

CHAPTER 16 – ZONING

TOWN OF VIENNA ORDINANCE NO. 1992-2
UPDATE SPRING 2019 – M.J.M.

AN ORDINANCE OF THE COMMISSIONERS OF VIENNA TO ENACT NEW CHAPTER 16, ENTITLED "ZONING" OF THE CODE OF LAWS OF THE TOWN OF VIENNA TO REGULATE USAGE OF PROPERTY AND CONSTRUCTION WITHIN THE TOWN.

SECTION 1. BE IT ENACTED AND ORDAINED by The Commissioners that the attached new Chapter 12 entitled "ZONING" of the Code of Laws of the town of Vienna is hereby enacted.

SECTION 2. BE IT FURTHER ENACTED AND ORDAINED that this ordinance shall take effect at 00:01 A.M., November 1, 1992.

PASSED this 12th day of October 1992.

THE COMMISSIONERS OF VIENNA

ATTEST:

_____ By: _____ (SEAL)
Dewey E. Blades
President

APPROVED this 12th day of October, 1992.

Dewey E. Blades
President

CHAPTER 16 – ZONING

CHAPTER 16 ZONING

FOREWORD

This July 12, 1993, issue of Chapter 16 includes Ordinance Number 1993-2 which adds a new Section 16-12 to the previously issued Zoning Ordinance of October 12, 1993, and renumbers succeeding sections. That issuance incorporated key provisions of all previously enacted ordinances dealing with zoning including regulations relating to the flood-plain. It and Ordinance 1993-1 superseded the following ordinances:

<u>Ordinance Number</u>	<u>Section Affected</u>	<u>Date Enacted</u>	<u>Subject</u>
1997-1 1980 1980-8 1980-26	16-6-3		Trailers Repeal of Ordinances Penalties
1982-3 1983-1 1986-1 1987-1 1988-1	16-15-2 16-13-2 16-13-3 16-5-2B 6-2B	10/22/80 8/9/82 3/14/83 1/27/86 6/15/87 5/9/88	Repeal of Ordinances Permits Sale of Bonds Lodging House Rqmts Satellite Dishes Sale of Alcohol (original text changed by ordinance 1988-5)
1988-2 1988-4 1988-5 1990-1	16-12-4 (h) 16-11 Numerous 16-10-7D	3/28/88 7/25/88 12/12/88	Signs Floodplain Critical Areas Impervious surface
Previous issues of Chapter 16 Zoning			

This issuance also incorporates Ordinance Number 1993-1 of May 10, 1993, which corrected several errors and omissions contained in Ordinance 1992-2.

Individual pages are identified in the upper right hand corner with the number of the first paragraph appearing on that page. New ordinances may result in changes to this chapter. The date appearing on the bottom of the page is the date of issue for that particular page of this document. It is anticipated that revisions will be periodically made to this ordinance which will require entering changes to this chapter to keep it current. Entry of changes to the chapter should be documented in the following table to enable a person to verify that this copy is current. Additional changes have been added as amendments occur.

<u>Ordinance Number</u>	<u>Section Affected</u>	<u>Date Enacted</u>	<u>Subject</u>
-------------------------	-------------------------	---------------------	----------------

CHAPTER 16 – ZONING

CHAPTER 16 ZONING

FOREWARD

This October 12, 1992, issue of Chapter 16 is a complete revision of the town's zoning ordinances. It is intended to incorporate key provisions of all previously enacted ordinances dealing with zoning including regulations relating to the flood-plain. It supersedes the following ordinances:

<u>Ordinance Number</u>	<u>Section Affected</u>	<u>Date Enacted</u>	<u>Subject</u>
1979-1	16-6-3		Trailers
1980-2	16-6-3		Trailers
1982-3	16-15-2	8/9/82	Permits
1986-1	16-13-2	1/27/86	Lodging House Rqmts
1987-1	16-13-3	6/15/87	Satellite Dishes
1988-1	16-5-2B, 6-2B (original text changed by ordinance 1988-5)	5/9/88	Sale of Alcohol
1988-2	16-12-4 (h)	3/28/88	Signs
1988-4	16-11	7/25/88	Floodplain
1988-5	Numerous	12/12/88	Critical Areas
1990-1	16-10-7D		Impervious surface
1992-2	16	10/12/92	Zoning
1993-2	16-12	7/12/93	FCR DISTRICT
1996-2	16-10-7E	12/23/96	Impervious surfaces
1997-2	16-10-7E	3/10/97	Impervious Surfaces
2001-3	16-13-5	9/24/01	Accessory Buildings
2002-1	16-13-6	02/25/02	Temporary Structures
2006-1	16-13-3	1/9/05	Delete Parking
2006-2	16-3-2	4/19/06	Definitions fence
2006-3	16-13-5	5/8/06	Accessory Bldgs
2007-01	16-9		Industrial District
2008-3	16-9	6/30/08	Industrial District
2008-5	16-8-3	9/22/08	B-2 Apartments/more than one
2008-6	16-14-6	12/22/08	Adult Oriented Business
2008-7	16-14-7		Prohibited Uses
2008-7	16-14-1	12/22/08	Massage Establishment
2006-02	16-13-7	4/19/06	Fence All Districts
2008-5	16-8-4	9.22.08	B-2 Lot, Yard & Height
2010-2	16-14-8	10/25/10	DorchesterCty -Stormwater
2010 -7	16-16	12/27/10	Planned Devp Dist
2011-01	16-11	7/25/11	Floodplain
2012-02	16-13-5	9/24/12	Height to 17ft accessory bldg
2012-03	16-13-7	8/27/12	Fencing All Districts
2013-05	16-13-5		Accessory Bldg delete hoiz siding

CHAPTER 16 – ZONING

2018-03	all sections	11/12/18	delete 66B use Land Use Article
2019-1	16-5-all districts	4/8/19	add Day Care Home
2019-2	16-13-5	4/8/19	Accessory Bldg height 20 ft, anchoring. pitch & etc.

A newer update, beginning spring, 2019 includes many changes from the past. By Ordinance 2018-03, on 11/ 12/ 2018 all references to Article 66 B were deleted and replaced with the following:” 2012 Land Use Article”. Further, by Ord 2010-3 on 10/10/11 all references to BOCA were deleted from the entire Code of Laws of the Town of Vienna and the MD Building Performance Standards was adopted. The CHESAPEAKE BAY CRITICAL AREA DISTRICT C-10 and the FLOODPLAIN MANAGEMENT ORDINANCE are each in separate notebooks and not included herein.

Individual pages are identified in the upper right hand corner with the number of the first section appearing on that page. New ordinances may result in changes to this chapter. The date appearing on the bottom of the page is the date of issue for that page of this document. It is anticipated that revisions will be periodically made to this ordinance which will require entering changes to this chapter to keep it current. Entry of changes to the chapter should be documented in the preceding table to enable a person to verify that this copy is current.

CHAPTER 16 – ZONING

**CHAPTER 16 ZONING ORDINANCE
TABLE OF CONTENTS**

16-1 AUTHORITY AND ENACTMENT

16-2 PURPOSE

16-2-1 GENERAL PURPOSE

16-2-2 PROVISIONS OF ORDINANCE DECLARED MINIMAL

16-3 DEFINITION OF TERMS

16-3-1 GENERAL USAGE

16-3-2 DEFINITIONS

16-4 DISTRICT REGULATIONS AND MAP

16-4-1 ESTABLISHMENT OF DISTRICTS

16-4-2 OFFICIAL ZONING MAPS

16-4-3 INTERPRETATION OF DISTRICT BOUNDARIES

16-5 RESIDENTIAL DISTRICT, LIMITED R₁

16-5-1 STATEMENT OF INTENT

16-5-2 PERMITTED USES AND STRUCTURES

16-5-3 SPECIAL EXCEPTIONS (Amended 4/8/19 by Ord 2019-1)

16-5-4 LOT, YARD AND HEIGHT REGULATIONS

16-6 RESIDENTIAL DISTRICT, GENERAL R₂

16-6-1 STATEMENT OF INTENT

16-6-2 PERMITTED USES AND STRUCTURES

16-6-3 SPECIAL EXCEPTIONS (Amended 4/8/19 by Ord 2019-1)

16-6-4 LOT, YARD AND HEIGHT REGULATIONS

16-7 BUSINESS DISTRICT, GENERAL B-1

16-7-1 STATEMENT OF INTENT

16-7-2 PERMITTED USES AND STRUCTURES

**16-7-3 SPECIAL EXCEPTIONS (Amended 12.22.08 by Ord 2008-6 & (Amended
4/8/19 by Ord 2019-1)**

16-7-4 LOT, YARD AND HEIGHT REGULATIONS

**16-8 BUSINESS DISTRICT, NEIGHBORHOOD B-2 (Amended 9/22/2008 by Ord.
2008-5)**

16-8-1 STATEMENT OF INTENT

16-8-2 PERMITTED USES AND STRUCTURES

16-8-3 SPECIAL EXCEPTIONS (Amended 4/8/19 by Ord 2019-1)

CHAPTER 16 – ZONING

**16-8-4 LOT, YARD AND HEIGHT REGULATIONS (Amended 9/22/2008
by Ord. 2008-5)**

**16-9 INDUSTRIAL DISTRICT, GENERAL (M1) GENERAL (Amended on 5.14.07
by Ord. 2007-1, Amended on 6.9.08 by Ord. 2008-3, Amended on
10.22.08 by Ord. 2008-5)**

16-9-1 STATEMENT OF INTENT

16-9-2 PERMITTED USES AND STRUCTURES

16-9-3 SPECIAL EXCEPTIONS (Amended 4/8/19 by Ord 2019-1)

16-9-4 LOT, YARD AND HEIGHT REGULATIONS

**16-10 CRITICAL AREA DISTRICT (CA) Section 16-10 CRITICAL AREA
DISTRICT was repealed and reenacted by ORD No 2011-4 on 12/12/2011
The CRITICAL AREA DISTRICT (CA) can be found in a separate notebook.**

**16-11 FLOODPLAIN DISTRICT (FP) CHAPTER 16- 2011 – 1 § 155-37.
FLOODPLAIN MANAGEMENT ORDINANCE
(Repealed and reenacted Chapter 16-11 Floodplain Management Ordinance
FEM 16-11-155-37 Floodplain District – Introduced 6/22/11 and adopted
7/25/11 – Stand Alone Document ENFORCED BY DORCHESTER
COUNTY**

16-12 FLOATING COMMERCIAL/RECREATION DISTRICT (FCR)

16-12-1 STATEMENT OF INTENT

16-12-2 PERMITTED USES AND STRUCTURES

16-12-3 APPLICATIONS FOR FCR ZONING

16-13 GENERAL PROVISIONS

16-13-1 APPLICATION OF REGULATIONS

16-13-2 REPAIR OR REMOVAL OF DAMAGED STRUCTURES

**16-13-3 REPEALED ORD 2006-1) “OFF STREET PARKING –
NEW OFF STREET PARKING SECTION 16-17 (FORMER OFF STREET
PARKING- RENUMBERED 16-17)**

16-13-4 SIGNS

**16-13-5 ACCESSORY STORAGE BUILDINGS AND USES (Added 5.08.06 by
ORD 2006-3) ACCESSORY STRUCTURES Definition amended
3.27.2006 by Ord. 2006-3. (ACCESSORY BUILDINGS AND USES
Amended 4/6/19, by ORD 2019-2).**

**16-13-6 TEMPORARY STRUCTURES Definition amended 3.27.2006 by Ord.
2006-3**

16-13-7 FENCES (Deleted/reenacted 4.19.06 by ORD 2006-2)

16-13-8 SCREENING OF CONFLICTING USES

16-13-9 MINIMUM LOT SIZE AND AREA

16-13-10 FRONT YARD EXCEPTION

16-13-11 HEIGHT LIMITATION EXCEPTIONS

CHAPTER 16 – ZONING

16-13-12 VISIBILITY AT INTERSECTIONS

16-13-13 SINGLE FAMILY DWELLING CONVERSIONS

16-13-14. PORTABLE ACCESSORY STRUCTURES AND ACCESSORY BUILDINGS (REPLACED BY 16-13-5 COMBINED BOTH SECTIONS INTO ONE ORD 2006-3)

16-14 SPECIAL PROVISIONS

16-14-1 MULTI-FAMILY DEVELOPMENTS

16-14-2 ACCESSORY APARTMENTS AND BOARDING AND LODGING HOUSES

16-14-3 SATELLITE DISHES

16-14-4 SUBDIVISIONS

16-14-5. DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS (Added in its entirety on 11.14.05 by ORD 2005-5

16-14-6. ADULT ORIENTED BUSINESS, ENTERTAINMENT, AND MATERIAL 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT AND MATERIAL REGULATIONS (Added 12.22.08 by Ord. 2008-6)

16-14-7 PROHIBITED USES AND ACTIVITIES (Added 12.22.08 by Ord. 2008-7)

16-14-7. PROHIBITED USES AND ACTIVITIES

16-14-7.1. MASSAGE ESTABLISHMENT IN ALL DISTRICTS

16-14-8 STORMWATER MANAGEMENT (ADDED 10/25/2010 by ORD 2010-2)

16 16-14-8.1 ADOPTION DORCHESTER COUNTY

STORMWATER MANAGEMENT ORDINANCE AS CHAPTER 134

16-14-8.2 AUTHORIZATION

16-14-8.3 APPLICATION

16-15 NON-CONFORMING LOTS, USES, AND STRUCTURES

16-15-1 NON-CONFORMING LOTS

16-15-2 NON-CONFORMING USES

16-15-3 NON-CONFORMING STRUCTURES

16-15-4 EXEMPTIONS FROM NON-CONFORMANCE

16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE

Added 10 January 2011 by ORDINANCE 2010-7)

16-16-1. PURPOSE

16-16-2. DEFINITIONS

16-16-3. APPLIABILITY AND INTENT

16-16-4. LAND USES, DENSITY, AND DEVELOPMENT STANDARDS IN A PDD FLOATING ZONE.

16-16-5. REQUIRED PROCEDURES

16-16-6. INITIAL APPLICATION

CHAPTER 16 – ZONING

16-16-7. REVIEW BY THE PLANNING COMMISSION

**16-16-8. MAYOR AND TOWN COMMISSIONERS' APPROVAL OF
FLOATING ZONE AND PDD PLAN**

16-16-9. AMENDMENT OF PDD PLAN

16-16-10. CONFLICT WITH OTHER ARTICLES

16-17 PARKING REQUIREMENTS (Added 1.9.06 by ORD 2006-1)

**16-18 VIOLATION AND PENALTY (See new CHAPTER 17 VIOLATIONS AND
PENALTIES (Added in it's entirety 4.14.2007 by Ord. 2007-2)**

16-18-1. DEFINITIONS

16-18-2. FINES

16-18-3. PROCEDURE

16-18-4 CITATIONS

16-18-5 DELIVERY OF CITATIONS

16-18-6 PAYMENT OF FINE; ELECTION TO STAND TRIAL

16-18-6.1 ADDITIONAL PENALTIES

16-18-7 ADJUDICATION; PROCEDURE

16-18-8 EFFECT OF ADJUDICATION

16-18-9 AUTHORITY TO PROSECUTE

16-18-10 FINES TO BE REMITTED TO THE TOWN

16-18-11 NO FORMAL HEARING BY TOWN

16-18-12 EQUITABLE RELIEF

16-19 AMENDMENTS

16-19-1 A GENERAL

16-19-2 PROCEDURE

B. SPECIAL PROCEDURES FOR THE CRITICAL AREA DISTRICT

16-20 SEVERABILITY

CHAPTER 16 ZONING**16-1****16-1 AUTHORITY AND ENACTMENT**

Previous, the General Assembly of Maryland provided in Article 66B, Sections 4.01 through 4.08, Annotated Code of Maryland, (all reference to Article 66B was deleted and replaced with **2012 Land Use Article** in this Code by Ord 2018-02 on 11/12/18) as amended, that the legislative body of municipal corporations may, by ordinance, divide the territory under its jurisdiction into districts of such number, shape and area as it may deem best suited to carry out the purposes of this section, and in each district it may regulate and restrict the height, number of stories, and size of buildings and other structures; the percentage of lot that may be occupied; off-street parking; the size of yards, courts and other open spaces; the density of population; and the location and use of buildings, signs, structures and land for trade, industry, residence or other purposes.

Therefore, the Commissioners of the Town of Vienna, Maryland, ordain that this Chapter 16 as the Zoning Ordinance of Vienna.

16-2 PURPOSE**16-2-1 GENERAL PURPOSE**

This ordinance is prepared in accordance with the Comprehensive Plan of the Town and is designed to control congestion in the streets; to secure the public safety; to promote health and the general welfare; to provide adequate light and air; to promote the conservation of natural resources; to prevent environmental pollution; and to facilitate the adequate provision of transportation, water, sewerage, schools, recreation, parks and other public requirements.

16-2-2 PROVISIONS OF ORDINANCE DECLARED MINIMAL

The provisions of this ordinance shall be held to be minimum requirements in their interpretation and application. Whenever the requirements of this ordinance are at variance with the requirements of any other lawfully adopted laws, rules, regulations or ordinances, the most restrictive or that imposing the higher standard shall govern.

16-3 DEFINITION OF TERMS**16-3-1 GENERAL USAGE**

For the purpose of the ordinance, certain words and terms are herein defined as follows: The word "person" includes a firm, association, organization, partnership, trust, company or corporation as well as an individual; the present tense includes the future

tense; the singular number includes the plural; the plural number includes the singular; the word "shall" is mandatory; the word "should" is at the discretion of the property owner; the word "may" is permissive; the words "used" or "occupied" include the words "intended", "designed" or "arranged to be used or occupied"; and the word "lot" includes the words "plot" or "parcel". Includes shall not limit a term to the specified examples, but is intended to extend its meaning to all other instances or circumstances of like kind or character.

The phrase "new construction" applies to new structures, homes, and accessory buildings. The words "building or structure" includes the other and any part thereof. The meaning of words and terms not specifically defined in town ordinances or references documents shall be the generally accepted meaning. The word "story" shall mean any floor that is totally above ground and having a ceiling height of at least seven and one-half feet.

16-3-2 DEFINITIONS

DEFINITIONS (Amended 12.22.08 by Ord. 2008-7)

16-3-3

"Accessory Apartment" – A dwelling unit having its own kitchen, bathroom, and sleeping facilities established within or as a structural addition to a building originally designed as a single family dwelling, a commercial or non-residential use; or on a lot occupied by a single family dwelling or non-residential use.

"Accessory Storage Building, Large" - Large Accessory Storage Building – Greater than 288 square feet (in size). Definition amended 3.27.2006 by Ord. 2006-3

"Accessory Storage Building, Small" - Portable Structures – A pre-built wooden shed of no more than 288 Square feet (generally but not always brought in completely assembled. Definition amended 3.27.2006 by Ord. 2006-3

"Accessory Structure" - a detached structure on the same parcel of land as the principle structure whose use is incidental to the principle structure, e.g. a shed or detached garage. Small Accessory Building –

"Adult Book or Video Store" - an Adult Oriented Business, whether or not containing viewing booths, theaters, or other performance viewing space, that involves the sale, rental, transfer, loan, dissemination, distribution, provision or promotion of photographs, movies, videos, DVDs, CDs or other audio/video recordings, or other electronic recordings, or, in the form of merchandise, objects, items or devises.

"Adult Entertainment or Material" - Any performance, depiction, or text that is intended to cause or provide, or reasonably may be expected to cause or provide, sexual stimulation, sexual excitement, or sexual gratification and:

- (a) In which an individual or individuals appear in a state of Nudity or Partial Nudity; or
- (b) That consists, in whole or in part, of action, activity, poses, portrayal,
 - (i) Human genitals in a discernable state of sexual stimulation or arousal; or
 - (ii) Any act, whether real or simulated, of masturbation, sexual intercourse, anal intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female breasts, pubic area, or genital area, Sodomasochistic Abuse, physical contact or attempted contact with clothes or unclothed genitals, pubic areas, buttocks, anus, or female breast; or
- (c) That consists of sexual contact with animals or inanimate objects; or
- (d) That consist of any merchandise, object, item or devise that is designed and/or marketed with the intention of causing, or that reasonably may be expected to cause, sexual stimulation, sexual excitement or sexual gratification.

