

FINAL

# Talbot County Zoning Code and Subdivision Regulations Update

## *Issues and Options Paper*

November 17, 2005

**Environmental Resources Management**  
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Annapolis, MD 21401





## Talbot County Zoning Code and Subdivision Regulations Update

*To: George Kinney, Planning Officer*

*From: ERM*

*Date: November 17, 2005*

*Re: Issues and Options Paper*

The attached Issues and Options Paper describes options to address the issues identified in the Issues Memorandum September 27, 2005.

The issues are divided into two groups:

1. Issues that need to be addressed for Phase 1 of the code update (adoption by Summer 2006)
2. Issues that need to be addressed for Phase 2 of the code update (adoption after November 2006)

Each issue or set of issues is addressed as follows:

- Issue definition
- Current code treatment
- Discussion
- Options

The options are also summarized in the form of an attached “Direction matrix” for use by the Planning Commission and the County Council in providing direction on the options.

Shaded (gray highlight) items are those that we consider to be more major in terms of change, authority, or impact.

Table 1 on page 1 indicates where in this paper the issues identified in the Issues Memorandum (September 27, 2005) are addressed.

Appendix 1 to this paper is a chart summarizing the current review and decision-making authorities for different development processes in Talbot County.

The County’s generalized zoning map and Comprehensive Plan map are provided for convenience at the end of this paper.



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**Table 1 Matrix of Issues from Issues Memorandum September 27, 2005**

<b>Issue Category</b>	<b>Description of Issue</b>	<b>Issues and Options Paper Section</b>
<b>Process and Administration</b>	Community input in the planning and design process (CP)	C1
	Increase the number of minor waivers that Planning Officer can grant (ST)	C2
	Allow Planning Commission to waive zoning and subdivision requirements rather than requiring Board of Appeals variances (E/D)	C2
	Eliminate Planning Commission recommendation for routine administrative variances (ST)	G3
	Clarity and specificity of development review schedule (E/D, ST)	C3
	Allow minimal expansions of nonconforming uses to be decided by the Planning Officer (BA)	G2
	Faster process for minor plan review (E/D)	C4
	Review procedure for concept plan review prior to sketch plan (E/D)	C5
	Delete ability to create multiple minor subdivisions on a single parcel (ST).	C6
<b>Land Preservation and Cluster Provisions</b>	Re-examine transfer of development rights option (CP)	A5
	Review RAC cluster development standards, including lot size, open space and density bonus. (CP)	A1
	Can use of shared septic systems be encouraged to support clustering and to preserve farmland?	A2
<b>New Zoning Districts</b>	Draft regulations for the Countryside Preservation district (E/D) Outside St. Michaels the Countryside Preservation area is in the Town of St. Michaels growth area(TO)	B3 Mapping Issue
	Draft regulations for a new Western Rural Conservation district (E/D)	B1
<b>Development – not specific to a particular zoning district</b>	Consider using growth allocation as an incentive requiring recipients to fulfill some public purpose in exchange for the benefit bestowed (CP)	F
<b>Town Residential Zone</b>	Ensure premature development inconsistent with desired town densities is precluded in town growth areas (CP) County should coordinate with towns in review of projects adjacent to towns	B2
<b>Rural Conservation district</b>	Review the conditions that apply to a parent parcel after an intra-family lot is created under an intra-family transfer (§ 190-58.G).	F2
<b>Natural Resource Conservation</b>	In Critical Areas, require installation of de-nitrification systems at the time of an arms-length sale (CP)	D
<b>Historic Preservation</b>	Increase role of Historic Preservation Commission in subdivision and site plan review (CP)	C7

