: 1) Be likely to contribute to the long-term survival of the species; 2) Be likely to be occupied by the species for the foreseeable future; and 3) Constitute habitat of the species which is deemed critical under Natural Resources Article, §§4—2A-04 and 10-2A-06, Annotated Code of Maryland.

CRITICAL HABITAT FOR ENDANGERED SPECIES: A habitat occupied by an endangered species as determined or listed under Natural Resources Article, §§4—2A-04 and 10-2A-04, Annotated Code of Maryland.

DECLARATION OF INTENT:

- a. A signed and notarized statement by a landowner or the landowner's agent certifying that the activity on the landowner's property: 1) Is for certain activities exempted under this Ordinance or Natural Resources Article, §§5-103 and 5—1601--5-1612, Annotated Code of Maryland, 2) Does not circumvent the requirements of this Ordinance or Natural Resources Article, §§5-103 and 5—1601--5-1612, Annotated Code of Maryland, and 3) Does not conflict with the purposes of any other declaration of intent; and
- b. The document required under COMAR 08.19.01.05 or this Ordinance.

DEVELOPMENT PROJECT:

- a. "Development project" means the grading or construction activities occurring on a specific tract that is 10,000 square feet or greater.
- b. "Development project" includes redevelopment.

DEVELOPMENT PROJECT COMPLETION: For the purposes of afforestation, reforestation, or payment into a fund:

- a. The release of the development bond, if required;
- b. Acceptance of the project's streets, utilities, and public services by the Town Council;
- c. Designation by the Office that a: 1) Development project has been completed, or 2) Particular stage of a staged development project, including a planned unit development, have been completed.
- d. Projects being developed in sections will be required to submit an approved Forest Conservation Plan along with documentation for each section's individual approval stage.

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, within the limits of the dripline.
- b. Forest includes: 1) Areas that have at least 100 live trees per acre with at least 50% of those trees having a 2—inch or greater diameter at 4.5 feet above the ground and larger; and 2) Forest areas that have been cut but not cleared; and 3) Duff, leaf litter, or understorey.
- c. Forest does not include orchards.

FOREST CONSERVANCY DISTRICT BOARD: The forestry board created for each State forestry conservancy district under Natural Resources Article, Sec. 5-601--5-610, Annotated Code of Maryland.

FOREST CONSERVATION: The retention of existing forest or the creation of new forest at the levels prescribed by the Office.

FOREST CONSERVATION AND MANAGEMENT AGREEMENT: An agreement as stated in the Tax-Property Article, Sec. 8-211, Annotated Code of Maryland.

FOREST CONSERVATION PLAN: A plan approved pursuant to Article VIII of this Ordinance.

FOREST COVER: The area of a site meeting the definition of Forest.

FOREST MANAGEMENT PLAN: A plan establishing best conservation and management practices for a landowner in assessment of the resource values of forested property.

FOREST STAND DELINEATION: The description and evaluation of the existing vegetation on a site proposed for development, as set forth in the Town of New Market Forest Conservation Manual.

FORESTED SLOPES: An area meeting the definition of forest and growing on an area with a slope of 25% or more.

GROWING SEASON: The period during which consecutive frost—free days occur as stated in the current soil survey for Frederick County published by the National Cooperative Soil Survey Program, 16 U.S.C. §590 (a)-(f).

INTRODUCTION: Appearance on the agenda of a regularly scheduled meeting of the Town Planning Commission as a presentation item.

LANDSCAPING PLAN: A plan: 1) Drawn to scale, showing dimensions and details for reforesting an area at least 35 feet wide and covering 2,500 square feet or greater in size; 2) Using native or indigenous plants when appropriate; and 3) Which is made part of an approved forest conservation plan.

LINEAR PROJECT: A project which: 1) Is elongated with nearly parallel sides; 2) Is used to transport a utility product or public service not otherwise contained in an application for subdivision, such as electricity, gas, water, sewer, communications, trains, and vehicles; and 3) May traverse fee simple properties through defined boundaries, or established easement rights.

LOCAL AGENCY: Each unit in the executive, legislative, or judicial branch of the Town government, including an office or department of public works.

LOT: A unit of land, the boundaries of which have been established [as a result of a deed or previous] by subdivision of a larger parcel, and which will not be the subject of further subdivision, as defined by Natural Resources Article, §5-1601, Annotated Code of Maryland, and this Ordinance without an approved forest stand delineation and forest conservation plan.”