“Adult Oriented Business” - any business, operation, or activity a significant amount of which consists of:

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

Nudity --

- (a) The showing of the human male or female genitals, pubic area, anus or buttocks with less than fully opaque covering;
- (b) The showing of the female breast with less than a fully opaque covering over any part below the top or uppermost part of the nipple; or

- (c) The showing of the covered male genitalia in a discernibly turgid state.

Partial Nudity – A state of dress in which opaque clothing or material covers primarily and little else other than;

- (a) The human male or female genitals, pubic area, anus, or buttocks; or
- (b) The female breasts below the top or uppermost part of the nipple.

Sadomasochistic Abuse – Any act or depiction of Nude or Partially Nude humans engaged in:

- (c) Flagellation or torture, whether real or simulated, by or upon an individual; or
- (d) The condition of being, or causing oneself or another to be, fettered, bound, or otherwise physically restrained.

Significant Amount –

- (e) At least 20 % of the stock in the establishment or on display consists of Adult Entertainment or material or houses or contains devices depicting, describing, or relating to Adult Entertainment; or Material; or
- (f) At least 20% of the usable floor area is used for the display or storage of Adult Entertainment or Material or houses or contains devices depicting, describing, or relating to Adult Entertainment or Material; or
- (g) At least 20 % of the gross revenue is, or may reasonably be expected to be, derived from the provision of Adult Entertainment or Material.

Viewing Booth – a space or area in which a display device is located for purposes of viewing pictures, films, videotapes, or other images.

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

"Agriculture" - all methods of production and management of livestock, crops, vegetation, and soil. This includes, but is not limited to, the activities of feeding, housing, and maintaining of animals such as cattle, dairy cows, sheep, goats, hogs, horses, and poultry and handling their by-products.

"Agricultural easement" - a non-possessory interest in land which restricts the

conversion of use of the land, preventing non-agricultural uses.

"Anadromous fish" - fish that travel upstream (from their primary habitat in the ocean) to freshwater in order to spawn.

"Aquaculture" -

(a) the farming or culturing of finfish, shellfish, other aquatic plants or animals, or both, in lakes, streams, inlets, estuaries, and other natural or artificial water bodies or impoundments.

(b) Activities include the hatching, cultivating, planting, feeding, raising, and harvesting of aquatic plants and animals and the maintenance and construction of necessary equipment, buildings, and growing areas.

(c) Cultivation methods include, but are not limited to, seed or larvae development and grow-out facilities, fish pens, shellfish rafts, racks and longlines, seaweed floats and the culture of clams and oysters on tidelands and sub-tidal areas. For the purpose of this definition, related activities such as wholesale and retail sales, processing and product storage facilities are not considered aquaculture practices.

"Barren land" - unmanaged land having sparse vegetation.

"Basement" - an enclosed area whose floor is below grade on all four sides.

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

"Boarding or Lodging House" - a dwelling in which sleeping accommodations are provided for compensation to overnight guests and long-term renters. Meals may also be provided. Guest house and tourist house/home are included within this definition.

"Boat Trailer" - a vehicle that is designed and constructed to transport a boat used for recreational purposes; and of a size and weight that does not require a special highway movement permit when towed by a motor vehicle.

"Buffer" - a naturally vegetated area or vegetated area established or managed to protect aquatic, wetland shoreline, and terrestrial environments from man-made disturbances.

"Buffer Exemption" - an Act of the Town Commissioners, approved by the Critical Area Commission, that relieves an area of the Town or an individual property from the Buffer provisions of the Critical Area Overlay District.

“Camping Trailer” – a vehicle that is mounted on wheels; and has collapsible partial sidewalls that fold for towing by another vehicle and unfold to provide temporary living quarters for recreational, camping, or travel use.

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

"Cluster Development" - a residential development in which dwelling units are concentrated in a selected area or selected areas of the development tract so as to provide natural habitat or other open space uses on the remainder.

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

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

"Community piers" - boat docking facilities associated with subdivisions and similar residential areas, and with condominium, apartment, and other multiple-family dwelling units. Private piers are excluded from this definition.

"Conservation easement" - a non-possessory interest in land which restricts the manner in which the land may be developed in an effort to reserve natural resources for future use.

"Covenant" - a legal obligation or promise imposed upon a property owner through a deed or other instrument.

"Cover crop" - a vegetative cover to protect soils from erosion and to restrict pollutants from the entering the waterways. Cover crops can be dense, planted crops of grasses or legumes, or crop residues such as corn, wheat, or soybean stubble which maximize infiltration and prevent run-off from reaching erosive velocities.

"Critical Area" - all lands and waters defined in Section 8- 1807 of the Natural Resources Article, Annotated Code of Maryland. They include:

- a. All waters of and lands under the Chesapeake Bay and its tributaries to the head of tide as indicated on the State wetlands maps, and all State and private wetlands designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland;
- b. All land and water areas within 1,000 feet beyond the landward boundaries of

State or private wetlands and the heads of tides designated under Title 9 of the Natural Resources Article, Annotated Code of Maryland; and

c. Modification to these areas through inclusions or exclusions proposed by local jurisdictions and approved by the Commission as specified in Section 8-1807 of the Natural Resources Article, Annotated Code of Maryland.

Day Care Home – A dwelling in which a permanent occupant of the dwelling provides for the care, protection, and supervision of no more than eight (8) children or adults for periods of less than 24 hours per day. Those receiving care are not all related to the occupant or to each other by blood, marriage, or adoption and are not legal wards or foster children of the attendant adults. For the purpose of this code, such activities shall meet all requirements for home occupations and shall meet all state standards with respect to registration and inspection. (Added by Ord 2019-1 on 4/8/2019)

"Density" - the number of dwelling units per acre within a defined and measurable area.

"Development" - any man made change to real estate, including, but not limited to buildings and other structures, dredging, fill, grading, paving, clearing, excavation, or extraction. Development includes the subdivision of land.

"Developed woodlands" - those areas of 1 acre or more in size which predominantly contain trees and natural vegetation and which also include residential, commercial, or industrial structures and uses.

"Development activities" - the construction or substantial alteration of residential, commercial, industrial, institutional, or transportation facilities or structures.

"Documented breeding bird areas" - forested areas where the occurrence of interior dwelling birds, during the breeding season, has been demonstrated as a result of on-site surveys using standard biological survey techniques.

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

"Elevation Certificate" - a form supplied by the Emergency Management Agency (FEMA) to certify as-built elevations of structures above sea level.

"Excess storm-water run-off" - all increases in storm-water resulting from:

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

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

"Fences" – an artificially constructed barrier of wood, vinyl, metal, or any other permitted material or combination of materials and living fences, hedges, erected for the enclosure of yard areas and for screening purposes. This definition does not include a wall of any kind. (Added by Ordinance 2006-02 adopted 04/19/06)

"Fisheries activities" - commercial water dependent fisheries facilities including structures for the packing, processing, canning, or freezing of finfish, crustaceans, mollusks, and amphibians and reptiles and also including related activities such as wholesale and retail sales, product storage facilities, crab shedding, off-loading docks, shellfish culture operations, and shore-based facilities necessary for aquaculture operations.

"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.

"Floodplain" - land, typically adjacent to a body of water, with ground surface elevations that are inundated by the base flood.

"Flood Protection Elevation (FPE)" - the elevation of the base flood plus one foot freeboard.

"Forest" - a biological community dominated by trees and other woody plants covering a land area of 1 acre or more. This also includes forests that have been cut but not cleared.

"Forest Interior Dwelling Birds" - species of birds which require relatively large forested tracts in order to breed successfully (for example, various species of flycatchers, warblers, vireos, and woodpeckers).

"Forest management" - the protection, manipulation, and utilization of the forest to provide multiple benefits, such as timber harvesting, wildlife habitat, etc.

Pick up in current code at this point with changes that include small and large accessory buildings and fences.

"Forest practice" - the alteration of the forest either through tree removal or replacement in order to improve the timber, wildlife, recreational, or water quality values.

"Habitat Protection Areas" include the Buffer, Non-Tidal Wetlands, Threatened and

CHAPTER 16
ZONING

16-3-3 DEFINITIONS (Continued)

Endangered Species and Species in Need of Conservation, Plant and Wildlife Habitat, and Anadromous Fish Propagation Waters as defined in COMAR 14.15.09.

"Highly erodible soils" - those soils with a slope greater than 15 percent; or those soils with a K value greater than .35 and with slopes greater than 5 percent.

"Historic 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 the Secretary of the Interior.

"Historic waterfowl staging and concentration area" - an area of open water and adjacent marshes where waterfowl gather during migration and throughout the winter season. These areas are "historic" in the sense that their location is common knowledge and because these areas have been used regularly during recent times.

"Home Occupation" - a business which is operated out of a single- family or duplex dwelling, or buildings accessory to the residential use and which:

- (a) Is clearly incidental and secondary to the use of the dwelling for residential purposes and,
- (b) Is carried on by members of the family residing in the dwelling, and;
- (c) Employs no more than one person outside of the family.

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

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

"Junk Vehicle" – any old, scrap, dismantled, inoperable, abandoned, or dilapidated motor vehicle (s) and parts thereof; and including unregistered trailer, semi-trailer, travel trailer, camping trailer, boat trailer, or mobile home.

"K Value" - the soils erodibility factor in the Universal Soil Loss Equation. It is a quantitative value that is experimentally determined.

"Land-based aquaculture" - the raising of fish or shellfish in any natural or

man-made, enclosed or impounded, water body.

"Land clearing" - any activity that removes the vegetative ground cover.

"Landform" - features of the earth's surface created by natural causes.

"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 if it is supplied with water equalizing vents.

"Marina" - any facility for the mooring, berthing, storing, or securing of watercraft, but not including community piers and other non-commercial boat docking and storage facilities.

"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.

"Massage" – Any method of treating, or attending to, the external parts of the human body (other than the scalp) by touching, rubbing, stroking, kneading, tapping or vibrating with the hand, arm, foot or other body part, or by instrument or device, applied by a Massage Technician, for compensation, or without compensation and in connection with or related to any other service, sale, transaction, or exchange for compensation.

"Massage Establishment" Any establishment, building, structure, premise, room or other location or site where a Massage Technician administers a Massage to another person. Massage Establishment does not include a hospital, nursing home, medical clinic or other establishment, building, structure, premise, room or other location or site where massages are administered by any individual who is a Medical Practitioner, a Massage Therapist, or a Massage Practitioner.

"Massage Technician" An individual who administers a Massage to another individual. Massage Technician does not include:

- a. A Massage Practitioner;
- b. A Massage Therapist; or
- c. A Medical Practitioner.

"Massage Practitioner" A registered massage practitioner as that term is defined by § 3-5A-01 of the Health Occupations Article of the Annotated Code of Maryland, or a person excepted from the requirement to be certified or registered before practicing massage therapy or non-therapeutic massage pursuant to an exception set forth in § 3-5A-05(A)(2) of the Health Occupations Article of the Maryland Annotated Code who is practicing massage under the limited circumstances allowed in § 3-5A-05(A)(2)

“Massage Therapist” A certified massage therapist as that term is defined by § 3-5A-01 of the health occupations Article of the Annotated code of Maryland.

"Mean High Water Line" - the average level of high tides at a given location.

“Medical Practitioner” - A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, or other similar health professional licensed and/or certified by the State of Maryland.

"Mean High Water Line" - the average level of high tides at a given location.

"Natural Heritage Area" - any communities of plants or animals which are considered to be among the best statewide examples of their kind, and are designated by regulations of the Town of Vienna or the Department of Natural Resources.

"Natural Vegetation" - those plant communities that develop in the absence of human activities.

"Nature-dominated" - condition where landform or biological communities, or both, have developed by natural processes in the absence of human intervention.

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

"New Construction" - a structure for which the start of construction or subsequent improvements commenced on or after July 1, 1992.

"NGVD" - National Geodetic Vertical Datum of 1929 elevation reference points set by the National Geodetic Survey based on mean sea level.

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

"Non-renewable resources" - resources that are not naturally regenerated or renewed.

"Non-tidal wetlands" - those lands in the Critical Area, excluding tidal wetlands regulated under Title 9 of Natural Resources Article, Annotated Code of Maryland, where the water table is usually at or near the surface, or lands where the soil or substrate is covered by shallow water at some time during the growing season. These

regulations apply to the Palustrine class of non-tidal wetlands as defined in "Classification of Wetlands and Deepwater Habitats of the United States" (Publication FWS/OBS-79/31, December 1979) and as identified on the National Wetlands Inventory maps, or which may be identified by site survey at the time of application for a development activity. These lands are usually characterized by one or both of the following:

- a. At least periodically, the lands support predominantly hydrophytic vegetation;
- b. The substrate is predominantly un-drained hydric soils.

"Offsets" - structures or actions that compensate for undesirable impacts.

"One Hundred (100) Year Frequency Flood" - the base flood, having a one in a hundred (1%) chance of being equaled or exceeded in any year.

"Open space" - land which is not developed. It may consist of open fields, lawns, trees, or water areas. Areas occupied by streets, drives, and accessory buildings are not considered open space.

"Overburden" - the strata or material in its natural state, before its removal by surface mining, overlying a mineral deposit, or in between mineral deposits.

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

"Physiographic features" - the soils, topography, land slope and aspect, and local climate that influence the form and species composition of plant communities.

"Port" - a facility or area established or designated by the State or local jurisdictions for purposes of waterborne commerce.

"Portable Accessory Structure" - A pre-built wooden shed of no more than 288 square feet that is brought in completely assembled.

"Private harvesting" - the cutting and removal of trees for personal use.

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

"Public Buildings" - buildings owned by a government and privately owned buildings which are to be frequented by the public in the course of business.

"Public water-oriented recreation" - shore-dependent recreation facilities or activities provided by public agencies which are available to the general public.

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

"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.

"Redevelopment" - the process of developing land which is or has been developed.

"Reforestation" - the establishment of a forest through artificial reproduction or natural regeneration.

"Renewable resource" - a resource that can renew or replace itself and, therefore, with proper management, can be harvested indefinitely.

"Riparian habitat" - a habitat that is strongly influenced by water and which occurs adjacent to streams, shorelines, and wetlands.

"Seasonally flooded water regime" - a condition where surface water is present for extended periods, especially early in the growing season, and when surface water is absent, the water table is often near the land surface.

"Selection" - the removal of single, scattered, mature trees or other trees from uneven-aged stands by frequent and periodic cutting operations.

"Semi-Trailer" - a vehicle that has no mode of power; and is designed to carry people or property and to be towed by a motor vehicle; and is constructed so that some of its weight and load rests on or is carried by another vehicle.

"Sensitive Areas" -

1. Hydric soils and soils with hydric properties as designated by the Soil Conservation Service;
2. Highly erodible soils with a K value greater than .35; and
3. Steep slopes greater than 15 percent.

"Significantly eroding areas" - areas that erode 2 feet or more per year.

"Special Exceptions" - specified uses of land and buildings which may be permitted in various districts only by approval of the Board of Appeals.

"Species in need of conservation" - those fish and wildlife whose continued existence as part of the State's resources are in question and which may be designated

by regulations of the Town of Vienna or the Department of Natural Resources as in need of conservation pursuant to the requirements of Natural Resources Article, 10-2A-06 and 4-2A-03, Annotated Code of Maryland.

"Spoil pile" - the overburden and reject materials as piled or deposited during surface mining.

"Soil Conservation and Water Quality Plans" - land-use plans for farms that show farmers how to make the best possible use of their soil and water resources while protecting and conserving those resources for the future. It is a document containing a map and related plans that indicate:

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

"Start of Construction" - the date of issue of a building permit, 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 slab or footings, piles, columns, or actual placement of a manufactured home. For substantial improvement, it is the first alteration of any structural part of the building.

"Structure" - that which is built or constructed or built up or composed of parts joined together. It includes walled buildings as well as such things as fences and porches.

"Steep slopes" - slopes of 15 percent or greater incline.

"Subdivision" - the division of a parcel or track of land into two or more lots.

"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 the market value of the structure before damage occurred.

"Substantial Improvement" - any repair, reconstruction or improvement of a structure, the cost of which exceeds 50% of the market value (less land value) either: (a) before the improvement or repair is started; or (b) if the structure has incurred substantial damage, before the damage occurred. The minimum repairs need to correct previously 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.

"Thinning" - a forest practice used to accelerate tree growth of quality trees in the shortest interval of time.

"Topography" - the existing configuration of the earth's surface including the relative relief, elevations, and position of land features.

“Trailer” – a vehicle that has no mode of power; and is designed to carry people or property and to be towed by a motor vehicle; and is constructed so that no part of its weight rests on the towing vehicle.

"Transitional habitat" - plant community whose species are adapted to the diverse and varying environmental conditions that occur along the boundary that separates aquatic and terrestrial areas.

"Transportation facilities" - anything that is built, installed, or established to provide a means of transport from one place to another.

“Travel Trailer” – means a vehicle that is mounted on wheels; and is of such a size and weigh as not to require any special highway movement permit when towed by a motor vehicle; and is designed and constructed primarily to provide temporary living quarters for recreational, camping, or travel use; and is no longer than 40 feet.

"Tributary streams" - those perennial and intermittent streams in the Critical Areas which are so noted on the most recent U.S. Geological Survey 7 1/2 minute topographic quadrangle maps (scale 1:24,000) or on more detailed maps or studies at the discretion of the local jurisdictions.

"Underlying Zoning District" - the Zoning District that lies under the Critical Area when the Critical Area Overlay Map is superimposed on the towns zoning map.

“Untagged Vehicle” – any motor vehicle that is subject to the registration requirements of the transportation article of the annotated code of Maryland that does not display current registration plates and a validation tab used for the current year by the Motor Vehicle Administration

"Utility transmission facilities" - fixed structures that convey or distribute resources, wastes, or both, including, but not limited to, electric lines, water conduits, and sewer lines.

"Variance" - permission by the Board of Appeals to construct, alter, or use a particular building, structure or parcel of land in a way which is not in conformance with a provision or provisions of this ordinance. A variance is a form of relief from an ordinance which may be given when it is not contrary to the public good when a literal interpretation of the ordinance would result in unnecessary hardship or practical difficulty.

"Wash plant" - a facility where sand and gravel is washed during processing.

"Water-based aquaculture" - the raising of fish and shellfish in any natural, open, free-flowing water body.

CHAPTER 16
ZONING

16-3-3 DEFINITIONS (Continued)

"Water-use industry" - an industry that requires location near the shoreline because it utilizes surface waters for cooling or other internal purposes.

"Waterfowl" - birds which frequent and often swim in water, nest and raise their young near water, and derive at least part of their food from aquatic plants and animals.

"Wetland" - any land which is: (1) considered private 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.

"Wildlife corridor" - a strip of land having vegetation that provides habitat and a safe passageway for wildlife.

(End 16-3-3 DEFINITIONS)

16-4 DISTRICT REGULATIONS AND MAPS**16-4-1 ESTABLISHMENT OF DISTRICTS**

- A. For the purposes of this ordinance, the incorporated area of the town is divided into the following districts:

Business District, General	B-1
Business District, Neighborhood	B-2
Critical Area District	CA
Flood Plain District	FP
Floating Commercial/Recreation District	FCR
Industrial District, General	M-1
Planned Development District	PDD
Residential District, Limited	R-1
Residential District, General	R-2

B. Six districts, B-1, B-2, FCR, M-1, R-1, and R-2, constitute the basic zoning of the town. The Critical Area District is superimposed on the town's zoning map and establishes areas in which there are additional regulations to protect the waters of Chesapeake Bay. The "Flood Plain District" is also superimposed on the town's basic zoning to define areas subject to the town's floodplain ordinance. Thus it is possible for a parcel of property to be in Zone A of the Flood Plain District, in a Buffer Exemption Area, in an IDA, and an R1 residential zone. The "Planned Development District", added in 2010 is a floating zone district, with the intent to control placement, design, use and density of well-planned, mixed –use development.