Issue Category	Description of Issue	Issues and Options Paper Section
<b>Design</b>	<p>There is a conflict between planning interest in small lots and Health Dept. requirements for larger lots (ST, PC, E/D).</p> <p>Continue to use maximum lot size requirements, but provide guidelines so that the Planning Commission can require lots smaller than the maximum where desirable (PC)</p> <p>Provide more flexibility (especially in average lot size requirements) to allow design that makes sense (E/D)</p> <p>To encourage affordable housing, and better use of land consider permitting a duplex building to be built on a single lot (CI)</p>	<p>A 1-4, E1</p> <p>A2</p> <p>A4</p> <p>E2</p>
<b>List of uses</b>	<p>Allow limited, incidental retail sales in all zoning districts. (BA). Particular interest in the LI district for products made or handled on the premises</p>	<p>H1</p>
	<p>Allow agricultural retail uses, larger scale than farm produce stands year round, as a special exception or an accessory use to farms. (BA)</p>	<p>H2</p>
<b>Nonconforming Use Section</b>	<p>Nonconforming use section needs to be completely rewritten (ST, AT)</p>	<p>G1</p>
<b>Accessory Structures</b>	<p>Review rules for allowing accessory structures on a parcel before a principal structure (BA, ST).</p>	<p>I1</p>
	<p>Accessory structure limits may be too permissive, allowing large structures (ST)</p>	<p>I2</p>
<b>Fences</b>	<p>Excessive construction of long solid fences could mar rural character (BA).</p>	<p>I3</p>

# Issues and Options – Phase 1

## A. Land Preservation and Cluster Provisions

### 1. Review RAC cluster development standards, including lot size, open space and density bonus.

*Evaluate incentives for clustering lots and leaving remaining land as open space. Consider mandatory clustering for some of the permitted lots*

### 2. Continue to use maximum lot size requirements, but provide guidelines so that the Planning Commission can require lots smaller than the maximum where desirable.

### 3. Can use of shared septic systems be encouraged to support clustering and to preserve farmland?

### 4. Provide more flexibility (especially in average lot size requirements) to allow design that makes sense.

#### Current Code treatment

Talbot County’s definition of cluster development in Section 190-14 requires that the dwelling units be “concentrated in selected areas of the site.”

The key standards for cluster development in the RAC District in the RAC district are set forth in 190-57.A.

Minimum lot size	0.25 acres
Site perimeter structure buffer	50 feet
Parcel size	Minimum Open Space Percent
20 to 30 acres	50%
30 to 40 acres	60%
40 to 70 acres	65%
70 to 160 acres	70%
160+ acres	75%

The following qualitative standards give guidance to staff and the Planning Commission in reviewing subdivision design 190-57.B:

- Subdivisions shall be designed and the lots located in a way that preserves the agricultural and open space integrity of the remainder of the property and is compatible with existing farming operations in the area.
- To the extent practical, residential lots and structures shall be located at the fringe edges of woodlands and fields. At least 50% of the existing mature tree cover on any residential lot shall be retained when the lot is improved.
- In creating a subdivision in the RAC District, the landscape shall be preserved in its natural state, insofar as practical, by minimizing tree and soil removal. Topography, tree cover and natural drainageways shall receive priority as fixed determinants of road, site and structure configuration rather than as elements that can be changed to follow a preferred development plan.
- Developers of an RAC District subdivision are encouraged to set back and/or buffer residential lots and structures from existing County or state roads and agricultural operations.

The qualitative standards in the zoning code apply to all RAC subdivisions. There are no specific standards for cluster subdivisions.

The subdivision regulations at 160-28.G include the following related qualitative statement:

- To the maximum extent practical, agricultural lands shall be conserved and residential lots and associated subdivision roads shall not dissect or break up contiguous agricultural fields. Wherever practical, residential lots should be clustered on the edges of fields and along woodland fringes. Adequate buffers shall be established between residential lots and working agricultural fields and operations in order to minimize conflicts between these often incompatible land uses.

## **Discussion**

### Preservation Priorities

In considering development in rural areas, there are three preservation priorities: agriculture; natural resources; and rural character. These tend to be competing priorities: in particular development competes with the better drained land that is good for crops, but development on this land will tend to mar rural character. Agricultural land is best in large contiguous blocks. Development “at the fringe edges of woodlands” (typically by stream buffers, and further away from county roads) may be more expensive (requiring longer roads/driveways, utility extensions) and may require larger development areas.