MAINTENANCE AGREEMENT: The short-term management agreement associated with afforestation or reforestation plans required under Natural Resources Article, §5-1605, Annotated Code of Maryland and this Ordinance.

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

NET TRACT AREA: 1) Except in agricultural and conservation areas, the total area of a site, including both forested and nonforested areas, to the nearest 1/10 acre, reduced by the area found to be within the boundaries of the 100-year floodplain; and 2) In agricultural end conservation areas, part of the total tract for which land use will be changed or no longer be used for primarily agricultural activities, reduced by the area found to be within the boundaries of the 100-year floodplain, and 3) For a linear project: (a) The area of a right-of-way width, new access roads, and storage; or (b) The limits of disturbance as shown on an application for sediment and erosion control approval or in a capital improvements program project description.

NONTIDAL WETLAND:

a. Nontidal wetlands means an area that is: 1) Inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and under normal conditions does support, a prevalence of vegetation typically adapted for life in saturated soil conditions, commonly known as hydrophytic vegetation; and 2) Considered a nontidal wetland in accordance with the publication known as the “Federal Manual for Identifying and Delineating Jurisdictional Wetlands,” published in 1989 and as may be amended and interpreted by the U.S. Environmental Protection Agency.

b. Nontidal wetlands does not include tidal wetlands regulated under Natural Resources Article, Title 9, Annotated Code of Maryland

OFFICE: The Town unit charged with implementing the local forest conservation plan.

OFF-SITE: Not on the same tract as the proposed related activity, but within the corporate limits.

ON-SITE: The area located within the legal boundary of the property or properties on which the regulated activity or activities are proposed, are occurring, or have occurred, as set forth in the deed for that area, plus any contiguous land owned by the same individual as set forth in the deed or deeds for that contiguous land, as these boundaries existed at the commencement of the regulated activity.

100-YEAR FLOOD: A flood which has a 1% chance of being equaled or exceeded in any given year. Except for Class III waters (natural trout streams) a body of water with a watershed less than 400 acres is excluded.

100-YEAR FLOODPLAIN: An area along or adjacent to a stream or body of water, except tidal waters, that is capable of storing or conveying floodwaters during a 100-year frequency storm event, or a 100-year flood.

OVERSTOREY: That portion of trees in a forest that form the uppermost layer or canopy.

PERSON: The federal government, the state, any county, municipal corporation, or other political subdivision of the state, or any of their units, or an individual, receiver, trustee, guardian, executor, administrator, fiduciary, or representative of any kind, or any partnership, firm, association, public or private corporation, or any of their affiliates, or any other entity.

PLANNED UNIT DEVELOPMENT (PUD): A development comprised of a combination of land uses or varying intensities of the same land use in accordance with the Zoning Ordinance of the Town of New Market.

PROJECT PLAN: A construction, grading, stormwater, or sediment control activity on an area of 10,000 square feet or greater by a local agency.

PUBLIC UTILITY: Any: 1) Transmission line or electric generating station; or 2) Water, sewer, electric, gas, and telephone or television cable service line.

REFORESTATION:

- a. "Reforestation" or "reforested" means to create a biological community dominated by trees and other woody plants containing at least 100 live trees per acre with at least 50% of those trees having the potential of attaining a 2-inch or greater diameter measured at 4.5 feet above the ground, within 7 years.
- b. "Reforestation" or "reforested" includes landscaping of areas under an approved, drawn to scale landscaping plan showing dimensions and details for establishing a forest at least 35 feet wide and covering 2500 square feet or more of area, as distinguished from landscaping in general, using native or indigenous plants when appropriate.

REGULATED ACTIVITY: Any of the following activities, when that activity occurs on a unit of land which is 10,000 square feet or greater: 1) Subdivision; 2) Grading; 3) An activity that requires a sediment control or stormwater management control permit; 4) Project plan of a local agency.

RETENTION: The deliberate holding and protecting of existing trees, shrubs or plants on the site according to established standards as provided in the Town of New Market Forest Conservation Manual.

SEEDLINGS: An unbranched woody plant, less than 24 inches in height and having a diameter of less than 1/2 inch measured at 2 inches above the root collar.

SELECTIVE CLEARING: The careful and planned removal of trees, shrubs, and plants using specific standards and protection measures under an approved forest conservation plan.

STREAM: An intermittent or perennially flowing drainage course.