16-4-2 OFFICIAL ZONING MAPS

The location and boundaries of zoning districts established in the Town of Vienna shall be shown on Official Zoning Maps which may be amended from time to time according to the provisions of Section 16-18 of this ordinance.

There shall be three such maps; one depicting the boundaries of business, industrial, and residential districts, one depicting the Critical Area District, and one depicting the Flood Plain District. The latter two, in effect, "overlay" the first.

These maps, together with all notations, dimensions, designations, references and other data shown thereon, are a part of this ordinance.

The official copies of these maps shall be maintained in the office of the Town Clerk. The maps shall be identified by the signatures of the Commissioners attested to by the Town Clerk, the date of the map's adoption, and bear the seal of the Town under the following words:

"This is to certify that this is the Official Zoning Map (or Critical Area Overlay Map or Floodplain Overlay Map) as of (___date___) and referred to in Section 16-4-2 of the Zoning Ordinance of Vienna."

16-4-3 INTERPRETATION OF DISTRICT REGULATIONS

- A. Where uncertainty exists as to the boundaries of the districts as shown on the Official Zoning Map, the following rules shall apply:
1. In cases where a boundary line is located within a street, road or highway right-of-way, it shall be deemed to be the centerline of the right-of-way.
 2. In cases where a boundary line is indicated as following railroad lines, it shall be deemed as being midway between the main tracks.
 3. In cases where a boundary line approximately follows a lot line or a municipal line, such lot line or municipal line shall be the boundary.
 4. In cases where a boundary line follows a shore line, it shall be construed to follow such shore lines; and in the event of change in the shoreline, it shall be construed as moving with the actual shoreline; and boundaries indicated as approximately following the center lines of streams, rivers, creeks, lakes or other bodies of water shall be construed to follow such center lines.
 5. Boundaries indicated as parallel to or extensions of features indicated above shall be so construed.
 6. 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 the above, the Board of Appeals shall make an interpretation.
- B. Where a district boundary line divides a parcel which was in existence at the time the property was zoned that particular classification, the Board of Appeals may grant, as a variance, an extension of the district regulations for either portion, provided such extension does not exceed 100 feet and is contained entirely within the divided parcel.
- C. In the event of inconsistency between the provisions of the Critical Area District and other provisions of this ordinance, the more restrictive or stringent provisions shall apply.

16-5 RESIDENTIAL DISTRICT, LIMITED R-1

16-5-1 STATEMENT OF INTENT

This district is intended to encourage low density single family housing development and permitting the few public and semi-public uses which are necessary to support this density of development.

16-5-2 PERMITTED USES AND STRUCTURES

A. In Residential District R-1, structures to be erected or land to be used shall be only for one of the following uses:

1. Single-family dwellings
2. Agriculture, not to include the keeping of livestock and fowl
3. Public parks
4. Drainage structures or other flood control works
5. Typical accessory structures, as defined, and signs subject to the provisions of 16-13-4 of this ordinance.

B. There shall be no sales of alcoholic beverages in the R1 District nor shall any property located within the R-1 District be used, in whole or in part, for the sale or provision of alcoholic beverages for compensation. This limitation does not apply to sales by not for profit organizations having an IRS 501c3 tax exemption.

16-5-3 SPECIAL EXCEPTIONS

In Residential district R-1, the following uses and structures may be permitted by special exception by approval of the Board of Appeals:

- a. Home occupations, as defined.
- b. Churches and schools.
- c. Public and quasi-public uses, buildings and structures determined by the Board to be of a public service, recreational, conservation or cultural nature.
- d. Any use or structure which is determined by the Board to be of the same general character as the above uses.
- e. Utility structures other than essential services.
- f. Accessory apartments, as defined, subject to the provisions of 16-14-2 of this ordinance.
- g. Boarding and lodging houses, as defined, subject to the provisions of 16-14-2 of this ordinance.
- h. Day Care Home (Added by Ord 2019-1 on 4/8/2019)

16-5-4 LOT, YARD AND HEIGHT REGULATIONS

In Residential District R-1, the following minimum requirements shall apply to all uses and structures. Setbacks for accessory uses and structures are set forth in Section 16-13-5.

- A. Off-street parking shall be provided in accordance with Section 16-17 of this Ordinance. (New section Parking Requirements 16-17 added ORD. 2006-1 on 01/09/06)
- B. There shall be no minimum lot size requirement in Residential District R-1, except as specified in Section 16-10-3 and 16-13-g as applicable -See Chesapeake Bay Critical Area District – Separate Notebook. Also see 16-13-9 below.
- C. The minimum lot width shall be 50 feet at the road, and 50 feet at the front building line.
- D. The minimum front yard depth shall be 20 feet.
- E. The minimum side yard shall be 5 feet.
- F. The minimum rear yard shall be 20 feet.
- G. The maximum height for buildings erected shall be 35 feet.

(The following printed here for convenience)

16-13-9 MINIMUM LOT SIZE AND AREA

- A. The minimum lot size for detached residential single- family dwellings permitted in any district shall be 5,000 square feet.
- B. The minimum lot area or parcel area allocation for each unit of two-family dwellings, duplexes, and multi-family dwellings, including attached single-family dwellings (town houses), shall be 3,500 square feet.

16-13-10 FRONT YARD EXCEPTION

In R1 and R2 Districts, the front setback line for new residential buildings shall be determined as the average of the setbacks of principal residential buildings on adjoining lots on both sides of the lot in question. A vacant lot or lot occupied by a principal building set back more than the required front yard depth for the district in which it is located, shall be considered as though occupied by a building set back the required depth.

16-13-11 HEIGHT LIMITATION EXCEPTIONS

The maximum height permitted in each district is stated in regulations for each district herein. Exceptions to such requirements shall apply to belfries, chimneys, domes, flagpoles, flues, radio towers, television antennas, spires, water towers and tanks, air-conditioning units or similar roof structures and mechanical appurtenances.

16-6 RESIDENTIAL DISTRICT, GENERAL R-2

16-6-1 STATEMENT OF INTENT

This district is intended to encourage medium and higher density residential development in those areas which have adequate services. This district is established to provide an area where a full range of housing can be accommodated.

16-6-2 PERMITTED USES AND STRUCTURES

- A. In Residential District R-2, structures to be erected or land to be used shall be only for one of the following uses:
 - 1. Single-family dwellings
 - 2. Agriculture, not to include the keeping of livestock and fowl
 - 3. Public parks
 - 4. Drainage structures or other flood control works
 - 5. Typical accessory structures, as defined, and signs subject to the provisions of 16-13-4 of this ordinance.
- B. There shall be no sales of alcoholic beverages in the R-2 District, nor shall any property located within the R-2 District be used, in whole or in part, for the sale or provision of alcoholic beverages for compensation. This limitation does not apply to not for profit organizations having an IRS 501c3-tax exemption.

16-6-3 SPECIAL EXCEPTIONS

In Residential District R-2, the following uses and structures may be permitted by special exception by approval of the Board of Appeals:

- A. Duplexes
- B. Multi-family dwellings, including condominiums, subject to the provisions of Section 16-14-1 of this ordinance
- C. Boarding and lodging houses, as defined, subject to the provisions of 16-14-2 of this ordinance
- D. Home occupations, as defined
- E. Churches and school
- F. Public and quasi-public uses, buildings and structures determined by the Board to be a public service, recreational, conservation or cultural nature
- G. Any use or structure which is determined by the Board to be of the same general character as the above uses
- H. Utility structures other than essential services
- I. Accessory apartments, as defined, subject to the provisions of 16-14-2 of this ordinance.
- J. Day Care Home (Added by Ord 2019-1 on 4/8/2019)

16-6-4 LOT, YARD AND HEIGHT REGULATIONS

In Residential District R-2, the following minimum requirements shall apply to all uses and structures. Setbacks for accessory uses and structures are set forth in Section 16-13-5 of this ordinance.

- A. Off-street parking shall be provided in accordance with Section 16-17 of this Ordinance. (New section Parking Requirements 16-17 added ORD. 2006-1 on 01/09/06)
- B. There shall be no minimum lot size requirement in Residential District R-2 except as specified in Section 16-10-3 and 16-13-g. as applicable -See Chesapeake Bay Critical Area District – Separate Notebook. Also see 16-13-9 below.
- C. The minimum lot width shall be 50 feet at the road, and 50 feet at the front building line; except in the cases of multi- family or condominium uses and structures, the minimum shall be 100 feet at the road and 100 feet at the front building line.
- D. The minimum front yard depth shall be 20 feet.
- E. The minimum side yard shall be 5 feet.
- F. The minimum rear yard shall be 20 feet; except in the cases of multi-family or condominium uses and structures, the minimum shall be 35 feet.
- G. The maximum height for buildings erected shall be 35 feet.

(The following printed here for convenience)

16-13-9 MINIMUM LOT SIZE AND AREA

- A. The minimum lot size for detached residential single- family dwellings permitted in any district shall be 5,000 square feet.
- B. The minimum lot area or parcel area allocation for each unit of two-family dwellings, duplexes, and multi-family dwellings, including attached single-family dwellings (town houses), shall be 3,500 square feet.

16-13-10 FRONT YARD EXCEPTION

In R1 and R2 Districts, the front setback line for new residential buildings shall be determined as the average of the setbacks of principal residential buildings on adjoining lots on both sides of the lot in question. A vacant lot or lot occupied by a principal building set back more than the required front yard depth for the district in which it is located, shall be considered as though occupied by a building set back the required depth.

16-13-11 HEIGHT LIMITATION EXCEPTIONS

The maximum height permitted in each district is stated in regulations for each district herein. Exceptions to such requirements shall apply to belfries, chimneys, domes, flagpoles, flues, radio towers, television antennas, spires, water towers and tanks, air-conditioning units or similar roof structures and mechanical appurtenances.

16-7 BUSINESS DISTRICT, GENERAL B-1

16-7-1 STATEMENT OF INTENT

This district is intended for the conduct of general business to which the public requires direct and frequent access, but which is not characterized either by constant heavy trucking other than stocking and delivery of goods, or by any unusual nuisance factors. Activities in this district include highway dependent service businesses as well as restaurants, retail stores and marine services.

16-7-2 PERMITTED USES AND STRUCTURES.

In Business District B-1, structures to be erected or land to be used shall be only for one of the following uses:

- A. Retail stores, but not including the sale of liquor
- B. Personal service businesses, including but not limited to shoe repair, beauty parlor, barbers, dry cleaners, and laundries
- C. Banks and other financial institutions
- D. Business and professional offices
- E. Automobile service center, including the sale of gasoline and other products, and servicing, but not including heavy body work
- F. Home appliance service centers and signs
- G. Restaurants and other eating establishments but not including sale of liquor for consumption on the premises
- H Public and private marinas, including commercial boat building, repair and storage facilities.
- I. Sale of agricultural and seafood products
- J. Sale of building materials and equipment, with enclosed storage
- K. Sale of automobiles and recreational vehicles and equipment and servicing
- L. Funeral homes
- M. Drainage structures or other flood control works
- N. Accessory uses and structures, including signs, subject to the provisions of 16-13-4 of this ordinance
- O. Single family dwellings and other uses permitted in an R-2 district.

16-7-3 SPECIAL EXCEPTIONS (Amended 12.22.08 by Ord 2008-6)

In Business District B-1, the following uses and structures may be permitted by special exception by approval of the Board of Appeals:

- A. Commercial recreation centers, such as dance hall, pool hall, etc.
- B. Retail stores for sale of liquors
- C. Restaurants, bars, cocktail lounges selling liquor for consumption on the premises, including dancing and entertainment
- D. Warehousing and distribution of finished products, but excluding the warehousing of hazardous materials
- E. Processing of agricultural and seafood products
- F. Vehicle body repair shops
- G. Public and quasi-public uses, buildings and structures determined by the Board to be of a public service, recreational, conservation or cultural nature
- H. Any use or structure which is determined by the Board to be of the same general character as the above uses
- I. Utility structures other than essential services
- J. Off-site billboards and signs, subject to the provisions of Section 16-13-4
- K. Adult Oriented Business, Entertainment and Material Regulations (Added by Ord 2008-6 on 12/22/08)
- L. Day Care Home (Added by Ord 2019-1 on 4/8/2019)

16-7-4 LOT, YARD AND HEIGHT REGULATIONS

In Business District B-1, the following minimum requirements shall apply to all uses and structures in addition to those contained in 16-10-3 and 16-13-g. Setbacks for accessory uses and structures are set forth in Section 16-13-5 of this ordinance.

- A. Off-street parking shall be provided in accordance with Section 16-13-3 of this Ordinance.(New section Parking Requirements added 16-17 by ORD. 2006-1 on 01/09/06)
- B. There shall be no minimum lot size requirement in Business District B-1.
- C. The minimum lot width shall be 50 feet at the road, and 50 feet at the front building line.
- D. The minimum front yard depth shall be 20 feet in Business District B-1.
- E. There shall be no minimum side or rear yard requirements in Business District B-1; except where a new business location abuts an existing residential structure or residential property, the minimum side and rear yard shall be 10 feet.
- F. The maximum height for buildings erected shall be 35 feet.

16-8 BUSINESS DISTRICT, NEIGHBORHOOD B-2 (Amended 9.22.08 by Ord. 2008-5)

16-8-1 STATEMENT OF INTENT

This district is intended to allow mixed residential and business development which is characteristic of neighborhood living. Business activities in this district include those which serve day-to-day needs of the neighborhood by selling or providing convenience goods and services, such as banks, professional offices, personal service businesses, restaurants and marine services.

16-8-2 PERMITTED USES AND STRUCTURES.

In Business District B-2, structures to be erected or land to be used shall be for one of the following, except as provided in 16-8-3(except ...added by Ord 2008-5 on 9/22/08)

- A. Single family dwellings and other uses permitted in an R-2 district.
- B. Retail stores such as hardware, grocery, drug and variety but not including the sale of liquors
- C. Personal service businesses
- D. Restaurants and other eating establishments but not including sale of liquor for consumption on the premises
- E. Banks and other financial institutions
- F. Business and professional offices
- G. Accessory uses and structures, including signs, subject to the provisions of 16-13-4 of this ordinance, but not including accessory apartments

16-8-3 SPECIAL EXCEPTIONS

The following uses and structures may be permitted by special exception in a B2 district with approval of the Board of Appeals:

- A. Accessory apartment, as defined, subject to the provisions of 16-14-2 of this ordinance, except a second accessory apartment may be permitted with an active commercial use provided that both dwelling units are above the ground floor level. (Except ... added by Ord 2008-5 on 9/22/08)
- B. Duplexes
- C. Multi-family dwellings, including condominiums, subject to the provisions of Section 16-14-1 of this ordinance
- D. Boarding or lodging houses, as defined, subject to the provisions of 16-14-2 of this ordinance
- E. Home occupations, except in multi-family dwellings
- F. Churches
- G. Public and quasi-public uses, buildings and structures determined by the Board to be of a public service, recreational, conservation or cultural nature
- H. Any use or structure which is determined by the Board to be of the same general character as the above uses
- I. Utility structures other than essential services
- J. More than one use on a parcel provided that additional uses are less intensive and related to and compatible with the principal use (Added by Ord 2008-5 on 9.22.08)
- K. Day Care Home (Added by Ord 2019-1 on 4/8/2019)

16-8-4 LOT, YARD AND HEIGHT REGULATIONS (Amended 9.22.08 by Ord. 2008-5)

In Business District B-2, the following minimum requirements shall apply to all uses and structures. Setbacks for accessory uses and structures are set forth in Section 16-13-5 of this ordinance.

- A. Off-street parking shall be provided in accordance with Section 16-17(amended by (Added by Ord 2008-5 on 9/22/2008 - (added 16-17 by ORD. 2006-1 on 01/09/06) of this Ordinance
- B. There shall be no minimum lot size requirement in Business District B-2.
- C. The minimum lot width shall be 50 feet at the road, and 50 feet at the front building line.
- D. There shall be no minimum front yard depth requirement; except residential structures shall have a minimum front yard depth of 20 feet.
- E. There shall be no minimum side yard requirement; except where a new business location abuts an existing residential property, a minimum side yard of 5 feet shall be provided. The minimum side yard required for residential structures shall be in accordance with the provisions set forth in Section 16-6-4 of this ordinance.
- F. There shall be no minimum rear yard requirement, except where a new business abuts residential property a minimum rear yard of 5 feet shall be provided. The minimum rear yard required for residential structures shall be in accordance with the provisions set forth in Section 16-6-4 of this ordinance.
- G. The maximum height for buildings erected shall be 35 feet.

16-9 INDUSTRIAL DISTRICT, GENERAL M-1

16-9-1 STATEMENT OF INTENT

This district is intended to encourage industrial uses which are compatible with nearby residential, commercial and public uses. Limitations and provisions relating are imposed on items such as height of buildings, emission of fumes, odors and noise to protect adjacent non-industrial development or activity.

16-9-2 PERMITTED USES AND STRUCTURES.

In Industrial District M-1, structures to be erected or land to be used shall be only for one of the following uses except as provided in 16-9-2 D (except ... added by Ord 2008-5/22.2008):

- A. Agriculture
- B. Drainage structures and other flood control works
- C. On-site billboards and signs, subject to the provisions of Section 16-13-4
- D. Uses allowed in R-1, R-2, B-1, and B-2 districts, except that only one accessory apartment shall be permitted. (Added by ORD 2008- 5 on 9/6/2008).

16-9-3 SPECIAL EXCEPTIONS

In Industrial District M-1, the following uses and structures may be permitted by special exception by approval of the Board of Appeals:

- A. Warehousing and distribution of previously prepared materials not requiring further processing, but excluding the warehousing of hazardous materials
- B. Assemblage or light manufacture of items from previously prepared materials such as cloth, fiber, paper plastic, metals, rubber, etc.
- C. Collecting, sorting, packing, storing, processing, and selling agricultural and seafood products
- D. Public and private marinas, including commercial boat building, repair and storage facilities
- E. Trucking terminals, and overnight storage of trucks
- F. Contractors yards, building materials sales and lumber yards, including incidental millwork, concrete mixing, or the compounding of other building materials
- G. Establishments for the sale, repair, and storage of automobiles, mobile homes, trailers, boats and farm machinery, implements and supplies
- H. Manufacturing, compounding, procession, packaging and storage of cosmetics, pharmaceuticals, electrical devices, scientific instruments or appliances
- I. Any use of structure which is determined by the Board to be of the same character as the above uses
- J. Utility structures other than essential services
- K. Off-site billboards and signs, subject to the provisions of Section 16-13-4
- L. Day Care Home (Added by Ord 2019- 1 on 4/8/2019)

CHAPTER 16 16-9 INDUSTRIAL DISTRICT, GENERAL M-1 16-9-4
ZONING (Amended 5.14.07 by Ord. 2007-1, Amended on 6.9.08 by Ord 2008- 3, Amended
on 10-22.08 by Ord 2008-5

16-9-4 LOT, YARD AND HEIGHT REGULATIONS (entire section Amended
by ORD 2007-1 on 5/14/2007)

- A. Off-street parking shall be provided in accordance with Section 16-17 of this Ordinance.
- B. There shall be no minimum lot size requirement in the Industrial District, General M-1
- C. The minimum lot width shall be 50 feet at the road, and 50 feet at the front building line.
- D. There shall be no minimum front yard depth requirement.
- E. There shall be no minimum side yard requirement except where a new permitted use abut an existing residential property; a minimum side yard of 5 feet shall be provided.
- F. There shall be no minimum rear yard requirement, except where a new use abuts residential property a minimum rear yard of 5 feet shall be provided.
- G. The maximum height for buildings erected shall be 35 feet.
- H. For uses allowed in R-1, R-2, B-1 and B-2 Districts, the lot, yard and height requirements shall be determined by the Planning Commission for all structures (Added on 6-10/08 by Ord 2008-3).