### Clustering

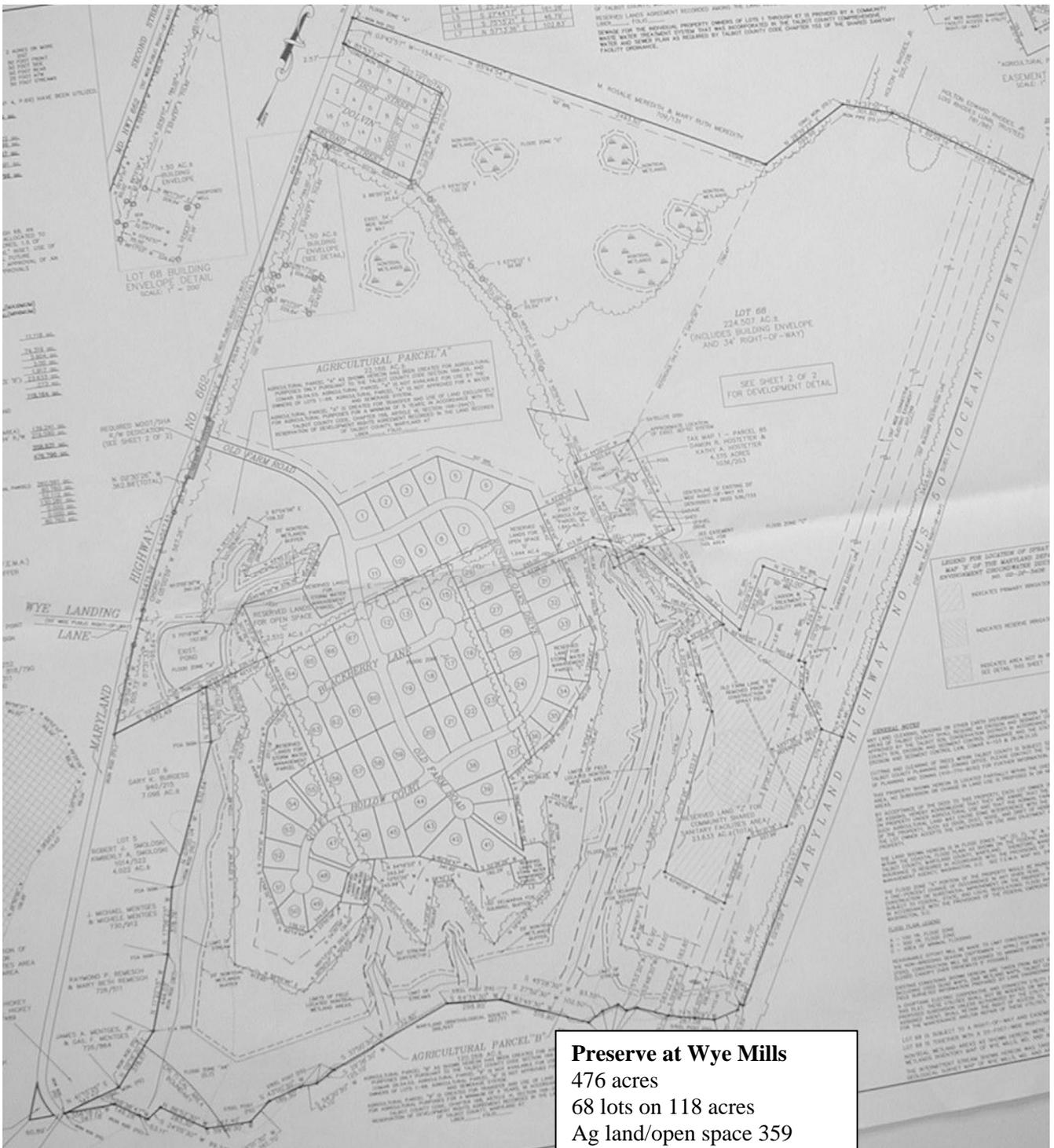
Cluster development has three elements: lots are smaller than in non-cluster subdivision, the lots are grouped rather than being scattered across the original parcel, and the remaining land (the open space) is protected by a “reservation of development rights.” The RAC District does not require cluster development, but encourages it by doubling the allowed density.

Talbot County’s minimum open space requirements for cluster subdivisions are quite high and in the range generally considered good for meeting preservation priorities. The open space requirement forces lot sizes to be relatively small. RAC cluster subdivisions are generally able to meet the open space requirement and achieve the maximum available density. The one subdivision using transfers of development rights approved to date (the Preserve at Wye Mills) was unable to achieve both the maximum available density and the open space requirement.

Clustering can help achieve some preservation priorities – particularly preservation of rural character. Mandatory clustering would help support this priority. The Comprehensive Plan consistently uses the term “encourage” clustering. It does not use “mandate”. In order to encourage clustering an incentive must be given, and the only realistic incentive is increased density.