STREAM BUFFER: All lands lying within 50 feet, measured from the top of each normal bank of any perennial or intermittent stream.

SUBDIVISION: Any division of a parcel of land into 2 or more lots or parcels for the purpose, whether immediate or future, of transfer of ownership, sale, lease, or development.

- a. "Subdivision" includes resubdivision.

TIMBER HARVESTING:

- a. "Timber harvesting" means a tree cutting operation affecting 1 or more acres of forest or developed woodland within a 1-year interval that disturbs 5,000 square feet or more of forest floor.
- b. "Timber harvesting" does not include grubbing and clearing of root mass.

TOWN OF NEW MARKET FOREST CONSERVATION MANUAL: The Maryland State Forest Conservation Technical Manual, latest edition, used to establish standards of performance required in preparing forest stand delineations and forest conservation plans.

TRACT: Property or unit of land subject to an application for a grading or sediment control permit, subdivision approval, stormwater management approval, project plan approval, or areas subject to this subtitle.

TREE: A large, branched woody plant having 1 or more self-supporting stems or trunks that reach a height of at least 20 feet at maturity.

UNDERSTORY: Herbaceous and woody plants growing under the tree canopy or overstorey.

VARIANCE:

- a. "Variance" means relief from Natural Resources Article, Sec. 5-1601--5—1612, Annotated Code of Maryland, or this Ordinance.
- b. "Variance" does not mean a zoning variance.

WATERSHED: All land lying within an area described as a sub-basin in water quality regulations adopted by the Department of the Environment under COMAR 26.08.02.08.

WHIP: An unbranched woody plant [not less than 21 inches in height, averaging] greater than 24" in height, and having a diameter of less than 1 inch measured at 2 inches above the root collar.

13.4 Historic District Definitions

For the purposes of the Historic District Overlay, the following words and phrases, shall have the meanings respectively ascribed to them:

ALTERATION: Any exterior change that would affect the historic, archeological, or architectural significance of a designated site or structure, any portion of which is visible or intended to be visible from a public way, including, but not limited to, construction, reconstruction, moving, or demolition.

APPURTENANCES AND ENVIRONMENTAL SETTINGS: All that space of grounds and structures thereon which surrounds a designated Site or Structure and to which it relates physically or visually. Appurtenances and environmental settings shall include, but not be limited to, walkways and driveways (whether paved or not), trees, landscaping, pastures, croplands, waterways, open space, setbacks, parks, public spaces, and rocks.

CERTIFICATE OF APPROPRIATENESS: A certificate issued by the Historic District Commission indicating its approval of plans for construction, alteration, reconstruction, moving, or demolition of an individually designated landmark, site or structure or of a site or structure within a designated preservation district.

DEMOLITION BY NEGLECT: Any willful neglect in the maintenance and repair of an individually designated landmark, site, or structure, or a site or structure within a designated preservation district, not including any appurtenances and environmental settings, that does not result from an owner's financial inability to maintain and repair such landmark, site, or structure, and which results in any of the following conditions:

1. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, so as to create or permit a hazardous or unsafe condition to exist; or
2. The deterioration of the foundations, exterior walls, roofs, chimneys, doors, or windows, the lack of adequate waterproofing, or the deterioration of interior features which will or could result in permanent damage, injury, or loss of or loss to foundations, exterior walls, roofs, chimneys, doors, or windows.

HISTORIC DISTRICT: A significant concentration, linkage, or continuity of sites, structures, or objects united historically, architecturally, archeologically, culturally, or aesthetically by plan or physical development. A [historic/preservation] district shall include all property within its boundaries as defined and designated by the Mayor and Town Council.

EXTERIOR FEATURES: The architectural style, design, and general arrangement of the exterior of an historic structure, including the nature and texture of building material, and the type and style of all windows, doors, light fixtures, signs, or similar items found on or related to the exterior of an historic structure.

HISTORIC AREA WORK PERMIT: A permit issued by the Zoning Administrator upon receiving a Certificate of Appropriateness from the Commission for all projects that the Town conducts, assists, licenses, or permits that affect properties within a designated district or individually designated sites or landmarks.

LANDMARK: Any designated site or structure outside the boundaries of a preservation district that is of exceptional historic, archeological, or architectural significance.

RECONSTRUCTION: The process of reproducing by new construction the exact form and detail of a vanished structure, or part thereof, as it appeared at a specific period of time.