**16-10 CRITICAL AREA DISTRICT (CA) Section 16-10 CRITICAL AREA DISTRICT was repealed and reenacted by ORD No 2011-4 on 12/12/2011
The CRITICAL AREA DISTRICT (CA) can be found in a separate notebook.**

**16-10 CRITICAL AREA DISTRICT (CA) Section 16-10 CRITICAL AREA DISTRICT was repealed and reenacted by ORD No 2011-4 on 12/12/2011
The CRITICAL AREA DISTRICT (CA) can be found in a separate notebook on the shelf in the Town Hall.**

NOTES:

**16-11 FLOOD PLAIN DISTRICT (FP) CHAPTER 16-2011-1 § 155-37
FLOODPLAIN MANAGEMENT ORDINANCE. (Repealed and reenacted
Chapter 16-11 Floodplain management Ordinance FEM 16-11-155-37
Floodplain District – Introduced 6/22/11 and adopted 7/25/11.**

**16-11 FLOODPLAIN DISTRICT (FP) CHAPTER 16- 2011 – 1 § 155-37.
FLOODPLAIN MANAGEMENT ORDINANCE
(Repealed and reenacted Chapter 16-11 Floodplain Management
Ordinance FEM 16-11-155-37 Floodplain District – Introduced 6/22/11 and
adopted 7/25/11 –**

**It is a Stand Alone Document ENFORCED BY DORCHESTER COUNTY.
A copy can be found on the shelf in Vienna Town Hall**

NOTES:

CHAPTER 16 16-12 FLOATING COMMERCIAL/RECREATIONAL DISTRICT (FCR) 16-12 ZONING

16-12-1 DISTRICT (FCR) STATEMENT OF INTENT

This district allows commercial/recreational uses of property which in accord with the Comprehensive Plan. It is the intent that such utilization of property, on a case by case basis, will attract tourism and trade while maintaining the overall character of the town. The district “floats” in that its boundaries are not predetermined but instead, float over the entire town until an individual property owner applies for the zone to be applied to his property through a zoning request.

If a site plan review demonstrates a proposal to be consistent with the Comprehensive Plan and all tests and conditions of this ordinance are met, the proposal is predeemed compatible with the established comprehensive zoning, and “change or mistake” does not need to be demonstrated in order for FCR zoning to be applied.

16-12-2 PERMITTED USES AND STRUCTURES

- A. Property may be used for a wide range of uses that are of a commercial recreation usage providing they support the objectives of the Comprehensive Plan and maintain, or improve, the overall character of the town. Potential uses are not limited beforehand by this ordinance but are evaluated on the merits of individual applications. Potential uses could include, but not be limited to, boat rentals; bicycle rentals; gift, craft and antique shops; concessions; restaurants; or limited term residences, hotels, and bed and breakfast establishments.
- B. Although FCR zoning does allow that uses that may not be allowed on adjoining property, it includes more restrictions and limitations than those of other zoning districts. As an example, the property owner is limited to constructing buildings described and approved in accordance with the site plan, as accepted and approved in final form by the Town Commissioners. The site plan review process may require the applicant to provide information about building sizes, floor plans, location/orientation, setbacks, materials, parking, landscaping and other details, as needed to provide adequate information to support findings of consistency by the Planning Commission and the Town Commissioners.

16-12-3 APPLICATIONS FOR FCR ZONING

- A. Applications for FCR zoning shall be processed in accordance with the provisions of Section 16-19. Applications shall include detailed site plan including, but not limited to:
 - 1. A scaled drawing of the property, appropriate to the size of the parcel, with existing and proposed roads, structures, sidewalks, driveways, parking areas, fences, screens, and landscaping clearly shown. The site plan will reference the tax map grid, block and parcel numbers as well as the current zoning for the site. The site plan will indicate adjoining zoning, structures,

CHAPTER 16 16-12 FLOATING COMMERCIAL/RECREATIONAL DISTRICT (FCR) 16-12 ZONING

- property lines, and property owners.
2. A narrative description narrative description of exactly what uses are planned for the property. This explanation shall describe the extent of each use and the structures/areas in which they will take place. More than one use may be permitted on any one site if all requirements of the ordinance are met and the proposal is demonstrated to be consistent with the comprehensive plan.
 3. The application shall also discuss any precautions that will be taken to avoid or minimize discord with neighboring areas.
- B. The Planning Commission shall review the application and submit their recommendations to the Town Commissioners. The recommendation shall include a statement of “Findings of Consistency” with the Comprehensive Plan.
- C. The Town Commissioners shall advertise and conduct a public hearing in accordance with Section 16-19. If the Town Commissioners approve an application for FCR zoning, the approval must delineate the uses being authorized and any requirements as to setbacks, building locations, building style, or special conditions deemed necessary to ensure compatibility with the Comprehensive Plan and the intent of this ordinance,

Extract: Minutes 1/10/11: Harvey Altergott questioned why we didn't just use the old floating district". ... Attorney Tilghman and Tracey Gordy agreed that this Ordinance 2010-7 (PDD-PLANNED DEVELOPMENT DISTRICT) could be approved tonight without repealing the old Floating Zone". NEW BUSINESS: "There was a motion by Commissioner Cusick seconded by Commissioner Travers to Pass Ordinance 2010-07 Planned Development District

16-13 GENERAL PROVISIONS

16-13-1 APPLICATION OF REGULATIONS

No building, structures, or land shall hereafter be constructed, erected, occupied, or used in any manner which does not conform to the regulations of this Ordinance, unless specifically exempted.

16-13-2 REPAIR OR REMOVAL OF DAMAGED STRUCTURES

A permit must be obtained for the repair or reconstruction of any structure damaged or destroyed by fire, wind, or other causes, to the extent that it can not be used for its intended purpose. The permit must be obtained within six months of incurring the damage. If repair or reconstruction does not begin within one year after issuance of a permit, the site shall be cleared of all debris and all excavations filled to ground level within 24 months from the effective date of this ordinance.

16-13-3 OFF STREET PARKING

16-13-3 OFF STREET PARKING was deleted and replaced by Chapter 16-17 on 12/9/2006 by ORD 2006-1

**16-13-3 REQUIRED STORAGE FOR ALL RESIDENTIAL HOUSING
(combined with 16-13-5)**

16-13-4 SIGNS

A. Permanent signs which identify or advertise the resident, business, or use of the premises on which signs are located may be erected or provided in all districts. These are defined as on-site signs and are subject to the provisions of this section.

B. Permanent signs, including billboards, which advertise or identify goods and services or uses not available or located on the premises on which signs are located may be erected or provided only in the B1 and M1 Districts as special exceptions by the Board of Appeals. These are defined as off-site signs and are also subject to the provisions of this section.

C. Signs advertising a business or other non-residential use may be illuminated by a shielded or indirect light source of a continuous, non-flashing nature. Such lighted signs shall be arranged, designed, and operated so as not to be objectionable or nuisances to residential premises after 10:00 p.m.

D. One sign advertising a home occupation or a boarding and lodging house may be erected on a lot, provided that such sign is not lighted, does not exceed four (4) square feet in area, and is setback from all lot lines at least five (5) feet. Such signs may, however, be lighted in the B1 and B2 Districts, subject to the provisions of sub-section C above.

E. In B1, B2, and M1 districts, two on-site signs may be erected to advertise a business or other non-residential use or activity, provided that their aggregate area does not exceed one foot for each linear foot of lot frontage. For those signs not attached to a building, setback distances shall be at least five (5) feet from all lot lines, except that the setback distance shall be at least ten feet from any adjoining residential property line.

F. Not more than one off-site sign shall be permitted on any lot in the B1 and M1 districts, nor shall such sign exceed 100 square feet in area or be situated any nearer any lot line than twenty (20) feet.

G. No permit shall be required for on-site signs in any district which identify the names and addresses of residential occupants or the name of the residential premises, and which are unlighted. Nothing in this section shall be construed to prohibit lighting any exterior signs and displays of a temporary nature which commemorate or celebrate special events and holidays.

H. Other signs not requiring a permit under this ordinance are identification and directional signs provided by public agencies, historical markers, and temporary informational signs posted or erected to advertise a political candidate, an event or other activity, provided that such temporary signs do not exceed four square feet in area, and provided further that all such temporary signs shall be removed within seven (7) days after the election or completion of the event or activity.

**CHAPTER 16 16-13 -5 ACCESSORY STORAGE BUILDINGS AND USES
ZONING**

16-13-5 ACCESSORY STORAGE BUILDINGS AND USES – RESIDENTIAL AND COMMERCIAL (Deleted and reenacted with new Section on 5.8.06 by ORD. 2006-3 – Roof pitch F. 1 below was amended 12/26/05 by ORD: 2005-4 – Height 16-13-5-D increase height to 17 ft. was amended 9/24/2012 by ORD 2012-02 – Vertical/horizontal siding A. Category II 3 Reference to exterior wall covering was deleted by ORD: 2013-05 on 9/23/13) Revisions by ORD. 2013-05 on 9/23/13) Revisions by ORD2019-2, April 10, 2019

A. Category 1. Accessory Storage Buildings – Small accessory storage buildings between 96 and 288(example 8ft x 12 ft) – added for clarification) square feet and storage addition.

B. Category II. Accessory Storage Buildings – Large accessory storage structures – greater than 288 square feet, which are attached or detached from the principal building such as a garage, green house and tool shed.

C. All new construction shall require a minimum of ninety-six (96) square feet of storage space either attached or detached. (Required Outdoor Storage for All Residential Housing added 12.26.05 by Ord. 2005-4)

D. All Accessory storage buildings not attached to the principal structure shall comply with the following:

1. All accessory buildings shall require a building permit.
2. All accessory buildings shall be a minimum of ninety-six (96) square feet.
3. An accessory building shall not be permitted on a lot unless the principal use or structure is in existence or until construction has begun on the principal structure.
4. All accessory buildings shall only be in a rear yard and shall occupy not more than 33 percent of that area.
5. All accessory buildings shall have a setback from the rear and side property line a minimum of five (5) feet.
6. All accessory buildings shall not exceed twenty (20) in height. (Amended 9/24/2012 by ORD 2012-02 – Amended 4/10/19 by ORD. 2019-2)
7. Exterior wall coverings shall be wood or vinyl or other suitable material (Amended 4/10/19 by ORD 2019-2).
8. Treated wood floors on ground are not permissible within Vienna.

**CHAPTER 16 16-13 -5 ACCESSORY STORAGE BUILDINGS AND USES
ZONING**

E. Category I – Small accessory buildings not attached to the principal structure.
(Defined as: Portable Structures – A pre-built wooden shed of no more than 288 square feet (generally but not always brought in completely assembled).

1. The accessory building shall be a minimum of 96 Square feet and no greater than 288 square feet.
2. Roofs shall have a minimum pitch of at least three inches in rise for every twelve inches in depth (3:12) roof pitch. Roofs shall have a minimum of 3 and 1/2 inches of overhang beyond the main walls. Roof styles are not otherwise limited – updated to allow other styles, i.e. Gambrel – barn style (added 4/10/19 by ORD 2019-2)
3. The floor, floor joist and 4x4's below the floor joist shall be pressure treated lumber to protect against rot and insects.
4. The structure shall be built with a minimum of 2'x3' wall studs (changed 2'x3') and roof rafters and have the floor and walls covered with a minimum of 7/16's sheathing (Amended 4/10/19 by ORD 2019-2).
5. The structure shall be anchored by an acceptable application of anchor bolt and, or foundation straps that are fixed into the ground or a concrete foundation in a manner deemed appropriate by the code officer. A final inspection may be required by the code officer before approval is granted. A final inspection is required upon completion for approval. The Town Code Enforcement Officer will do these inspections. (Amended 4/10/19 by ORD 2019-2)

F. Category II - Large Accessory Storage Buildings – (Defined as: 288 Square Feet or greater)

1. Roofs shall extend a minimum of 10 inches beyond outer walls. Roofs shall have a pitch of at least 5 (Five) inches in rise for every 12 (twelve) inches in depth (5:12).
2. Exterior Design shall be so that the building will be in keeping with the overall character of the neighborhood and the primary structure on the property.
3. ~~Exterior wall covering shall be installed in a horizontal fashion not vertical.~~
Item in its entirety deleted on 9/23/13 by Ord 2013-05

G. Accessory Uses. Accessory uses not enclosed in a building, including swimming pools and tennis courts, shall not be in the front yard and shall not adversely affect the character of the neighborhood or adjacent property by reason of noise or glare or safety.

16-13-6 TEMPORARY STRUCTURES

A. A temporary structure, including a mobile trailer office, construction trailer, or storage container may be placed in all districts, only if necessary or incidental to construction work on the premises for which a building permit has been issued. A request to place this temporary structure must be submitted to the Zoning Inspector for approval. The applicant must also submit in writing the reason and the planned usage of the temporary structure.

B. If an occupied residential dwelling located in any district is damaged or destroyed by any cause to a degree so as to make it unsafe or unhealthy for human occupancy, emergency housing such as a mobile home or trailer may be placed on the premises to house the displaced occupants. The emergency housing shall be removed from the premises when the damaged dwelling is restored, for a maximum of 12 months. The Zoning Inspector may grant an extension of up to 6 months if necessary.

C. The temporary structure can be inspected at any given time by the Zoning Inspector to determine if the structure is being used in accordance with the requested use. If the structure is not being used in accordance with the requested use, the Zoning Inspector can order immediate removal.

D. The temporary structure will be removed within thirty days after passage of final Inspection or the expiration of the permit.

E. The temporary structure's location on the site must be approved by the Zoning Inspector.

F. In the case of a remodeling, where a permit may not be needed, a temporary structure may be placed on the site by following the same procedures as outlined in Section 16-13-6 A, B, C, D, and E

16-13-7 FENCE REGULATIONS – ALL DISTRICTS (Former Section 16-13-7 was deleted and replaced with new Section 16-13-7 by Ordinance 2006-02 of 04.19.06) Amended 9/24/2012 by ORD 2010-03 (changed greater to lesser 16-13-7-B)

(Inserted here for convenience)

(Definition added by ORD 2006-02) “Fences” – an artificially constructed barrier of wood, vinyl, metal, or any other permitted material or combination of materials and living fences, hedges, erected for the enclosure of yard areas and for screening purposes. This definition does not include a wall of any kind.

16-13-7 FENCE REGULATIONS – ALL DISTRICTS

- A. A fence, not more than six feet (6) in height may be located in the rear yard in any district. The rear yard is established from either corner of back of the principle structure extending parallel from that point to the side and/or rear property line.
- B. A fence, located in the side or front yard may not exceed a maximum height of three and one-half feet (3’ 6”) above grade, street pavement or sidewalk, whichever is lesser and shall have a minimum uniform open space of at least 50 percent. The 50% open space shall not apply to living screens and hedges.
- C. Fences on unimproved lots shall not exceed three and one-half feet (3’ 6”) in height.
- D. Chain link fences are not allowed on any street frontage. Wire mesh-type fencing (i.e. chicken wire, rat wire, etc.) shall not be conspicuous from any street frontage.
- E. A fence with a decorative face shall be erected so that the decorative side is toward the adjacent property or street.

16-13-8 SCREENING OF CONFLICTING USES

In situations where a business or industrial use in a B1, B2 or M1 district occupies a lot which adjoins an existing residential structure or a R1 or R2 district, a screen shall consist of a solid fence, hedge, a combination thereof, or equivalent, not less than 5 feet in height.

16-13-9 MINIMUM LOT SIZE AND AREA

A. The minimum lot size for detached residential single- family dwellings permitted in any district shall be 5,000 square feet.

B. The minimum lot area or parcel area allocation for each unit of two-family dwellings, duplexes, and multi-family dwellings, including attached single-family dwellings (town houses), shall be 3,500 square feet.

16-13-10 FRONT YARD EXCEPTION

In R1 and R2 Districts, the front setback line for new residential buildings shall be determined as the average of the setbacks of principal residential buildings on adjoining lots on both sides of the lot in question. A vacant lot or lot occupied by a principal building set back more than the required front yard depth for the district in which it is located, shall be considered as though occupied by a building set back the required depth.

16-13-11 HEIGHT LIMITATION EXCEPTIONS

The maximum height permitted in each district is stated in regulations for each district herein. Exceptions to such requirements shall apply to belfries, chimneys, domes, flagpoles, flues, radio towers, television antennas, spires, water towers and tanks, air-conditioning units or similar roof structures and mechanical appurtenances.

16-13-12 VISIBILITY AT INTERSECTIONS

No fence, planting, shrubbery, building, or structure shall be permitted in any district that would substantially obstruct traffic visibility at exits or entrances on public streets and at street intersections.

**CHAPTER 16 16-13-13 SINGLE FAMILY DWELLING CONVERSIONS 16-13-13
ZONING**

16-13-13 SINGLE-FAMILY DWELLING CONVERSIONS

The Board of Appeals may authorize as a Special Exception in any R1, R2, and B2 district the conversion of a single-family dwelling to not more than two separate dwelling units, provided that the gross floor area of said original dwelling is a minimum of 2,400 square feet and the lot frontage is a minimum of 75 feet.

16-13-14 PORTABLE ACCESSORY STRUCTURES (Portable accessory structures and accessory buildings (Replaced by 16-13-5 combined both sections into one Ord. 2006-3))

CHAPTER 16-14 SPECIAL PROVISIONS- MULTI-FAMILY DEVELOPMENT 16-14-1 ZONING

16-14 SPECIAL PROVISIONS

16-14-1 MULTI-FAMILY DEVELOPMENT

A. the Board of Appeals may grant the use of a property for multi-family development as a special exception, reserving their final approval until the Planning Commission has reviewed the Plan in detail. For the Board's hearing on the Special Exception, the applicant shall provide a sketch showing the proposed location of the site and all buildings, the number of dwellings and the location and number of parking spaces. If the Board tentatively approves the use, then the Planning Commission shall review the Site Plan. After the Site Plan is reviewed by the Planning Commission, it shall be returned to the Board for final approval, but an additional hearing shall not be required for the final approval.

B. If the Board of Appeals tentatively approves the use of the site for multi-family development as a special exception, the applicant shall submit a Site Plan to the Planning Commission. The site Plan shall show the proposed location of all buildings, parking areas, landscaping, the proposed dimensions of all structures and related areas, and other relevant information.

A copy of all proposed deed restriction covenants, by-laws or other instruments designed to provide for continuing maintenance and control of common areas shall be submitted along with the Site Plan.

C. The Planning Commission shall forward its comments on its review of the Site Plan to the Board no later than 45 days after receiving the complete Site Plan.

D. Within 45 days after receiving the Planning Commission's comments, the Board shall give its final decision on the Site Plan.

E. Additional Standards - Multi-family development shall meet the following additional standards:

1. All multi-family projects shall provide on-site open space areas at least equal to 50% of the total land area. Parking spaces shall not be included when computing open space areas.
2. When more than one multi-family building is built; no building shall be closer than twenty-five (25) feet from any other multi-family building.
3. Off-street parking shall be provided as required by Section 16-12-3.
4. All areas not utilized for a building, or off-street parking, shall be landscaped and maintained.
5. All buildings within the multi-family project shall be of architectural design compatible with the community.

**CHAPTER 16 16-14-1 MULTI-FAMILY DEVELOPMENT 16-14-1
ZONING**

- 6. The minimum width of all living units shall be 18 feet.
- 7. When more than one multi-family building is constructed; external walkways shall be paved and lighted.
- 8. When more than one multi-family building is to be built, the buildings shall be subject to the provisions of Section 16-14-4, Subdivisions.
- 9. Public water and sewerage systems must be available to serve the project.
- 10. Maximum density permitted shall be six bedrooms per acre in an R1 District

(Note: Multifamily dwellings is not a listed use in the R1 District unless the Board of Appeals allows it as a "d. Any use or structure which is determined by the Board to be of the same general character as the above uses". See Section 16-5 RESIDENTIAL DISTRICT, LIMITED R-1) and not more than 10 bedrooms per acre in an R2 district.