Because it allows increased density, clustering is generally regarded as a poor option for supporting agriculture. Even in the best designs it butts residential right up to agricultural uses, together with all the potential conflicts; noise, dust, smells etc. The Preserve at Wye Mills is probably the best cluster plan in Talbot County to date, but even this plan has limitations (see plan next page). To the extent that clustering increases the number of dwelling units, it increases the potential for conflicts.

If agriculture is the priority, then the land should be zoned in support of agricultural use. Clustering is a laudable effort to serve both agricultural and development needs (preserving landowners’ equity) but has limitations for supporting farming.



**Preserve at Wye Mills**  
 476 acres  
 68 lots on 118 acres  
 Ag land/open space 359 acres  
 Avg. lot size: +/-0.8 acres

## Lot size averaging

Lot size averaging is a form of mandatory clustering. It ensures that, on average, lots will be in a certain range. Lot size averaging applies in several zoning districts in Talbot County, but not in the RAC:

District	Average lot size requirement
RC	5 acres or less or 20 acres or more
RR	5 acres or less
TR	2 acres or less
VC	2 acres or less
RAC	No requirement

The Code does not require maximum lot sizes per se (except in manufactured home developments 190-30), but through the lot size averaging requirements lot sizes are essentially capped. Some issues have been raised with respect to lot size averaging in the VC districts. These issues are different from the issues in this discussion and are discussed below in Section E.

Lot size averaging requires two characteristics of cluster development: it limits the size of subdivision lots, and through the Subdivision Regulations (Section 168-31), a Reservation of Development Rights agreement is required on the remaining land after the allowed density is exhausted. However, because the subdivisions created are not “cluster developments,” the lots can be scattered across the original parcel. This more flexible location of lots can be important in areas where the soils that pass percolation tests are scattered across the parcels in an unpredictable pattern.

The following table compares options in the RAC district on parcels of different sizes under current zoning and if lot size averaging were in place as in the RC district (average lot size 5 acres or less or 20 acres or more). Lot size averaging would apply to rural subdivisions only, not to cluster subdivisions.

The current zoning for rural subdivisions gives the developer the most flexibility with respect to lot size. The table shows that under lot size averaging, the developer would “lose” lots compared to the cluster subdivision option, and would “lose” lots compared to the rural subdivision if he elected to use an average lot size of 20 acres or more. An average lot size requirement for non-cluster subdivisions in the RAC district would make the cluster option more attractive for some parcels.

	Parcel Size		
	60 acres	100 acres	160 acres
<b>Rural Subdivision, lots permitted under by zoning</b>	5 (3+ 1 per 20 ac)	8	11
Option i (current)	5 lots of varying sizes on 60 acres.	8 lots of varying sizes on 100 acres.	11 lots of varying sizes on 100 acres.
<i>Option ii avg. lot size 5 acres or less</i>	<i>5 lots on 25 acres</i>	<i>8 lots on 40 acres</i>	<i>11 lots on 55 acres</i>
Option ii avg. lot size 20 acres or more	3 lots max	5 lots max	8 lots max
<b>Cluster Subdivision, lots permitted under by zoning</b>	9 lots (3+ 1 per 10 ac)	13	19
<i>Option i (current)</i>	<i>9 lots on 21 acres (65% open space requ't)</i>	<i>13 lots on 30 acres (70% open space requ't)</i>	<i>19 lots on 40 acres (75% open space requ't)</i>

## Limits on lot size

The Planning Commission would like the flexibility to require lots smaller than the maximum that can be achieved under the current requirements, for specific subdivision plans where smaller lots would be desirable for design and land preservation. To achieve this, language could be added to the standards in 190-57.B. For example:

“Preservation of land for agriculture and resource protection shall be given priority in subdivision design. Where feasible and consistent with good design, the Planning Commission may require smaller lot sizes than can be achieved under the requirements.”

## Shared septic systems/ sewer facilities

Use of shared septic systems / sewer facilities can help achieve better design by giving more flexibility in lot location (freeing up the residential lot configuration away from individual drainfields) and allowing the lots to be smaller. The zoning regulations allow shared systems, but to date few projects using them have been approved (Preserve at Wye Mills and Northside Woods). To facilitate their use, work needs to be done on the part of the Health Dept., Maryland Department of the Environment, and the County. The systems require multiple approvals (including from the County Council). Obtaining all the necessary approvals is an onerous and costly process that can be challenged at every stage.