RESTORATION: The process of accurately recovering the form and details of a property as it appeared at a specific period of time by means of removal of later work and the replacement of work missing from that period.

SITE: The location of an event of historic significance or a structure, whether standing or ruined, which possesses historic, architectural, archeological, or cultural significance.

STRUCTURE: A combination of material to form a construction that is stable, including but not limited to buildings, stadiums, reviewing stands, platforms, stagings, observation towers, radio towers, water tanks and towers, trestles, bridges, piers, paving, bulkheads, wharves, sheds, coal bins, shelters, fences, and display signs visible or intended to be visible from a public way. The term "structure" shall be construed as if followed by the words, "or part thereof."

13.5 Lighting Definitions

The "IES" (Illuminating Engineering Society of North America) Lighting Handbook, most recent edition, shall be used for the definition of terms used in this ordinance but not defined herein. In the case where a definition of a term of this ordinance is found to be in conflict with a definition of a term of any other ordinance, "IES" handbook or regulation, the more restrictive definition will apply.

DIRECT LIGHT: Light emitted directly from the lamp, off of the reflector or reflector diffuser, or through the refractor or diffuser lens, of a luminaire.

FIXTURE: The assembly that houses the lamp or lamps and can include all or some of the following parts: a housing, a mounting bracket or pole socket, a lamp holder, a ballast, a reflector or mirror, and/or a refractor or lens.

FLOOD OR SPOT LIGHT: Any light fixture or lamp that incorporates a reflector or a refractor to concentrate the light output into a directed beam in a particular direction.

FULLY-SHIELDED LIGHTS: Outdoor light fixtures shielded or constructed so that no light rays are emitted by the installed fixture at angles above the horizontal plane as certified by a photometric test report.

GLARE: Light emitting from a luminaire with an intensity great enough to reduce a viewer's ability to see, and in extreme cases causing momentary blindness.

GRANDFATHERED LUMINAIRES: Luminaires not conforming to these regulations that were in place at the time they were voted into effect. When an ordinance "grandfathers" a luminaire, it means that such already-existing outdoor lighting does not need to be changed unless a specified period is specified for adherence to the regulations.

HEIGHT OF LUMINAIRE: The height of a luminaire shall be the vertical distance from the ground directly below the centerline of the luminaire to the lowest direct-light-emitting part of the luminaire.

INDIRECT LIGHT: Direct light that has been reflected or has scattered off of other surfaces.

LAMP: The component of a luminaire that produces the actual light.

LIGHT TRESPASS: The shining of light produced by a luminaire beyond the boundaries of the property on which it is located.

LUMEN: A unit of luminous flux. One footcandle is one lumen per square foot. For the purposes of this Ordinance, the lumen-output values shall be the INITIAL lumen output ratings of a lamp.

LUMINAIRE: This is a complete lighting system, and includes a lamp or lamps and a fixture.

OUTDOOR LIGHTING: The night-time illumination of an outside area or object by any man-made device located outdoors that produces light by any means.

TEMPORARY OUTDOOR LIGHTING: The specific illumination of an outside area of object by any man-made device located outdoors that produces light by any means for a period of less than 7 days.

13.6 Subdivison/Site Plan Definitions

For the purpose of these regulations certain terms are defined as follows:

ALLEY: A right-of-way which provides secondary service access for vehicles to the side or rear of abutting properties.

BLOCK: A tract of land (within a subdivision) that is entirely bounded by streets or by a combination of streets, alleys, public parks, cemeteries, road rights-of-way, waterways, or corporate boundary lines of the Town.

BUILDING SETBACK LINE: A line within a lot or parcel of land, so designated on the plats, between which line and a street no building or structure may be erected, as determined by the yard requirements of the Zoning Ordinance of New Market.

COMPREHENSIVE DEVELOPMENT PLAN: The officially adopted master plan(s) for the development of New Market, or any part of such plan(s) or amendments thereto.

COUNTY MASTER HIGHWAY PLAN: The official plan of major roads, highways, streets, and other ways adopted by the Frederick County Planning Commission and approved by the Board of County Commissioners of Frederick County, and as amended in accordance with Article 66B of the Annotated Code of Maryland as amended.

COUNTY PLANS: The officially adopted master plan(s) for the comprehensive development of Frederick County, or any part of such plan (s) or any amendments thereto.

CROSSWALK: A passageway which cuts through a block and is used for the movement of pedestrians only.