16-14-2 ACCESSORY APARTMENTS AND BOARDING AND LODGING HOUSES (Amended 9/22/08 by Ord 2008-5)

A. An apartment, as defined in section 16-3-2, may be permitted as an accessory use in a single family dwelling, as an accessory use in a commercial building, and as an accessory use of an accessory building in the R-1, R-2 and B-2 districts, provided that such apartment shall have a minimum livable area of 500 square feet.

B. Not more than one accessory apartment shall be permitted on any lot except that a second accessory apartment may be permitted in the B-2 District in accordance with Section 16-8-3 A. An accessory apartment established within or as an addition to a single-family dwelling shall not occupy an area greater than one-third of the gross livable floor area of the dwelling or dwelling plus addition. (Except... added by ORD 2008-5 on 9/22/08)

C. The maximum number of sleeping rooms which can be made available to tenants in boarding and lodging houses, as defined in section 16-3-2, shall be limited as follows:

Gross Living Area of Dwelling (Square feet)	Maximum Number of Sleeping Rooms
----- up to 1,500	----- 1
1500-1800	2
over 1,800	2 plus 1 per each 500 square feet over 1,500

D. For the purposes of this section, the livable or living area of a dwelling shall not include unheated space, any portion of a building which has less than a seven foot vertical height between floor and finished ceiling, and basement or cellar space which has more than half of its floor-to-ceiling height below the average level of surrounding ground. No such space shall be used for an accessory apartment, for occupancy by boarders and lodgers, or for calculations of gross living area under this section.

16-14-3 SATELLITE DISHES

A. Definitions:

1. Satellite Dish - A device used or designed to receive electromagnetic signals from earth-orbiting satellites and other extraterrestrial sources and is external to or is attached to the exterior of any building or structure. The term satellite dish shall also include satellite earth station, satellite television antenna, satellite dish antenna or any other device designed to receive signals from satellites.

2. Satellite Dish Height - The distance measured vertically from the finished grade line, consistent with surrounding ground level elevations, if ground mounted, at the base which supports the satellite dish to the highest point of the satellite dish when positioned for operation.

B. Mounting - Satellite dishes 10 feet or less in diameter and less than 15 feet in height may be mounted (on) a single stanchion provided the following requirements are met:

1. Satellite receiving dishes may be mounted on a building provided that:
 - a. Said dish is six feet or less in diameter and projects eight feet or less from the building.
 - b. Dishes attached to buildings must be attached securely.
 - c. Dishes are only to be attached to the rear half of the principal building, at least five feet beyond the center line of the roof.
2. No person shall erect in any zoning district a satellite dish less than five feet from any lot line and less than 10 feet from the nearest door or window of a principal structure, nor closer to the street than the front of the principal structure.

C. Number Allowed - One satellite dish shall be allowed per principal structure.

D. Advertising - No form of advertising or identification is allowed on a satellite dish or framework other than the (manufacturer's) small identification plates.

E. Color - All satellite dishes in all zoning areas shall be neutral in color and, to the extent possible, be compatible with surrounding neighborhood in appearance and character.

B. Application for Permit - An applicant for a satellite dish shall submit to the Vienna Zoning Inspector a plan showing, but not limited to, location, type, size, color, mounting supports, anchorage and screening, where applicable, for the purpose of the satellite dish. Actual installation of a satellite dish shall require application for and receipt of a building permit.

G. Existing Dishes - All satellite dishes existing and in use at the time of the adoption of this ordinance are permitted to continue in use until such use is discontinued or said satellite dish is removed.

H. Removal - Non-operable or Satellite dishes not in use shall be removed from the property.

16-14-4 SUBDIVISIONS

A. All plans for sub-divisions must be approved by the Planning (Commission)Division.

1. Reviews by the Planning Commission will be done in three stages: initial, preliminary and final. Review will include site plans, landscaping, etc.
2. Conformance with the town's Comprehensive Plan and how well it conforms with the style, flavor and atmosphere of the community will be factors considered in the reviews by the Commission. Monotonous alignment of all buildings in rows, parallel to the street is discouraged.
3. It is the responsibility of the developer/builder to ensure that all proposed new construction be appropriate to the town of Vienna.
4. A design policy statement shall accompany the plans submission. The purpose of this design policy statement is to allow the developer or property owner to explain, in writing, the overall design and layout of the project and to explain how the proposed design will be compatible with the existing character of the town. It shall include sufficient detail in writing and illustration to provide a clear understanding of the overall appearance of the project and of individual buildings proposed.
5. It is very important that new subdivisions and structures are viewed and considered as natural extensions of the historic character and setting of the "Village of Vienna" and they do not overwhelm the character and design of the existing town. The Planning Commission will work with the developer/builder to ensure that the subdivision and buildings are appropriate.
6. If the property is sold as building lots, the seller shall place deed restrictions on the design of all structures to be built on that land. Building permit applications submitted by the buyer and subsequent owners will be reviewed to ensure they comply with these restrictions and the original subdivisions design policy statement.

B. The developer must pay for and have streets, curbs, storm drains, street lighting, sewer and water service in place before a lot is sold.

C. All new homes must have curbs next to the street, water and sewer installed before an occupancy permit is issued.

D. Any new subdivision and new construction of multiple multi-family units must meet the following standards:

1. Bedroom density not to exceed six bedrooms per acre in R1 and nine bedrooms per acre in R2 and B2.
2. No more than six bedrooms per building in R1 and nine in R2.

3. At least 3500 sq. ft. of land per unit.
4. At least 50% of the land must be contiguous Open Space. The Planning Commission may authorize this to be reduced to as little as 40% for cluster housing. At least 10% of the minimum open space required will be usable.
5. Height may not exceed two and one half stories.
6. At least two parking spaces per unit.

E. New subdivisions must have open space provided and that requirement included as an easement to the town, a covenant in the deed or guaranteed in some other manner which would preclude utilization of that open space in the future.

F. Cluster housing is to be encouraged and individual lot requirements may be reduced by the Planning Commission of a case by case basis in order to gain larger uninterrupted open space.

G. Street names within the town, including new subdivisions, are established by the town commissioners.

H. The following design standards will apply to all subdivision of land located within the Vienna Critical Area District in addition to the other provisions of the Zoning Ordinance.

1. Where a tract of land bordering tidal water, tidal wetlands, or tributary streams in the Critical Area is to be subdivided and a Buffer exemption has not been granted by the Critical Area Commission, a Buffer of at least one hundred (100) feet shall be established in natural vegetation (except areas of the Buffer which are planted in vegetation where necessary to protect, stabilize, or enhance the shore line). No development, including septic systems, impervious surfaces, parking areas, roads, or structures, are permitted in the buffer. However, approved development or expansion of a water-dependent facility, as defined in the Vienna Zoning Ordinance and the Critical Area Criteria (COMAR 14.15.03.03 & .04), is excepted from these Buffer provisions.

2. The buffer will be expanded beyond 100 feet to include contiguous sensitive areas such as steep slopes, hydric soils, or highly erodible soils whose development or disturbance may impact streams, wetlands, or other aquatic environments. In the case of contiguous slopes of 15 percent or greater, the buffer shall be expanded four feet for every one percent of slope, or to the top of the slope, whichever is greater in extent.
- 3 All subdivision in the Vienna Critical Area shall be subject to the Habitat Protection criteria and guidelines prescribed in the Town of Vienna Critical Area Program.
4. The subdivider shall be required to identify stormwater management policies appropriate to site development which achieve the following standards:
 - a. In areas designated Intensely Developed Area on the Town of Vienna Official Critical Area map the subdivider shall demonstrate that the best management practices for stormwater assure a ten (10) percent reduction of pre- development pollutant and loadings. Redevelopment or development projects which cannot demonstrate they meet this requirements may be approved only if it can be demonstrated that mitigation measures or offsets will be provided to achieve equivalent water quality benefits elsewhere in the same watershed. Methods of determining mitigation measures necessary to achieve 10 percent reductions shall be consistent with methodologies such as that outlined in "A Framework for Evaluating Compliance With the 10 percent Rule in the Critical Area" prepared for the Critical Area Commission. The Town may permit a fee-in-lieu where it is demonstrated that a ten (10) percent pollution reduction cannot be achieved.
 - b. The subdivider shall delineate those site areas not covered by impervious surfaces to be maintained or established in vegetation. Where vegetation is not proposed the developer shall demonstrate why plantings for such portions of the site are impracticable. The types of planting and vegetation proposed shall be in accordance with guidelines established as part of the Town of Vienna Critical Area Program.
 - c. The subdivision shall be designed to assure those features, or resources identified as Habitat Protection Areas are offered protection as prescribed in the Habitat Protection Element of the Town of Vienna Critical Area Program.
5. Roads, bridges and utilities serving lots shall be located to avoid disturbances to Habitat Protection Areas. When no alternative exists and such infrastructure must cross or be located in Habitat Protection Area the developer shall demonstrate how impacts to Habitats have been minimized and that no feasible alternative location of such infrastructure exists.

6. All roads, bridges, lots or other development which cross or are located adjacent to tributary streams in the Critical Area shall:
 - a. Not be located in the Buffer and designed in a manner to reduce increases in flood frequency and severity.
 - b. Provide for the retention of natural streambed substrate.
 - c. Minimize adverse impacts to water quality and storm water runoff.
 - d. Retain existing tree canopy.
7. Lots and open space acres shall be located and designed to provide for maintenance of existing site wildlife and plant habitats and continuity with those on adjacent sites. Existing wildlife corridors shall be identified on proposed development plats. When wildlife corridors exist or are proposed they shall include any existing Habitat Protection Areas and connect large forested areas on or adjacent to the site.
8. Impervious surfaces in subdivision located in Limited Development Area (LDA) of the Critical Area shall be limited to fifteen (15) percent of the gross site area of the parcel proposed for development, except that impervious surfaces on any lot not exceeding one (1) acre in size in a subdivision approved after 1 June 1986 may be up to twenty-five (25) percent of the lot.
9. No clearing or grading is permitted in the Buffer nor on steep slopes and hydric or highly erodible soils for other than agricultural practices, not involving the clearing of natural vegetation in the Buffer, or commercial forestry practices in the Buffer between March 1 and May 15.
10. Land to be subdivided shall be designed and improved in conformity to existing topography, in order to minimize grading, cuts and fill, and to retain, insofar as possible, the natural contours, minimize storm water run-off and conserve the natural cover and soil. No soil, sand or gravel shall be removed from any lots shown on any subdivision plat, except in accordance with the provisions of the Sediment Control Plan approved by the Soil Conservation District Board.
 11. Developers of subdivisions and developments in the Critical Area are encouraged to increase natural vegetation on the development site.

I. All new construction of multi-family houses and houses built by a developer in a subdivision will be inspected by a qualified building inspector to insure conformance with the state building code. The inspections shall be arranged for and paid for by the builder. Inspections will be done by persons/companies approved by the town's Commissioners.

**CHAPTER 16 16-14 - DEVELOPMENT RIGHTS AND RESPONSIBILITY 16-14--5
ZONING AGREEMENTS**

**16-14-5 DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS
(Added in its entirety by ORD 2005-05 on 11/14/05 effective 12/3/2005)**

16-14-5 Development Rights and Responsibilities Agreements

A. Purpose and Authority.

1. The purpose of this Chapter is to provide an additional technique for land development consistent with the Comprehensive Plan as authorized by the Annotated Code of Maryland. It is the purpose of this Chapter to enhance development flexibility, innovation and quality while ensuring protection of the public interest, health, safety and welfare.
2. The right to enter into Development Rights And Responsibilities Agreements is hereby vested in the Mayor and Commissioners of Vienna pursuant to the authority conferred in **Section 13.01 of Article 66 B. of the** Annotated Code of Maryland.

B. Applicability.

1. Any person having a legal or equitable interest in real property, or a representative of a person having a legal or equitable interest in real property in the Town of Vienna may petition the Mayor and Commissioners to enter into an agreement.
2. A petition shall be entirely voluntary on the part of the petitioner, and shall not be required by the Town, or any classification, designation permit or approval.

C. Contents of Agreement.

1. At a minimum a Development Rights And Responsibilities agreements shall contain the following:
 - (A) A legal description of the real property subject to the agreement. The agreement shall be accompanied by a title report from an attorney or title company which includes copies of all plats, covenants, restrictions, easements and title encumbrances which affect the use occupation, or location of improvements of the real property.
 - (B) A certification that the petitioner has either a legal or equitable interest in the property, together with a copy of the instrument establishing such interest.
 - (C) The names of all parties having as equitable or legal interest in the property, including lien holders;
 - (D) The duration of the agreement;
 - (E) The permissible uses of the real property;

**CHAPTER 16 16-14 -5 DEVELOPMENT RIGHTS AND RESPONSIBILITY 16-14--5
ZONING AGREEMENTS**

- (F) The density or intensity of use of the real property;
 - (G) The maximum height and size of structures to be located on the real property;
 - (H) Architectural elevation sketches, if required by the Mayor and Commissioners;
 - (I) A description of the plan approvals and permits required or already approved for the development of the property.
 - (J) A statement that the proposed development is consistent with the applicable development regulations and the Comprehensive Plan, with references to specific provisions of the applicable law or plan;
 - (K) A description of the conditions, terms, restrictions or other requirements determined by the Mayor and Commissioners, or their designees, to be necessary to ensure the public health, safety, or welfare;
 - (L) To the extent applicable, provisions for:
 - (I.) Dedication or preservation of a portion of the real property for public or private uses;
 - (II) Protection of sensitive areas;
 - (III) Preservation and restoration of historic structures;
 - (IV) Construction or financing of public facilities;
 - (V) Provisions to the effect that the petitioner shall be responsible for attorney's fees costs and expenses incurred by the Town in the event an agreement is abandoned or breached by the petitioner, or challenged by others.
2. An agreement may fix the period in and terms by which development and construction may commence and be completed, as well as provide for other matters consistent with this title, including, but not limited to the phasing of development in such a manner that public facilities and services may be provided in an orderly and sequential fashion in the discretion of the Town.
3. An agreement shall be void five (5) years after the day on which the parties execute the agreement unless:
- (A) A different duration is expressed within the agreement; or
 - (B) The duration of the agreement is extended by amendment of the agreement in accordance with the formalities required for such amendments.

**CHAPTER 16 16-14 - DEVELOPMENT RIGHTS AND RESPONSIBILITY 16-14-5
ZONING AGREEMENTS**

D. Referral To Planning Commission.

Upon receipt of a petition to enter into an agreement, the Mayor and Commissioners shall refer the petition to the Planning Commission for a determination whether the proposed agreement is consistent with the Comprehensive Plan. The Planning Commission shall make specific findings within 60 days of referral of the petition. The Mayor and Commissioners may not enter into an agreement unless the Planning Commission determines whether the proposed agreement is consistent with the Comprehensive Plan.

E. Public Hearing By Mayor and Commissioners.

Before a Development Rights and Responsibilities Agreement may be executed, the Mayor and Commissioner shall conduct a public hearing on the proposed agreement. Notice of the hearing shall be published in a newspaper of general circulation in the Town once each week for two consecutive weeks, with the first publication at least fourteen (14) days prior to the hearing. 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.

F. Amendment of Agreement.

1. Subject to paragraph (2) of this subsection and after a public hearing the parties to an agreement may amend the agreement by mutual consent.
2. The parties may not amend an agreement unless the Planning Commission determines whether the proposed amendment is consistent with the Comprehensive Plan. The Planning Commission shall make specific findings within 60 days of the referral of the proposed amendment.

G. Termination of Agreements; suspension.

1. The parties to an agreement may terminate the agreement by mutual consent.
2. After a public hearing the Mayor and Commissioners may suspend or terminate an agreement if they determine that the suspension or termination is essential to ensure the public health, safety, or welfare.

H. Applicable Laws, Regulations and Policies.

1. Except as provided in Paragraph (2) of this subsection, the laws, rules, regulations, and policies governing the use, density, or intensity of the real property subject to the agreement shall be the laws, rules, regulations and policies in force at the time the parties execute the agreement.

**CHAPTER 16-14-- DEVELOPMENT RIGHTS AND RESPONSIBILITY 16-14-5
ZONING AGREEMENTS**

2. An agreement may not prevent compliance with laws, rules, regulations and policies enacted or adopted after the effective date of the agreement. If the Mayor and Commissioners determine that imposition and compliance with these laws, rules, regulations and policies is essential to ensure the public health, safety or welfare of residents of all or party of the Town.

I. Recordation:

1. An agreement shall be void if not recorded among the land records of Dorchester County within twenty (20) days after the day on which the Mayor and Commissioners and the petitioner execute the agreement.
2. When an agreement is recorded, the Mayor and Commissioners and the petitioner(s), and their successors in interest, are bound to the agreement.

J. Enforcement:

Unless terminated pursuant to this Article, the Mayor and Commissioners or the petitioner (s) , and their successors in interest, may enforce the agreement.

K. Fees And Costs:

The petition shall be accompanied by such fees as may be established or modified by resolution of the Mayor and Commissioners, 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.

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS (Added 12.22.08 by Ord. 2008-6)**

**16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT AND MATERIAL
REGULATIONS (Added 12.22.08 by Ord. 2008-6)**

A. Definitions:

As used in this Ordinance the following words and phrases shall have the meanings indicated:

1. Adult Book or Video Store – an Adult Oriented Business, whether or not containing viewing booths, theaters, or other performance viewing space, that involves the sale, rental, transfer, loan, dissemination, distribution, provision or promotion of photographs, movies, videos, DVDs, CDs or other audio/video recordings, or other electronic recordings, or, in the form of merchandise, objects, items or devices.
2. Adult Entertainment or Material – Any performance, depiction, or text that is intended to cause or provide, or reasonably may be expected to cause or provide, sexual stimulation, sexual excitement, or sexual gratification and:
 - (a) In which an individual or individuals appear in a state of Nudity or Partial Nudity; or
 - (b) That consists, in whole or in part, of action, activity, poses, portrayal,
 - (i) Human genitals in a discernable state of sexual stimulation or arousal; or
 - (ii) Any act, whether real or simulated, of masturbation, sexual intercourse, anal intercourse, sodomy, fellatio, cunnilingus, fondling of the buttocks, anus, female breasts, public area, or genital area, Sadomasochistic Abuse, physical contact or attempted contact with clothes or unclothed genitals, pubic areas, buttocks, anus, or female breast; or
 - (c) That consists of sexual contact with animals or inanimate objects; or
 - (d) That consist of any merchandise, object, item or devise that is designed and/or marketed with the intention of causing, or that reasonable may be expected to cause, sexual stimulation, sexual excitement or sexual gratification.
3. Adult Oriented Business – any business, operation, or activity a significant amount of which consists of:
 - (a) The conduct, promotion, delivery, provision, or performance of adult entertainment or material; including, but not limited to, that occurring in, at, or in connection with a cabaret, lounge, night club, modeling studio, bar, restaurant, club, lodge, or similar establishment; or

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS (Added 12.22.08 by Ord. 2008-6)**

(b)The sale, rental, transfer, loan, dissemination, distribution, provision or promotion of Adult Entertainment or material, in any format, form, or medium, including but not limited to, books, magazines, newspapers, photographs, movies, videos, DVDs, CDs or other audio/video recordings, other electronic recordings, and/or coin operated or pay-view-viewing devices, including, but not limited to, the operation of an Adult Book or Video Store or Viewing Booth.

4. Nudity --

- (a)The showing of the human male or female genitals, pubic area, anus or buttocks with less than fully opaque covering;
- (b)The showing of the female breast with less than a fully opaque covering over any part below the top or uppermost part of the nipple; or
- (c) The showing of the covered male genitalia in a discernibly turgid state.

5. Partial Nudity – A state of dress in which opaque clothing or material covers primarily and little else other than;

- (a) The human male or female genitals, pubic area, anus, or buttocks; or
- (b) The female breasts below the top or uppermost part of the nipple.

6. Sadomasochistic Abuse – Any act or depiction of Nude or Partially Nude humans engaged in:

- (a) Flagellation or torture, whether real or simulated, by or upon an individual; or
- (b) The condition of being, or causing oneself or another to be, fettered, bound, or otherwise physically restrained.