The Talbot County Office of Environmental Health has said that the shared facility regulations (Talbot Code at Chapter 152) were developed with an eye to addressing issues of failing septic systems, not with the objective of encouraging cluster development.

Mandating use of shared facilities could result in a marginal increase in open space, perhaps up to 10 percent (see table below). The marginal increase in open space benefit may not be worth the increased cost, approval process, and long-range maintenance concerns for the homeowners.

### **Hypothetical 100-acre subdivision under cluster and cluster with shared system scenarios**

	<b>Cluster</b>	<b>Cluster with shared system</b>
Number of lots	13 (3+10)	13 (3+10)
Minimum open space	70 percent required	80 percent potential?
Development area	30 acres	19 acres
Lots	26 acres (13 2-acre lots with individual well and septic)	13 acres (13 1-acre lots. Possible but unlikely to market lots smaller than 1 acre)
Shared septic		3 acres
Other (roads, storm water mgmnt)	4 acres	3 acres (assumes some saving due to smaller lots)
Incremental potential open space increase		10 percent (development area of 30 acres versus a development area of 19 acres)

In a cluster subdivision the minimum lot size is a quarter acre. This could only be achieved with a shared system; under Health Department regulations the typical minimum lot size without sewer is two acres. The driving numbers for cluster subdivisions in the RAC district are the open space and sewer requirements, not lot size.

## Options

### **EITHER**

a. Leave the current cluster subdivision provisions unchanged.

### **OR**

b. Reduce the density bonus provision for cluster subdivisions.

i. 3 dus plus one du per 15 acres versus the current 3 plus one per 10, or

ii. 3 dus plus one du per 10 acres up to a maximum number such as 10 additional dus. That is, cap the size of subdivisions in the agricultural district.

These options would be strengthen county policy with respect to preservation priorities, but would reduce landowners' equity.

### **OR with options a or b, could also use option c:**

c. Require lot size averaging for non-cluster subdivisions in the RAC district.

This option would strengthen county policy with respect to preservation priorities, but would likely be perceived as reducing landowners' equity.

### **OR**

d. Require mandatory clustering of lots in subdivisions in the RAC district. Consider reducing the allowed density for cluster subdivisions to less than one dwelling unit per 10 acres.

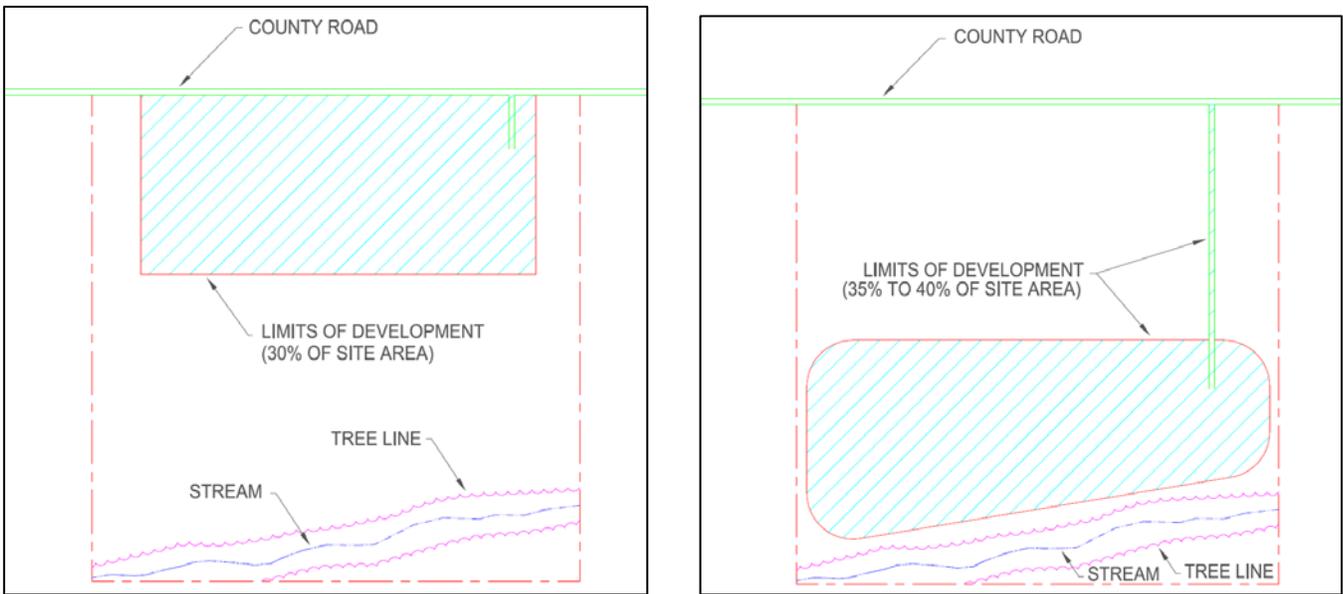
This option would effectively eliminate the rural subdivision option. It would strengthen county policy with respect to preservation priorities, but would likely be perceived as reducing landowners' equity.