DEVELOPER: The owner(s) or agent(s) under legal authority of the owner(s) who undertake to cause a parcel of land to be designed, subdivided, recorded as a subdivision and developed.

EASEMENT: A strip of land on which a limited right-of-way is provided for one or more designated purposes, without including title to the land.

FLOODPLAIN, ANNUAL: That floodplain being defined by soil types within the 1969 "natural Physical Characteristics" report published by the County Planning Commission as they are designated by the U.S. Soil Conservation Service, such being principally a natural water retention area of generally wet land.

FLOODPLAIN, HISTORICAL: That floodplain being defined within the 1969 "Natural Physical Characteristics" report published by the County Planning Commission for the Potomac River, Monocacy River and Catoctin Creek, such being that area which at some point in time has or could be inundated by water due to flood conditions.

LOT: A parcel, tract or portion of land separated from other parcels, tracts, or portions either by descriptions as on a subdivision plat or a recorded survey map, or by metes and bounds, for the purpose of transfer, sale, lease or other changes in ownership or separate use.

LOT, CORNER: A lot abutting upon two (2) or more roads at their intersection or upon two parts of the same road, and in either case, forming an interior angle of less than one hundred thirty-five degrees.

LOT, DOUBLE FRONTAGE: A lot extending through the block from one street to another.

OUTLOT: A parcel of land within a subdivision which has been included on a preliminary or final plat but not designated as a buildable lot due to insufficient size and/or frontage, peculiar site or topographical problems, or due to the necessity of providing for access to adjoining properties or a continuation of appropriate future street patterns.

PARKWAY: A scenic road with variable right-of-way which is used by continuous as well as frequently stopping traffic, depending upon the use of related recreational lands.

PERFORMANCE BOND: A surety bond or cash deposit made out to the Town in an amount equal to the full cost of the improvements which are required by this ordinance, and said surety bond or cash deposit being legally sufficient to secure to the Town that said improvements will be constructed in accordance with this ordinance.

PLANNING COMMISSION: The New Market Planning Commission Principal Highway - Any road designated as Freeway, Expressway, or Major Arterial on the official Frederick County Master Highway Plan.

PUBLIC IMPROVEMENTS: Changes and/or additions to land necessary to prepare it for future transfer or building development and located in areas or easements to be deeded to or dedicated to public use. They may include streets, curbing, grading, drainage-ways, sewerage facilities, fire hydrants, water facilities, sidewalks, and other works and appurtenances to be deeded to or dedicated to public use.

ROAD: Includes street, highway, avenue, land, marginal access street, service drive, alley, bridge, viaduct or any segment thereof.

STREET: A public or dedicated way, or a public proposed right-of-way, widening, or extension of an existing street or public way shown on any plan approved by the Planning Commission.

STREET, COLLECTOR: A street which is intended as a main interior street, non-conducive to through traffic, for local traffic; individual property access is granted to properties abutting thereon.

STREET, LOCAL: A street which provides local service exclusively to the abutting properties, and which is not conducive to through traffic.

STREET, MAJOR ARTERIAL: A street which is intended to provide unity throughout a contiguous area with channelized intersections and no parking, used primarily for intra-county and local traffic; individual property access is prohibited.

STREET, MINOR ARTERIAL: A street which is intended as a main feeder street for local traffic; individual property access is prohibited.

STREET, PRIVATE: Any street which is under the jurisdiction of an individual, corporation, or trustee, or any street which is privately owned, established, constructed, or maintained.

STREET, SERVICE ROAD: A road not serving as a collector street or local street, but merely providing access to properties fronting on a principal highway, which road is contiguous and parallel to the principal highway. No structure shall be built between the service road and the principal highway.

SUBDIVIDE: The act of creating a subdivision as herein defined.

SUBDIVIDER: A person or persons, developer(s), partnership(s), firm(s), corporation(s), or co-operative enterprise(s), undertaking or participating in the subdivision of land.

SUBDIVISION: The division of any tract or parcel of land for the purpose, whether immediate or future, of transfer of ownership or building development.

TECHNICAL ADVISORY COMMITTEE: A committee composed of staff members of the New Market and County Planning Commissions, State Highway Administration, County Roads Board, County Health Department, Metropolitan Commission, other such governmental agency having jurisdiction over water and sewer facilities, Soil Conservation Service, and/or any other department or agency concerned with development.