7. Significant Amount –

- (a) At least 20 % of the stock in the establishment or on display consists of Adult Entertainment or material or houses or contains devices depicting, describing, or relating to Adult Entertainment; or Material;
or
- (b) At least 20 % of the usable floor area is used for the display or storage of Adult Entertainment or Material or houses or contains devices depicting, describing, or relating to Adult Entertainment or Material; or
- (c) At least 20 % of the gross revenue is, or may reasonably be expected to be, derived from the provision of Adult Entertainment or Material.

8. Viewing Booth – a space or area in which a display device is located for purposes of viewing pictures, films, videotapes, or other images.

B. Nudity and Partial Nudity.

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS
(Added 12.22.08 by Ord. 2008-6)**

1. Other than during a performance in accordance with Paragraph B2. below, it shall be unlawful for any person, including patrons and visitors at or in any Adult Oriented Business to perform, work, dance or appear in any state, condition, or appearance of Nudity or Partial Nudity.
2. When performing an artistic or expressive dance, performance, display, or exercise, an employee, agent, independent contractor, performer, dancer or show person at or in the employ of an Adult Oriented Business where such performances are customarily given, may appear, while performing, in a state or condition of Partial Nudity.

C. Certain Physical Contact Prohibited.

1. It shall be unlawful for any person on, in, or about the interior or exterior of an Adult Oriented Business while in any state, condition, or appearance of Nudity or Partial Nudity, whether performing or engaging in an artistic or expressive dance, performance, display, exercise or otherwise, to be , at any time, within a distance of six (6) feet of any other person, whether or not such other person is an employee, agent, independent contractor, performer, dancer , or show person at, or, in the employ of an Adult Oriented Business, or a customer, patron, or visitor of, at, or in any Adult Oriented Business. This prohibition includes, but is not limited to, any form of person to person touching or contact whether directly by actual physical touching or indirectly by the employment of any item or device.
2. No person in a state of Nudity or Partial Nudity on, in, or about the interior or exterior of an Adult Oriented Business shall touch any other person, whether directly by actual physical touching or indirectly by the employment of any item or device, for the purpose of sexual arousal, sexual stimulation, sexual excitement, or sexual gratification.

D. Other prohibited conduct or Activities.

1. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to encourage or permit any person to touch, caress, fondle or stimulate, whether directly by actual physical touching or indirectly by the employment of any item or device, the breast, buttocks, anus, or genitals of another, including the person so encouraging or permitting the person being encouraged or permitted, or any other person, while in, on, or about the interior or exterior of the Adult Oriented Business.
2. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to touch, caress, fondle or stimulate, whether directly by actual physical touching or indirectly by the employment of any item or device, their own breast, buttocks, anus, or genitals while in the view of any other person, or for purposes of sexual arousal, sexual stimulation, sexual excitement, or sexual gratification.

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS
(Added 12.22.08 by Ord. 2008-6)**

3. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to participate in, or encourage or allow another to participate in, any act of sexual intercourse, anal penetration, sodomy, bestiality, masturbation, fellatio, cunnilingus, or Sadoomasochistic Abuse, whether actual or simulated.
4. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to wear, use, or employ any device or covering exposed to view which simulates the breasts, genitals anus, pubic hair, or any part or portion thereof.
5. It shall be unlawful for any person in, on, or about the interior or exterior of any Adult Oriented Business to expose or encourage or permit any person to expose the breasts, buttocks, anus, or genitals of another, including the person so encouraging permitting, the person being encouraged or permitted, or any other person.
6. In shall be unlawful for any owner or operator of an Adult Oriented Business to encourage, allow, or permit any person in, on, or about the interior or exterior of an Adult Oriented Business to commit or participate in any of the acts prohibited under this Ordinance.

E. Required Conditions Of Operation.

1. An Adult Oriented Business shall ensure that at least one employee is on duty at each management station required pursuant to this Ordinance at any time any not-on-day employee or any customer, patron, or visitor is within the premises of the Adult Oriented Business.
2. An Adult Oriented Business shall ensure that all lighting required pursuant to this Ordinance is illuminated at any time any person other than an on-duty employee is within the premises.
3. An Adult Oriented Business shall not allow or permit any condition or state to exist with respect to such business in violation of the requirements of this Ordinance, or of any other Ordinance adopted by the Town Of Vienna.
4. An Adult Oriented Business:
 - (a) Shall have at least one management station in each building.
 - (b) Shall have an interior arranged or configured such that all areas of the interior of the building or structure open to the public (excluding restrooms) are always visible by direct sight from a management station and not visible merely by camera, mirror or other device.
 - (c) Shall be equipped with overhead or comparable lighting of sufficient intensity to light or illuminate all areas of the building or

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS
(Added 12.22.08 by Ord. 2008-6)**

structure at an illumination of at least five (5) foot-candles measured at floor level.

(d) Shall have lighting illuminating all places open or available to the public or any customer, patron, or visitor at any time any person other than an on-duty employee is in the building.

(e) Shall provide or cause to be provided for all exterior areas, including, but not limited to, parking lots or areas, loading docks, and sidewalks sufficient lighting to illuminate the exterior areas of the business to an illumination level of not less than two (2) foot-candles and shall be equipped with video surveillance devices that monitor the exterior portions of the premises from a management station.

(f) Shall not be equipped with or maintain or allow on the premises a viewing booth having any curtain, door, or other covering that allows the viewing booth to be screened from the view of any employee, the management station or anyone standing outside of the viewing booth.

(g) Shall ensure that each viewing booth is separated from other viewing booths and other rooms or adjacent areas by a solid wall or solid partition such that a person, in one viewing booth cannot have any physical contact with a person in any other viewing booth or area of the premises except as required by the immediately preceding item (f).

(h) Shall construct, configure and maintain its premises in such a way that all activities of all persons other than on-duty employees may be viewed from a management station at all times.

(i) In the case of an Adult Book or Video Store, shall arrange its displays of merchandise, including, but not limited to, books, magazines, newspapers, photographs, movies, videos, DVDs, CD, other audio/video recordings, or other electronic recordings, or, in the form of objects, items or devices, in such a manner that such merchandise is not visible in any way or manner, or to any degree, from outside the building.

(j) In the case of Adult Oriented Business other than an Adult Book or Video Store, and, to the extent not regulated under Article 2B of the Annotated Code of Maryland (or successor provisions thereof), shall be constructed and maintained in such manner: that the conduct, promotion, deliver, provision, or performance of Adult Entertainment or Material is not visible in any way or manner, or to any degree, from outside the building.

(k) Shall post appropriate signage prohibiting parking at the premises for persons other than patrons of the business and prohibiting the use of the exterior of the premises for other than ingress, egress, parking or solid waste deposit/processing by bonafide employees and patrons of the business.

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS
(Added 12.22.08 by Ord. 2008-6)**

- (1) An Adult Oriented Business shall not alter or permit to be altered the configuration of any management station required pursuant to this Ordinance and depicted on an approved site plan without the submittal to, and approval by the Planning Commission and Town Council of a new site plan.
5. No Adult Oriented Business may be conducted on the same parcel as, in the same building as, or in conjunction with any hotel, motel, bed-and-breakfast, country inn, marina, or in any structure or portion thereof not generally open to the public and freely accessible to patrons at all times.
6. An Adult Oriented Business shall, at all times that it is open, have at least one manager on duty that is responsible for maintaining compliance with all of the conditions and requirements of this Ordinance at all times that it is open for business. An Adult Oriented Business shall maintain a current name, phone number street address and e-mail address of at least one individual who resides in Dorchester County or maintains an office that is open at least five days a week, legal holidays excluded, for the acceptance of any civil citation issued pursuant to Paragraph F. 1. of this Ordinance with the Enforcement Officer, Mayor or Commissioners or Clerk of the Town of Vienna. As a condition to doing business in The Town of Vienna, an Adult Oriented Business agrees that service of any civil citation or legal process on it shall be deemed to have been accomplished if a copy of such citation is
- (a) Left at any management station of such Adult Oriented Business; or
 - (b) Left at the office of any person so designated by such Adult Oriented Business pursuant to this Subsection; or
 - (c) Served on the resident, posted on the door of the address of the resident, or left in the mailbox of the resident designated by such Adult Oriented Business; or
 - (d) Such Adult Oriented Business has actual knowledge of such civil citation or legal process because a call was made and message left at the phone number of the individual designated above or an e-mail was sent to the individual designated by such Adult Oriented Business.

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS
(Added 12.22.08 by Ord. 2008-6)**

F. Location Restrictions.

1. An Adult Entertainment Business may not be operated within:
 - (a) 300 feet of a church or place of religions assembly;
 - (b) 300 feet of a public school;
 - (c) 300 feet of a public park;
 - (d) 300 feet of a licensed day care home.
 - (e) 300 feet of another Adult Entertainment Business
2. An Adult Entertainment Business may not be operated in the same building, structure, or portion thereof containing another Adult Entertainment Business.
3. For the purpose of this Section, measurement shall be made in a straight line, without regard to intervening structures or objects, from the nearest portion of the building or structure used as a part of the premises where an Adult Entertainment Business is conducted, to the nearest property line of the premises of a church or school, or to the nearest boundary of an affected public park or licensed day care home.
4. For purposes of this Section, the distance between any two (2) Adult Entertainment Businesses shall be measured in a straight line, without regard to intervening structures or objects, from the closest exterior wall of the structure in which each business is located.

G. PENALTIES.

1. Each violation of any provision of this Ordinance shall constitute a separate violation and a civil citation in the amount of up to \$1,000.00 may issue for each such violation to any, and to each and every person who engages in such violation, including but not limited to the Adult Oriented Business, the on-duty manager of the Adult Oriented Business, and any employee or agent of the Adult Oriented Business who participated in such violation or otherwise took no action to stop or deter such violation from occurring or from continuing.
2. In addition to the foregoing provisions of Paragraph 1. Subsection F above, any Adult Oriented Business at, in, or on which any violations of this Ordinance have occurred on two (2) different days within any twelve (12) month period shall be deemed to be a public nuisance and the certificate of occupancy of such Adult Oriented Business may be withdrawn

H. INSPECTIONS

1. *Periodic Inspections.* The Code Enforcement Officer or person so authorized by the Mayor and Commissioners designee shall periodically inspect the premises of every Adult Oriented Business to ensure compliance with this Ordinance.

**CHAPTER 16-14-6 ADULT ORIENTED BUSINESS, ENTERTAINMENT 16-14-6
ZONING AND MATERIAL REGULATIONS
(Added 12.22.08 by Ord. 2008-6)**

2. *Entry.* The Code Enforcement Officer or persons as designated by the Mayor and Commissioners, the Sheriff of Dorchester County, or their duly authorized designees, who shall exhibit proper credentials upon request, may enter any Adult Oriented Business without consent of the owner, operator or occupant at any time during business or operating hours and at such other times as may be necessary in any situation reasonably believed to pose an immediate threat to life, property or public safety, for the purpose of enforcing the provision of this Ordinance.

I. PREEMPTION.

To the extent the provisions of this Ordinance are preempted by any otherwise applicable provision of Article 2 B of the Annotated Code of Maryland, or any rule or regulation issued pursuant thereto, or preempted by any other otherwise applicable law, rule, or regulation of the State of Maryland, such other applicable law, rule, provision, or regulation shall apply. Unless specifically required by law, conduct prohibited by this Ordinance shall not be preempted by any criminal statute and the violations of the provisions of this Ordinance are and shall be deemed to be civil infractions

**CHAPTER 16-14-7
ZONING**

**PROHIBITED USES AND ACTIVITIES 16-14-7
(Added 12.22.08 by Ord. 2008-7)**

16-14-7 PROHIBITED USES AND ACTIVITIES (Added 12.22.08 by Ord. 2008-7)

Chapter 16 Section 16-3 **DEFINITION OF TERMS** be amended by adding the following terms and definitions to read as follows:

Massage: – Any method of treating, or attending to, the external parts of the human body (other than the scalp) by touching, rubbing, stroking, kneading, tapping or vibrating with the hand, arm, foot or other body part, or by instrument or device, applied by a Massage Technician, for compensation, or without compensation and in connection with or related to any other service, sale, transaction, or exchange for compensation.

Massage Establishment – Any establishment, building, structure, premise, room or other location or site where a Massage Technician administers a Massage to another person. Massage Establishment does not include a hospital, nursing home, medical clinic or other establishment, building, structure, premise, room or other location or site where massages are administered by any individual who is a Medical Practitioner, a Massage Therapist, or a Massage Practitioner.

Massage Technician: - An individual who administers a Massage to another individual. Massage Technician does not include:

- a. A Massage Practitioner;
- b. A Massage Therapist; or
- c. A Medical Practitioner.

Massage Practitioner: A registered massage practitioner as that term is defined by § 3-5A-01 of the Health Occupations Article of the Annotated Code of Maryland, or a person excepted from the requirement to be certified or registered before practicing massage therapy or non-therapeutic massage pursuant to an exception set forth in § 3-5A-05(A)(2) of the Health Occupations Article of the Maryland Annotated Code who is practicing massage under the limited circumstances allowed in § 3-5A-05(A)(2)

Massage Therapist: - A certified massage therapist as that term is defined by § 3-5A-01 of the health occupations Article of the Annotated code of Maryland.

Medical Practitioner: - A physician, dentist, optometrist, chiropractor, podiatrist, psychologist, physical therapist, nurse, or other similar health professional licensed and/or certified by the State of Maryland.

CHAPTER 16-14-7 .1 PROHIBITED USES AND ACTIVITIES 16-14-7 .1
ZONING MESSAGE ESTABLISHMENTS IN ALL DISTRICTS
(Added 12.22.08 by Ord. 2008-7)

Chapter 16 Section 16-14-7 PROHIBITED USES AND ACTIVITIES be amended by adding the following Subsection 16-14-7.1 A Massage Establishment in All Districts, which designates a prohibited use, to read as follows:

16-14-7 PROHIBITED USES IN ALL DISTRICTS
16-14-7.1 A MASSAGE ESTABLISHMENT IN ALL DISTRICTS

**CHAPTER 16-14-8 ADOPT CHAPTER 134 OF THE DORCHESTER COUNTY
STORMWATER MANAGEMENT ORDINANCE (Added in its entirety by
ORD2010-2 on 10/25/2010)**

**16-14-8 ADOPT CHAPTER 134 OF THE DORCHESTER COUNTY
STORMWATER MANAGEMENT ORDINANCE (Added in its entirety by
ORD2010-2 on 10/25/2010)**

16-14-8.1 Adoption:

Chapter 134 of the Dorchester County Code known and cited as the Dorchester County Stormwater Management Ordinance, inclusive, and as amended from time to time, be the same is hereby adopted as part of the Code of Laws of the Town of Vienna.

16-14-8.2 Authorization:

Dorchester County, Maryland its agents and employees, be, and the same are hereby authorized to administer and enforce the provisions of Chapter 134 of the Dorchester County Code within the Town of Vienna in the same manner and with the same authority as they would in Dorchester County.

16-14-18.3 Application:

Any provisions of the current laws and ordinances of the Town of Vienna which conflict with or could be interpreted in a manner which is inconsistent with Chapter 134 of the Dorchester County Code be, and the same are hereby repealed.

16-15 NON-CONFORMING LOTS, USES, AND STRUCTURES

16-15-1 NON-CONFORMING LOTS

A. No non-conforming lot shall be further reduced in area unless the lot is divided for the purpose of enlarging adjoining lots and all parts are attached to the adjoining properties. In such case, the non-conforming lot shall not afterwards be re-established.

B. Non-conforming lots may be combined with adjoining parcels in their entirety but shall not afterwards be re-established as separate lots.

C. A single lot or parcel of land that was legally recorded as of (date of Critical Area Program and Overlay Provisions in the Zoning Ordinance Adoption) may be developed with a single family dwelling and customary accessory building on any single lot of record in the Critical Area District if the dwelling was not already placed there. This provision shall only apply as follows:

1. Any lot on which development activity has legally progressed to the point of pouring foundation footing or installation of structural members, prior to (date of Critical Area Program and Overlay Provisions in the Zoning Ordinance Adoption), will be permitted to complete construction as per existing development approvals.

2. Any legal parcel of land not being part of a recorded subdivision, that was recorded as of December 1, 1985, and that was subdivided into recorded, legally buildable lots, where the subdivision received Town or County final approval prior to June 1, 1984, provided that:

a. Lots not individually owned are reconfigured so as to permit compliance with the Buffer requirements; and

b. Any development of such lands complies "insofar as possible" with the provisions of the Critical Area Overlay District as determined by the Vienna Planning Commission.

3. Land that was subdivided into recorded, legally buildable lots, where the subdivision received the Town or County's final approval between June 1, 1984 and December 1, 1985; and

4. Land that was subdivided into recorded, legally buildable lots, where the subdivision received the Town or County's final approval after December 1, 1985, provided that either any such land conforms to the provisions of the Critical Area Overlay Zone, or the area of land is counted by the Town against the growth allocation permitted under COMAR 14.15.02.06.

16-15-2 NON-CONFORMIN USES

A. Any non-conforming use may be extended throughout any parts of existing building which were arranged or designed for such use at the time of the adoption of this ordinance.

B. A non-conforming use shall not be expanded into a new building or addition, unless authorized by the Board of Appeals as a variance. In such case the Board may allow the area for the use to be expanded up to 50%.

C. Any non-conforming use which is discontinued for 12 consecutive months shall not be re-established, unless the discontinuance is caused by a governmental action impeding the use. In such case the Board must determine as a variance that the use could not continue due to governmental action before the non-conforming use is re-established.

D. A non-conforming use contained within a structure which is deteriorated, damaged, or destroyed by any means to an extent less than or equal to 75% of the structure's replacement cost may be continued. Should the structure be damaged to an extent greater than 75%, the use shall not be allowed to continue unless authorized by the Board of Appeals as a variance.

16-15-3 NON-CONFORMING STRUCTURES

A. Any structure which is non-conforming shall not be made more non-conforming by an expansion, enlargement, or structural modification. A structure which is non-conforming due to yard setbacks may only be expanded, enlarged, or structurally modified on any portion where the existing yard requirements can be met.

B. Non-conforming structures which are deteriorated, damaged, or destroyed by any means to an extent less than or equal to 75% of its replacement cost at the time of destruction may be reconstructed or restored to the same degree of non-conformity. Any structure damaged or destroyed to an extent greater than 75% shall not be reconstructed or restored unless it conforms with the district regulations or unless the Board of Appeals authorized the reconstruction or restoration as a variance.

C. The expansion or redevelopment of existing structures in the Buffer Exemption Area may not increase impervious surfaces shoreward of the existing structure and shall not result in greater than a twenty-five (25) percent increase in the total site area in impervious surfaces. In the Buffer Exemption Area such additions will be located so as to minimize the shoreward extent of impervious surfaces, insofar as possible. In no case may such additions extend shoreward of any required setback line or as defined by existing structures on adjacent lots or parcels which ever is more restrictive.

16-15-4 EXEMPTIONS FROM NON-CONFORMANCE

A. Nothing in this section shall prohibit the reconstruction of a conforming use, including a dwelling, on its original foundation, where said foundation is in violation of yard and setback requirements for the district in which it is located, provided that upon reconstruction, the building shall be used for a conforming use.

B. Dwellings in the B1 District which existed prior to the effective date of this ordinance shall not be subject to the provisions of subsections 16-15-2D and 16-15-3B above, and may be reconstructed if destroyed or damaged by any means, regardless of the extent of damage or destruction.

**CHAPTER 16-16 PLANNED DEVELOPMENT DISTRICT 16-16
ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING
ZONE**

Added 10 January 2011 by ORDINANCE 2010-7)

16-16 PLANNED DEVELOPMENT DISTRICT

16-16-1 Purpose

The Planned Development District is a floating zone district, which means that provisions and regulations are made to govern development within a PDD, but no such district will be pre-mapped on the Town of Vienna Official Zoning Map. It is the intent of this district to control the placement, design, use, and density of well-planned, mixed-use development which offers a variety of residential and neighborhood commercial uses and represents an efficient overall use of land to permit the optimum amount of flexibility and variety in the design of such development.