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The following options would help support clustering but do not constitute “choices” between options.

- e. Allow the Planning Commission flexibility to reduce the minimum OS requirements in subdivisions to achieve alternative designs (for example, allowing a lesser open space requirement if this would make subdivision design more supportive of agriculture).

The following illustrates how this somewhat counterintuitive option could help achieve the County’s goals. If this option were pursued the open space requirements would have to be moved from the zoning code to the subdivision regulations, where the requirement could be subject to a waiver.



- f. Facilitate the use of shared sewer facilities. This is not a zoning issue since the zoning permits it. If desired it is an issue for the Health Dept., MDE, and the County.

## 5. Re-examine the transfer of development rights option.

### Current Code treatment

Transfers of Development Rights (tdrs) are permitted only in the RAC district 190-15.A. Transfers must come from another RAC district property in the same Election District. Using tdrs the receiving parcel can subdivide at the rate of up to one dwelling unit (du) per five acres plus three dus. Minimum open space requirements on the receiving parcel ensure that development must be clustered.

TDRs are transferred at the rate of one tdrs per 10 acres, 190-57.A (3).

A “reservations of development rights” (term not defined) is placed on the sending parcel. Conditions pertaining to reservations of development rights are in 190-57.C.

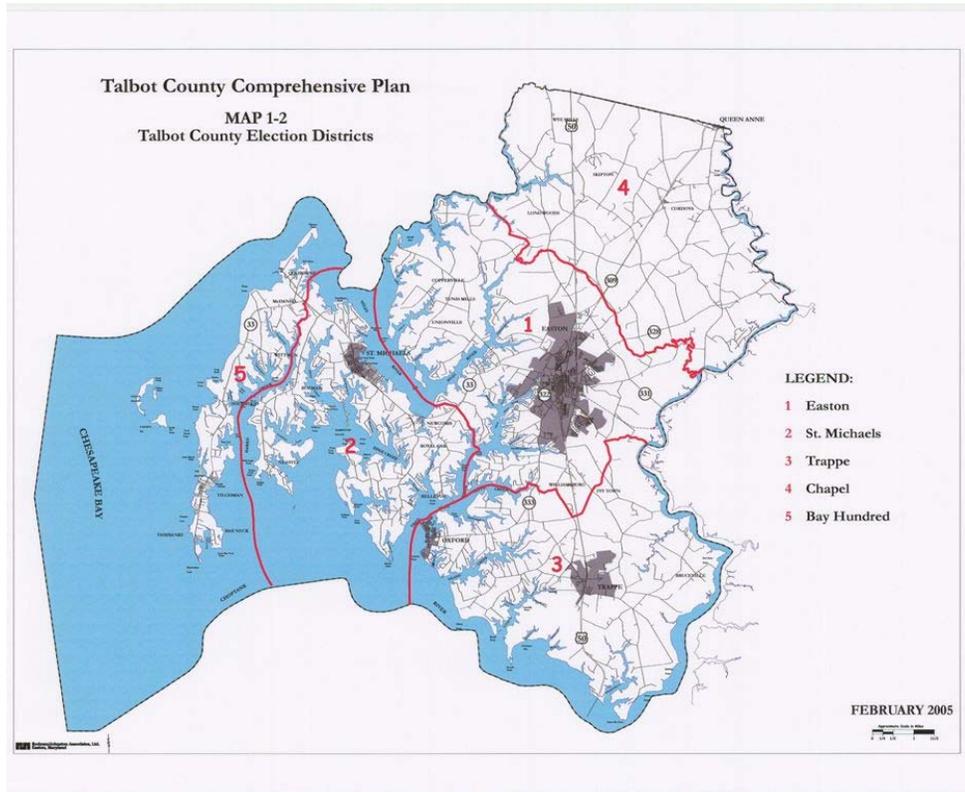
Another type of transfer (a joint subdivision) is permitted in the RC (critical area) district (190-58.F), but no gain in density is associated with this type of subdivision (the sending rate is 1 du per 20 acres).