16-16-2 Definitions

- A. For the purposes of this PDD, terms or words used herein shall be interpreted as follows:
- (1) Anticipated Absorption – The rate at which properties are able to be sold or leased in an area. This rate is dependent upon area building sales, local supply, and local demand.
 - (2) Day Care Home – A dwelling in which a permanent occupant of the dwelling provides for the care, protection, and supervision of no more than eight (8) children or adults for periods of less than 24 hours per day. Those receiving care are not all related to the occupant or to each other by blood, marriage, or adoption and are not legal wards or foster children of the attendant adults. For the purpose of this PDD Ordinance, such activities shall meet all requirements for home occupations and shall meet all State standards with respect to registration and inspection.
 - (3) Floating Zone - An unmapped district for which all of the zone requirements are contained in the PDD ordinance and for which the zone is fixed on the map only when an application for development within the planned development district, meeting the zone requirements, is approved.
 - (4) Growth Allocation – A Chesapeake Bay Critical Area term which refers to a finite number of acres of land that a local jurisdiction may use to create new Intensely Developed Areas and Limited Development Areas.
 - (5) Pattern Book – A development guide for a specific PDD that, based upon existing architectural styles and settlement patterns in the community, describes and illustrates models for the development of residential and nonresidential uses included in the PDD through the use of photographs, cross-sections, and perspective drawings to demonstrate the preferred public open spaces, building

**CHAPTER 16-16 PLANNED DEVELOPMENT DISTRICT 16-16
ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING
ZONE**

Added 10 January 2011 by ORDINANCE 2010-7)

and street relationships, architectural patterns, and the specific style and design of all proposed uses.

- (6) Rectilinear Pattern - A pattern of streets, alleys, and blocks, characterized by right angle roadways, grid pattern blocks, and four-way intersections.
- (7) Single-Loaded – Streets with residential development on one side and open space on the other side, which provide public access to, and visibility of natural open spaces and public parks.
- (8) Specific Plan – The development plan and related pattern book for a specific project and site that includes all of the required information for PDD approval.
- (9) Substantial Completion - A stage of a construction or building project, or a designated phase of the project, that is sufficiently complete, in accordance with the applicable construction contract documents, so that the building project or a designated phase of the project may be used or occupied for its original intended purpose. Partial use or occupancy shall not necessarily result in the project being deemed substantially complete and shall not be evidence of substantial completion.

16-16-3 Applicability and Intent

- A. The Town Commissioners may apply the Planned Development District (PDD) to any tract of land exceeding 50 acres.
- B. The standards and requirements contained in this PDD chapter shall be deemed as the minimum requirements for evaluating a PDD request. The Planning Commission may recommend and the Mayor and Town Commissioners may require more stringent standards, based on the specific and unique nature of the site and surrounding areas, in order to protect the health, safety, and welfare of the citizens of Vienna.
- C. The PDD is intended to:
 - (1) Implement the recommendations of the 2003 Vienna Community Vision Plan and the 2003 Greater Vienna Comprehensive Plan, as amended on September 14, 2009, to include Water Resources and Municipal Growth Elements;
 - (2) Develop neighborhoods that accommodate and promote pedestrian travel as well as motor vehicle trips;
 - (3) Promote design that results in residentially scaled buildings fronting on, and generally aligned with, streets;
 - (4) Encourage the inclusion of a diversity of household types, age groups, and

Added 10 January 2011 by ORDINANCE 2010-7)

income levels;

- (5) Promote traditional town building and site development patterns with an interconnected and broadly rectilinear pattern of streets, alleys, and blocks, where feasible, providing for a balanced mix of pedestrian and vehicular traffic;
- (6) Permit small-scale neighborhood commercial uses intended to serve the residents of Vienna and the immediate surrounding area;
- (7) Encourage creation of functionally diverse, but visually unified, communities focused on central squares;
- (8) Promote use of neighborhood greens, landscaped streets, boulevards, and "single-loaded" parkways woven into street and block patterns to provide space for social activity, recreation, parks, and visual enjoyment;
- (9) Provide buildings or areas for public assemblies that serve as visual landmarks and symbols of identity;
- (10) Promote the location of dwellings, shops, and workplaces in close proximity to each other, on a scale that accommodates and promotes pedestrian travel within the community;
- (11) Preserve open space, scenic vistas, agricultural lands, and natural areas;
- (12) Permit design flexibility in order to achieve an appropriate mix of residential and non-residential building uses; and
- (13) Require efficient utilization of designated growth areas.

16-16-4 Land Uses, Density, and Development Standards in A PDD Floating Zone

A. The following uses and structures may be permitted in a Planned Development District, provided that they comply with the approved PDD Plan and related Pattern Book, as well as all additional regulations cited within this PDD Ordinance:

- (1) Single-family and duplex dwellings.
- (2) Public and quasi-public noncommercial cultural, social, and recreational areas and centers including, but not limited to, parks, playgrounds, community centers, fraternal lodges, and swimming pools.
- (3) Firehouses, police stations, governmental offices, and other public structures and uses.
- (4) Retail and commercial service establishments, excluding any carryout alcohol sales, but including:
 - (a) Neighborhood Retail businesses such as hardware, groceries, drugs, florists, clothing, dry goods, variety, craft, antique, gifts, furniture, or appliances, and other similar establishments.

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE

Added 10 January 2011 by ORDINANCE 2010-7)

- (b) Personal service businesses such as shoe repair shops, banks, beauty parlors, barbers, self-service laundries, and dry cleaning stores which shall be pick-up stations only.
 - (c) Establishments such as restaurants, cafes, and carryout food which may include entertainment and dancing, but which shall exclude carryout sales of alcoholic beverages.
 - (d) General offices such as those of doctors, lawyers, engineers, surveyors, real estate brokers, and insurance agents, and other similar professionals.
 - (5) Water supply systems and wastewater treatment facilities.
 - (6) Public utilities and utility structures.
 - (7) Residential accessory uses and structures, as depicted on the approved PDD Plan and in the related pattern book.
 - (8) Any use or structure which is determined by the Mayor and Commissioners to be of the same general character as the above-permitted uses and any accessory uses or structures which, in the opinion of the Mayor and Commissioners is incidental and subordinate to any permitted principal use.
- B. The following uses and structures may be permitted by special exception with the approval of the Board of Appeals:
- (1) Bed and breakfasts, boarding houses, and lodging houses.
 - (2) Home occupations, as defined in Section 16-3-2.
 - (3) Day Care Homes with no more than 8 clients.
 - (4) Churches, temples, and other places of worship.
- C. Within a Planned Development District, the following percentages of the land shall be devoted to the following uses:
- (1) A maximum of 95% of the adjusted tract acreage may be utilized for residential uses and shall be limited to single-family and duplex dwellings. Land devoted to residential uses shall be deemed to include streets, alleys, and parking and service areas and primarily service residences or groups of residences, but shall not include usable open space or recreational areas.
 - (2) A maximum of 3% of the adjusted tract acreage may be utilized for retail and commercial service establishments. Such uses shall include all permitted uses not specified herein as residential, open space, or recreational.
 - (3) A minimum of 2% of the adjusted tract area shall be utilized for open space and recreational uses in accordance with the following provisions and requirements:

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE

Added 10 January 2011 by ORDINANCE 2010-7)

- (a) Open space shall be limited to agricultural uses, including horticulture and conservation uses, such as meadows, woodlots, arboreta, and other similar silvicultural uses.
- (b) Recreational areas shall be limited to public and quasi-public noncommercial uses such as walking and biking trails, social areas, community centers, town greens, and playgrounds.
- (c) The terms “open space” and “recreational areas” shall not include space devoted to roads, alleys, and associated rights-of-way; parking; utility easements; or stormwater management facilities.
- (d) Open space areas shall be permanently protected through conservation easements or permanent dedications.

D. Residential Density Determination

- (1) The total number of dwelling units permissible in a PDD project in the Planned Development District shall be determined through calculations of the Adjusted Tract Acreage, as determined in Table #1 below. The allowable residential density for a proposed PDD is 3.5 dwelling units per Adjusted Tract Acre, but in no case shall density exceed the appropriate density for the PDD project as determined by the Planning Commission and as approved by the Mayor and Commissioners during the usual course of the development review and approval process.

Table #1: Density Factors for Calculating Adjusted Tract Acreage

<u>Name</u>	<u>Density Factor</u>	<u>Description of Constraint</u>
DF 1	0.00	Floodways within 100-year floodplain; Existing street rights-of-way
DF 2	0.05	Tidal and nontidal wetlands and associated required buffers; Existing utility easements.
DF 3	0.25	Steep slopes, those greater than 25 percent.
DF 4	0.75	Soils classified as 'poorly drained'; Slopes of between 15 percent and 25 percent;
DF 5	1.00	Unconstrained land

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE**Added 10 January 2011 by ORDINANCE 2010-7)**

E. Development Standards

- (1) The lot area, setbacks, lot dimensions, bulk, lot coverage, minimum floor area, height, and road frontage requirements shall be established for each PDD project by the Vienna Planning Commission in the usual course of development and review of the PDD project, as outlined below. In establishing such requirements, the Planning Commission shall consider the proposed PDD project's intensity, density, consistency with the Comprehensive Plan and Vienna Vision Plan, as well as the existing character of adjacent neighborhoods and the Town of Vienna as a whole.

16-16-5 Required Procedures

- A. The procedures for amending the Official Vienna Zoning Map to locate a PDD, and to approve a PDD Plan, are set forth in this Ordinance.
- B. Any development, site plan, or subdivision approval for land subject to a PDD shall be consistent with the provisions of this code applicable to PDDs and the site specific plan applicable to the property, as approved or amended by the Mayor and Town Commissioners. The term "site specific plan" shall include the related "pattern book" provided by the applicant at the time of plan submission, as approved or amended by the Town (referred to herein as the "PDD Plan").
- C. The administrative procedures for approval of a subdivision located within a PDD shall be those set forth in the Town's Subdivision Ordinance. Final subdivision plats shall conform to the approved PDD Plan.
- D. The administrative procedures for development, site plan, or subdivision approval may be conducted simultaneously with the application for location of a PDD, approval of a PDD Plan, and a zoning map amendment. The Planning Commission and Mayor and Town Commissioners may conduct such joint meetings and joint public hearings as they deem necessary and appropriate.
- E. No development may occur until:
 - (1) A PDD has been established for the property by legislative action of the Mayor and Town Commissioners;
 - (2) A PDD Plan is approved for the established PDD by the Mayor and Town Commissioners; and
 - (3) Appropriate permits have been issued, following, if applicable, final subdivision plat and/or site plan approval by all agencies with jurisdiction.

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE**Added 10 January 2011 by ORDINANCE 2010-7)****16-16-6 Initial Application**

- A. Initial application for the location of a PDD and PDD Plan approval shall be made to the Mayor and Town Commissioners.
- B. Initial applications shall include:
- (1) A written petition for location of a PDD and approval of a PDD Plan, signed by the owners, and contract purchasers, if any, of the property that is the subject of the petition.
 - (2) A narrative describing the following:
 - (a) Present and proposed ownership of all land within the development;
 - (b) Overall objectives of the proposed Planned Development District and a statement of how the proposed Planned Development District corresponds to and complies with the goals and objectives of the Vienna Zoning Ordinance, Vision Plan, and Comprehensive Plan;
 - (c) Method of providing sewer and water service and other utilities, such as, but not limited to, telephone, gas, and electric services;
 - (d) Storm drainage areas, and a description of the stormwater management concepts to be applied;
 - (e) Method of and responsibility for maintenance of open areas, private streets, recreational amenities, and parking areas;
 - (f) School availability and school population impact analysis;
 - (g) General description of architectural and landscape elements, including graphic representations; and
 - (h) If petitioner desires to develop the property in phases, a preliminary phasing plan which indicates:
 - [1] The phase(s) in which the project will be developed, and the approximate land area, uses, densities, and public facilities to be developed during each phase.
 - [2] If different land use types are to be included within the Planned Development District, the plan should include the mix of uses anticipated to be built in each phase.
 - (3) A Concept PDD Plan, which includes:
 - (a) A boundary survey of the area subject to the application;
 - (b) A graphic and tabular presentation of proposed site development information that clearly depicts the following:
 - [1] Total acreage of subject property and

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE

Added 10 January 2011 by ORDINANCE 2010-7)

identification of all adjoining landowners;

[2] Description of proposed land uses;

[3] Maximum number of dwelling units, approximate densities of residential areas, and anticipated population;

[4] Land area and locations generally allocated to each proposed use; and

[5] Location of proposed roads, public open space, any sensitive resource areas (environmental or cultural), and public facilities and services.

(c) A Preliminary Pattern Book that defines:

[1] Land Uses;

[2] Conceptual Perspectives;

[3] Typical Street Sections;

[4] Diagrams of Typical Open Spaces;

[5] Diagrams of Typical Lots;

[6] Conceptual Architectural Elevations; and

[7] Design Guidelines.

C. The Mayor and Town Commissioners may establish additional and supplemental requirements for the plan, during their consideration of the Application, if the Mayor and Town Commissioners determine that such requirements are necessary to enable the Town to evaluate the particular request.

D. If the Town Commissioners find that the initial application for the PDD and concept plan are generally consistent with the Vision Plan, the Comprehensive Plan, and the standards of the requested district, the Application shall be "conditionally approved" and referred to the Planning Commission for review.

(1) "Conditional approval" as used herein means only that the Town Commissioners have made a preliminary finding that the proposal is generally consistent with the Vision Plan, the Comprehensive Plan, and applicable Zoning Ordinances.

(2) "Conditional approval" shall authorize the Planning Commission, Town staff, and Town consultants to continue to analyze the proposal in a manner consistent with all applicable review processes and procedures.

E. The Planning Commission may conduct its PDD review in conjunction with, and as a part of, other procedures conducted by the Planning Commission relating to other types of applications involving the same proposed PDD, including simultaneous hearings and/or decisions relating to annexation, zoning classification, development, site plan, and

Added 10 January 2011 by ORDINANCE 2010-7)

subdivision approval, and/or growth allocation.

16-16-7 Review by the Planning Commission

A. After the Mayor and Town Commissioners conditionally approve the materials included in initial PDD application and Concept PDD Plan, the petitioner shall submit the following to the Planning Commission for review and recommendation to the Mayor and Town Commissioners:

(1) Graphic PDD Plan Requirements:

(a) A PDD Plan that includes the following:

[1] Conditionally approved Concept PDD Plan;

[2] Boundary Survey, including identification of adjacent property owners;

[3] Existing condition information, including, but not limited to:

[a] Topographic survey with maximum 1 foot contour intervals;

[b] Soils;

[c] Forested areas and tree lines;

[d] Wetlands, hydric soils, streams, and water features;

[e] Steep slopes;

[f] Easements and deed restrictions;

[g] Roads, driveways, and rights-of-way;

[h] Existing buildings; and

[i] Existing land uses.

[4] Proposed open space, protected areas, and public and private parks;

[5] Pedestrian and vehicular master plan showing dominant street configuration and the alignment of pedestrian and biking ways;

[6] Detailed plan showing:

[a] Road alignments;

[b] Lot configuration;

[c] Public and private open space(s);

[d] Perspective streetscape (typical for represented phase);

[e] Lot type designation that

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE

Added 10 January 2011 by ORDINANCE 2010-7)

corresponds to the Pattern Book;

[f] Plan view, perspective, and elevations of private and/or public community facilities and services; and

[g] Plan view, perspective, and elevations of entrance to PDD, including gateway improvements, if applicable.

[7] Phasing plan, including:

[a] The general boundaries or location of each phase. Although the Phasing Plan shall include the information required by [b] and [c] below (in narrative, tabular, or graphical form), it is not required to depict the location of the land uses, densities, or public facilities within each phase.

[b] The phase(s) in which the project will be developed, indicating the approximate land area, uses, densities, and public facilities to be developed during each phase.

[c] If different land use types are to be included within the PDD, the plan should include the approximate mix of uses anticipated to be built in each phase.

(2) Studies and reports by qualified professionals shall be submitted by the developer, as follows:

(a) A Physical Infrastructure Impact Study to evaluate all aspects of the Town's existing water, wastewater, and traffic infrastructure systems and to determine how the PDD project will impact these systems and what improvements, if any, are needed.

(b) A Market Study for the Town's review and consideration;

(c) A Fiscal Impact Study for the Town's review and consideration;

(d) A proposed Developer's Rights and Responsibilities Agreement, to be negotiated by the Town and the Developer;

(e) A delineation of Tidal and Non-tidal wetlands and associated required buffers;

(f) An endangered species study prepared by qualified professionals;

(g) A historical and archeological survey; and

(h) A protection plan for all sensitive areas as defined by State law.

(3) A Pattern Book, including, but not limited to, specific detail regarding:

Added 10 January 2011 by ORDINANCE 2010-7)

(a) Site design standards in designated residential and non-residential areas, including: permitted uses, building types, frontage, setbacks and lot sizes, building heights, parking, street widths, alleys, cross-sections, sidewalks, lighting, and road geometry.

(b) Building standards for designated residential and non-residential areas, including: size and orientation, building facades, regulated architectural elements (windows, trim, etc.), roof lines, architectural styles, fencing, parking, and signage.

(c) Landscape standards, including: location and scope, materials, and scheduling.

(4) Project Scheduling Information, including: anticipated permit hearings, approvals, construction start, phasing, anticipated absorption, and completion of key site elements. (Note: This information is understood to be representative of a best estimate and will be used by the Town as a tool for long-range planning activities, but shall not be binding.)

(5) A management statement regarding:

(a) Anticipated ownership, construction, operation, and maintenance of:

[1] Sanitary and storm sewers, water mains, culverts, and other underground structures;

[2] Streets, roads, alleys, driveways, curb cuts, entrances and exits, parking and loading areas, and outdoor lighting systems, and

[3] Parks, parkways, walking paths, bicycleways, playgrounds, open spaces, and other recreational amenities.

(b) Summary of preliminary restrictive covenants and/or other documents by which the implementation of the development plan will be controlled by the developer, a Homeowner's Association (HOA), and/or others. Final covenants, restrictions, and HOA documents must be approved by the Mayor and Commissioners and will not be required until, and will be a condition of, final plat or final site plan approval.

B. The PDD Plan shall comply with the requirements of this section and the requested PDD and may be accompanied by such other written or graphic material that may aid the decisions of the Planning Commission and the Mayor and Town Commissioners.

C. Planning Commission Review and Recommendation – Location of PDD.

(1) The Planning Commission will review the PDD request and PDD Plan for compliance with the requirements of this Ordinance, any other applicable

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE**Added 10 January 2011 by ORDINANCE 2010-7)**

regulations, and for consistency with the Vision Plan and the Comprehensive Plan, and shall submit written recommendations to the Mayor and Town Commissioners. The Planning Commission shall conduct as many public meetings and work sessions as necessary to adequately review the PDD Plan, in addition to conducting at least one advertised public hearing.

(2) The Planning Commission may make reasonable recommendations to the petitioner regarding changes to the PDD Plan proposal, which, in the judgment of the Planning Commission, shall cause the proposal to better conform to the requirements of the Vision Plan and Comprehensive Plan, and the goals and objectives of this Ordinance. The petitioner may resubmit the PDD Plan to the Planning Commission in consideration of the Planning Commission's comments.

(3) The Planning Commission shall make written findings on the PDD and PDD plan and shall make a favorable, conditionally favorable, or unfavorable recommendation to the Mayor and Town Commissioners. The Planning Commission's written findings shall be made with regard to the issues outlined in Section 16-12-8, A. (1) through (4) below.

(4) The Planning Commission shall return the PDD Plan, with any revisions, together with written findings, comments, and recommendations, and its PDD comments, to the Mayor and Town Commissioners for action pursuant to this Ordinance.

D. The Planning Commission may, in conjunction with its review of the proposed PDD and PDD plan, conduct a review of a development, site plan, preliminary subdivision plat of the land, or growth allocation request, in accordance with the provisions of the Town Code.

16-16-8 Mayor and Town Commissioners' Approval of Floating Zone and PDD Plan

A. The Mayor and Town Commissioners shall review the PDD Plan and other documents, together with such comments and recommendations as may have been offered by the Planning Commission. The Mayor and Town Commissioners shall consider and make written findings with regard to the following issues:

(1) Whether the proposed PDD and PDD plan conforms to all applicable standards set out in this Ordinance for such uses, structures and projects;

(2) Whether the PDD is compatible with the Town's Vision and Comprehensive Plans;

(3) Whether the PDD is compatible with existing development in the

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE**Added 10 January 2011 by ORDINANCE 2010-7)**

surrounding neighborhood as well as the existing character of the Town of Vienna as a whole or, if not compatible, the district contains adequate screening, landscaping, and similar features to protect the adjoining neighborhood(s);

(4) Whether the PDD and PDD plan is planned in a manner that is sensitive to features of historical, cultural, or ecological importance on the land.

- B. The Mayor and Town Commissioners may approve, conditionally approve, or disapprove the proposed location of the PDD, map amendment, and associated PDD Plan, with any revisions, in their legislative discretion, and subject to all hearing requirements and necessary findings for map amendments and the application of a PDD to a particular area, as set forth in this Ordinance. In the alternative, the Mayor and Town Commissioners may refer the application back to the Planning Commission for reconsideration.
- C. The Mayor and Town Commissioners shall have the authority to impose conditions upon the grant of an application for PDD designation, and may require the recordation of covenants and restrictions (i.e., HOA document, pattern book), in a form approved by the Town Attorney, to assure compliance with those conditions or with any applicable provision of this Ordinance.
- D. After approval of the map amendment, locating the PDD, and approval of the PDD plan by the Mayor and Town Commissioners, two (2) complete copies of the approved PDD Plan and all supporting documents shall be filed with the Town Clerk. One (1) additional complete copy of the approved PDD Plan and supporting documents shall be filed with the Planning Commission for reference during its subsequent review and approval of subdivision plats and/or site plans.
- E. When a Planned Development District is to be constructed in phases, final subdivision plat(s) or site plans shall not be required for a phase until such time as applications are filed for permit(s) for construction of that particular phase.
- F. As part of the final PDD Plan approval, the Mayor and Town Commissioners shall approve a date for initiation of the proposed development, or designated phase of the development. The PDD and PDD plan approvals shall automatically expire and terminate within two years unless substantial completion of the project, or a designated phase of the project, has taken place, or unless an extension is granted for just cause by the Mayor and Town Commissioners. Absent substantial completion of the project, or a designated phase of the project, or an extension from the Mayor and Town Commissioners, all previous PDD approvals are rendered null and void.
- G. The Mayor and Town Commissioners may conduct the procedures described herein in conjunction with, and as a part of, procedures conducted by the Planning Commission

ZONING 16-16 PLANNED DEVELOPMENT DISTRICT (PDD) FLOATING ZONE**Added 10 January 2011 by ORDINANCE 2010-7)**

relating to another type of application involving the same proposed PDD designation, including simultaneous hearings and/or decisions relating to preliminary or final subdivision approval and/or final site plan approval and/or growth allocation determination.

- H. In the event that a development proposal is approved by the Mayor and Town Commissioners as a site-specific site plan for a PDD, absent a subdivision request being associated with such an approval, the subject property may not be subdivided until the owner submits a subdivision plat and again fully complies with the PDD review and approval provisions of this Ordinance. No property may be developed except in conformance with an approved site plan as required by, and in conformance with, the Town Code.

16-16-9 Amendment of PDD Plan

- A. The procedure for amendment of an approved PDD Plan shall be the same as for a new application, except that minor amendments of a PDD Plan may be reviewed by the Planning Commission at a regular meeting. The Planning Commission shall make a recommendation to the Mayor and Town Commissioners on the minor amendment. The Mayor and Commissioners may review and act on the proposed minor amendment at a regular Town meeting.
- B. Using the guidelines set forth below, the Planning Commission shall determine whether the proposed amendment is a “minor amendment.” An amendment may be deemed a “minor amendment,” provided that such amendment:
- (1) Does not conflict with the applicable purposes and land use standards of this Ordinance;
 - (2) Does not prevent reasonably necessary or expected emergency vehicle access or deprive adjacent properties of adequate light and air flow;
 - (3) Does not significantly change the general character of the land uses of the approved PDD Plan;
 - (4) Does not result in any substantial change of major external access points;
 - (5) Does not increase the total approved number of residential dwellings, the location or total amount of commercial space, or height of buildings; and
 - (6) Does not decrease the minimum specified setbacks, open space area, or minimum or maximum specified parking and loading spaces.
- C. Minor amendments that increase residential density, or intensify or relocate nonresidential uses, can only be approved by the Mayor and Town Commissioners, and

Added 10 January 2011 by ORDINANCE 2010-7)

only if the amendments provide for enhancement of the architectural design and landscaping of the areas subject to the amendments.

- D. Any amendment of a PDD Plan that adversely impacts the delivery of or the cost to the Town of providing public utilities, public services, or public infrastructure, or otherwise adversely affects amenities available to the public or the public health and safety shall not be considered a minor amendment.

16-16-10 Conflict with other Articles

- A. Provisions of the PDD Floating Zone ordinance, when found to be in conflict with other provisions of this Chapter, shall supersede those other provisions with which they conflict. Provisions of the PDD Floating Zone ordinance, when found to be in conflict with the provisions of the Vienna Subdivision Code, shall supersede those provisions with which they conflict.

**CHAPTER 16
ZONING**

**16-17- PARKING REQUIREMENTS
ADDED BY ORD 2006-1 JAN 9, 2006**

16-17. PARKING REQUIREMENTS (ADDED BY ORD. 2006-1, JANUARY 9, 2006)
Replaced former 16-13-3 First Reading December 12, 2005 Second Reading January 9, 2006

16-17 A. TYPE OF LAND USE – SPACES REQUIRED

- 1) Residential uses (single family dwellings, Duplexes and two family homes, and multifamily dwellings 2 spaces per dwelling
- 2) Home OccupationsSum of business and dwelling unit requirements in this schedule.
- 3) Churches One for each four seats in the sanctuary or hall which ever is greater. Spaces of others may be considered if not normally used on weekends.
- 4) Retail Stores One space per 100 square feet of floor area use.
- 5) Offices One space per 200 square feet of floor area of use.
- 6) Manufacturing plants; collection, sorting, packing and selling of agricultural or seafood products. One space per employee on the maximum shift, plus two spaces.
- 7) Warehouses, distribution centers; contractors and lumber yards. One space per employees plus two spaces
- 8) Boarding and Lodging homes One space per bedroom.
- 9) Restaurants and other eating places, bars, and places of commercial recreation.One space per 75 square feet of floor area of use.
- 10) Public Marians One space per slip.
- 11) Trucking Terminals One space per employee, plus two spaces: in addition to truck parking and maneuvering space.

16-17-B. PARKING AREA.

Parking area shall be provided on the basis of a minimum of 360 square feet of area per space required, including maneuvering areas and aisles.

16-17-C. PARKING REQUIREMENTS WAIVED

Parking requirements may be waived by the Zoning Inspector where existing building coverage on lots in B1 and B2 Districts will prevent conformance to the provisions of this section, provided such waiver does not violate the intention of this ordinance.

**CHAPTER 16-18
ZONING**

**VIOLATION AND PENALTY
(Added in its entirety 4.14.2007 by ORD. 2007-2)**

16-18

**18 VIOLATION AND PENALTY (Chapter 18 added in its entirety 5.14.2007
by ORD. 2007-2)**

18-1 DEFINITIONS

As used in this chapter, the following terms shall have the meanings indicated:

Civil Zoning Violation – A violation of Chapter 18 of this Code, which violation shall also be considered a civil infraction.

Infraction – Any violation of the Town Code or of a regulation adopted pursuant to the Town Code.

Misdemeanor – includes the following:

- A. A criminal offense, not amounting to a felony, arising from a violation of a law of the State, which violation is defined as a “Misdemeanor”; or
- B. Unless otherwise specified, a violation of any law of this Town, all violations shall be treated as “Misdemeanors” unless specifically declared to be infractions.

Official – For the purposes of this Chapter, an official is the code enforcement officer or such other individual authorized by resolution of the Town Commissioners to issue citations.

Parking Violation – any violation of any parking law, regulation or provision made by Vienna or any other agency authorized to designate limited parking or no parking.

18-2 FINES.

- A. Fines and penalties for civil infractions of the Town Code shall be as specified by the Chapter or in a schedule of fines adopted by ordinance of the Town for the violation charged.
- B. All fines shall be payable to and collected by the Town Secretary.

18-3PROCEDURE.

- A. Issuance and enforcement of a citation for a civil infraction of the Town Code shall be governed by the procedures established by this Chapter.
- B. Issuance and enforcement of a citation for parking violation shall be governed by the procedures established by this Chapter.

18-4 CITATIONS.

A. A citation for a civil infraction shall contain, at a minimum, the following information:

- (1) The name and address of the person charged;
- (2) The nature or the infraction;
- (3) The location and time that the infraction occurred or was observed;
- (4) The amount of the fine assessed;
- (5) The manner and location in which the fine may be paid;
- (6) The date by which the fine must be paid, which shall not be less than 10 calendar days after the date of the citation, or, if the citation is mailed, shall not be less than 13 days after the date the citation is mailed;
- (7) The right of the person charged to elect to stand trial and the location where an election to stand trial may be filed;
- (8) The effect of failure to pay the fine or demand a trial within the prescribed time;
- (9) The certification of the official issuing the citation attesting to the truth of the matters set forth in the citation or that the citation is based on an affidavit.

B. The official issuing the citation shall retain a copy of the citation.

18-5 DELIVERY OF CITATIONS.

The official issuing the citation shall deliver the citation to the person charged; or if unable, after good faith efforts to serve the individual, service, for real property related violations may be made by regular mail to the person charged and by posting of the citation in a conspicuous place on the property where the violation exists or has occurred.

18-6 PAYMENT OF FINE; ELECTION TO STAND TRIAL.

A. The person charged shall:

- (1) By the payment date set forth in the citation, pay the fine; or
- (2) At least five days before the payment date set forth in the citation, elect to stand trial for the infraction by filing a written notice of intention to stand trial. The notice shall be given at the location specified in the citation.

B. If the person charged fails to pay timely the fine set forth on the citation:

- (1) A copy of the citation, accompanied by any timely election to stand trial, shall be forwarded for adjudication to the district court having venue; or
- (2) If the citation is for an infraction of any provision of Chapter 18 and the person charged has failed to file a timely election to stand trial:
 - (A) A formal notice of the infraction shall be sent by first class mail postage prepaid, to the last known address of the person charged;
 - (B) The formal notice shall advise the person charged on the infraction and shall further advise that if the fine as set forth in the citation is not paid within 15 days of the date of the formal notice, the fine will be doubled; and
 - (C) If the person charged fails to pay the fine within 35 days after the date of the formal notice, a copy of the citation shall be forwarded for adjudication to the district court having venue.
 - (D) Compliance with this section shall be established by an affidavit of compliance accompanied by a copy of the formal notice.

18-6.1 ADDITIONAL PENALTIES.

- A. Subject to the limitation that a person charged with an infraction of Chapter 17 shall not be subject to a fine in excess of \$1,000, the person charged shall be liable for double the fine as set forth in the citation:
 - (1) If the citation is for an infraction of any provision of Chapter 17, and the person charged fails within 15 days after the date of the formal notice to pay the fine as set forth in the citation; or
 - (2) If the person charged elects to stand trial and fails to appear for trial; or
 - (3) If any other case, if the person charged fails to pay the fine by the payment date as set forth in the citation and fails timely to elect to stand trial.

18-7. ADJUDICATION; PROCEDURE.

- A. Upon receipt of a request for adjudication, the district court shall schedule the case for trial and summon the person charged to appear.
- B. The district court shall ensure that the person charged has received a copy of the charge.

**CHAPTER 16-18 VIOLATION AND PENALTY EQUITABLE RELIEF 16-18-12
ZONING**

- C. If the person charged appears for trial:
- (1) The district court shall ensure that the person charged understands the charges; and
 - (2) The person charged may enter a plea of guilty or not guilty of the infraction.
- D. If the person charged fails to appear for trial, the district court may enter judgment on affidavit based on the certification by the official issuing the citation.
- E. The Town shall have the burden of proving by a preponderance of the evidence that the person charged committed the infraction; provided, however, that in any adjudication of an infraction of Chapter 18, the Town shall have the burden of proving by clear and convincing evidence that the person charged committed the infraction.
- F. The person charged shall have the right to cross-examine witnesses, to testify or introduce evidence, and to be represented by an attorney of the person's selection and at the person's own expense.
- G. The district court shall apply the evidentiary standards as prescribed by law for rule for the trial or civil cases. The citation bearing the certification of the official issuing the citation shall be prima facie evidence that the facts stated therein are true.
- H. The verdict of the district court shall be guilty of the infraction or not guilty of the infracting, or the district court may, before rendering judgment, place the person charged on probation.
- I. If the district court renders judgment that the person charged is guilty of the infraction;
- (1) The court shall enter judgment in the amount of the fine, including any doubling of the fine, and court costs, against and shall order payment by, the person charged; and
 - (2) The court may order the person charged to abate the infraction; or
 - (3) If the Town so request, the court may enter an order permitting the Town to abate the infraction at the expense of the person charged;
- (A) If the Town abates an infraction pursuant to an order of the district court, the Town shall present the person charged with a bill for the cost of abatement by:
- {1} Regular mail to the last known address of the person charged;
 - {2} Any other means reasonably calculated to bring the bill to the attention of the person charged.

(B) If the person charged does not pay the bill within 30 days after presentment, upon a motion by the Town, the district court shall enter a judgment against the person charged for the cost of abatement.

- J. Payment of a judgment entered by the district court may be suspended or deferred under conditions set by the court.
- K. If a judgment entered by the district court remains unpaid 30 days after the entry of judgment, or following any suspension or deferral, whichever is later:
 - (1) the judgment shall constitute a judgment in favor of the Town enforceable in the same manner and to the same extent as other civil judgments for money; and
 - (2) The failure to pay the fine without good cause may be punished by the district court as a contempt of court.

18-8 EFFECT OF ADJUDICATION.

Adjudication of a civil infraction of the Town Code, whether by the district court or by payment of the fine, is not a criminal conviction for any purpose, nor does it impose any of the civil disabilities ordinarily imposed by a criminal conviction.

18-9 AUTHORITY TO PROSECUTE.

The office of the Town Attorney is authorized to prosecute all civil infractions of the Town Code.

18-10. FINES TO BE REMITTED TO THE TOWN.

All fines, penalties or forfeitures collected by the district court for civil infractions of the Town Code shall be remitted to the general fund of the Town.

18-11. NO FORMAL HEARING BY TOWN.

The Town shall not conduct any formal hearing in connection with civil infractions of the Town Code. This provision shall not prevent the person charged from requesting, either personally or through an attorney, additional information concerning the violation.

18-12. EQUITABLE RELIEF.

- A. The Town may, seek equitable, including injunctive, relief against any person or entity violating any provision of the Town Code relating to health, housing, fire, building, electric, licenses and permits, plumbing, animal control and zoning.

- B. A petition of equitable, including injunctive relief under this section may be filed in the district court.

16-19 AMENDMENTS

16-19-1 GENERAL

A. The regulations, restrictions and boundaries set forth in this ordinance may from time to time, be amended, supplemented, or repealed by the Commissioners.

B. The Town Commissioners may amend the Critical Area District Boundary to delete areas of the Town from the Critical Area District when it can be demonstrated that the Critical Area, as mapped on the Official Critical Area District Maps, is incorrectly drawn. The Critical Area District shall, at a minimum, encompass all areas delineated in the definition in Section 16-3. Evidence sufficient to warrant a determination of a mistakenly drawn Critical Area Boundary Line shall be based on, and substantiated by either;

1. The Official State Wetland Maps;
2. The amended Official State Wetland Maps adopted by the State of Maryland;
- or
3. The written concurrence by the State of Maryland that the Official State Wetland Map is incorrect.

The Town Commission may also elect to add areas to the Critical Area District at any time.

C. The Commissioners shall only grant changes to Land Use Management Classifications, i.e., Intensely Developed Area (IDA), Limited Development Area (LDA) or Resource Conservation Area (RCA), through granting of a GA Growth Allocation unless it is found that there was a mistake in the original classification.

16-19-2 PROCEDURE

A. GENERAL

1. Any proposed amendment, or change shall be referred by the Commissioners to the Planning Commission for an investigation and recommendation. The Planning Commission may hold such public hearings as provided by its own rule: and shall submit its report and recommendations to the Commissioners within 45 days of the receipt of the referral.

2. After receiving the recommendations of the Planning Commission, the Commissioners shall hold a public hearing in relation to the proposed amendment. At least 15 days notice of the time, place and nature of such hearing shall be published in a paper of general circulation in the community. In the case of a change in classification of a particular piece of property, the property shall be posted, and adjoining property owners shall be notified by mail.

3. The Commissioners may, upon the zoning or rezoning of any land or lands, (1) impose such additional restrictions, conditions, or limitations as may be deemed appropriate to preserve, improve or protect the general character and design of the surrounding lands and improvement being zoned or rezoned; and (2) may, retain or reserve the power and authority to approve or disapprove the design of buildings, construction, landscaping, or other improvements, alterations, and changes made or to be made on the subject property to assure conformity with the intent and purpose of this ordinance.

The Zoning Inspector shall be the enforcement officer for all proposed conditions. No zoning occupancy permit shall be granted until all conditions of the rezoning are fulfilled by the applicant. No other town permits shall be issued for final occupancy or use of the property until all conditions of the rezoning are met.

4. Where the purpose and effect of the proposed amendment is to change the zoning classification, the Commissioners shall consider in each specific case, including but not limited to, the following matters:

- a. The relationship of such proposed amendment to the Town's Comprehensive Plan
- b. The recommendation of the Planning Commission
- c. Population change
- d. Availability of public facilities
- e. Present and future transportation patterns
- f. Compatibility with existing and proposed development for the area

5. The Commissioners may grant the amendment based upon a finding that there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification.

6. An application for a reclassification shall not be accepted for filing by the Commissioners if the application is a reclassification of the whole or any part of land which had been denied by them within twelve (12) months from the date of the original decision by the Commissioners.

B. SPECIAL PROCEDURES FOR THE CRITICAL AREA DISTRICT

1. Amendments to this ordinance as it relates to the Critical Area District may only be initiated by the Planning Commission or Town Commissioners.
2. Proposals for amendments involving specific properties shall first be submitted to the Planning Commission.
2. The Planning Commission shall review the land-use management classifications in the Critical Area District at least every four (4) years and make recommendations to the town Commissioners as to the need for changes.
4. The Planning Commission shall hold a public hearing on any proposed amendment, at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time, place, and nature of the hearing shall be published in a paper of general circulation in the community and in the case of a change in the land management classification of a particular piece of property, said property shall be posted.
5. The Planning Commission shall then forward proposed amendments to the Maryland Critical Area Commission. All amendments must be approved by the Maryland Chesapeake Bay Critical Area Commission as required by Subsection 8-1803 of the Critical Area Law, Subtitle 18.
6. After receiving the recommendations of the Planning Commission and the approval of the Critical Area Commission, the Town Commissioners shall hold a public hearing on the proposed amendments at which parties in interest and citizens shall have an opportunity to be heard. At least fifteen (15) days notice of the time, place, and nature of the hearing shall be published in a paper of general circulation in the community and in the case of a change in the land management classification of a particular piece of property, said property shall be posted.

18-20 SEVERABILITY

Should any section or provision of this ordinance be decided by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part there of other than the part so held to be unconstitutional or invalid.

(END SPRING, 2019)