### Discussion

Very few projects (staff can recall only one) have used the tdr option. The one that did is the Preserve at Wye Mills development (see plan above). It used received tdrs in a cluster plan that has 68 single family lots on 476 acres preserving 359 acres. The residential lots are served by an on-site package treatment plant and spray irrigation. This project has received general praise as a means of preserving landowner’s equity and preserving rural land. As noted above, the subdivision did not achieve its maximum potential density of 98 lots (3 plus 476/5)

The reason tdrs have not been more widely used appears to be a combination of market and regulatory forces. Standard development types (rural and cluster subdivision) are easier to do and the marginal increase in the number of lots that can be achieved with tdrs does not offset the cost and complexities of acquiring and using tdrs, which include, due to the open space requirements, a shared system. The smaller buyer market for small lots in rural areas may also be a factor.

The Comprehensive Plan uses tdrs as a key land use plan implementation strategy. The Countryside Preservation area is to be a tdr sending area giving priority to Towns and Designated Growth Areas as



receiving areas. The Plan recommends that the County and towns mutually explore an inter-jurisdictional tdr program with development rights originating in the Countryside Preservation Areas being transferred to designated receiving areas within the adjacent incorporated town.

To date the County and Towns have not come to agreement over this program.

The net result is that the County has limited receiving areas, that is only the Comprehensive Plan's Agriculture Area. The new Western Rural Conservation Area is to be a tdr sending area only, not a receiving area. With limited receiving areas the tdr option will continue to be used very little.

Experience among counties nationwide is that very few tdr programs have been successful. The two most successful in Maryland are Montgomery County and Calvert County. Montgomery County preserved approximately 40,000 acres by, essentially by downzoning but compensating rural property owners by granting them tdrs for use in urban parts of the County. Calvert County has preserved approximately 13,000 acres since 1978 by a series of carefully managed density transfer, bonus, and purchase programs. Successful TDR programs require major staff commitment, hard work, and careful management.

### Options

- a. Come to agreement over an inter-jurisdictional tdr program. This may be difficult to achieve since the towns may not wish to increase density above their base zoning. The base zoning in most of the outer areas of Easton is R10-A, with a base density of approximately four dus per acre. The Town of Easton's Comprehensive Plan (2004) lacks specificity regarding density in its future growth areas, such that would support the use of tdrs. There may be potential for the Town of Easton to require that purchased tdrs be used to achieve density above base zoning in the Town's Planned Unit Development overlay district, but there is recent experience of resistance to higher density in PUDs.
- b. Create new receiving areas for tdrs. The only option appears to be the VC districts – *an option, however, that is not recommended or discussed in the Comprehensive Plan*, though the Plan does call for a planning program for village centers.

Development options currently are 1 du per acre without sewer and 4 du per acre with sewer ("sewer" includes shared facilities). The villages currently lack sewer so that the 4 du per acre option is not used.

A key constraint over using tdrs in VC districts would be that density would have to be increased with tdrs above the current 4 dus per acre, unless the current 4 dus per acre were changed to be made permissible *only* by using tdrs (i.e. reduce the by-right density). Density above 4 dus per acre may be incompatible with some villages' character.

Adding density in villages may be preferable to pockets of residential development scattered through the RAC district.

**B. New Zoning Districts**

Implementing the Comprehensive Plan’s land use recommendations will mean creating three new zoning districts:

<b>Comprehensive Plan Area</b>	<b>Current Zoning</b>	<b>New Zoning District</b>
Western Rural Conservation	RAC, plus a small area of TR near St. Michaels	Western Rural Conservation
Countryside Preservation Area	TR and RAC	Countryside Preservation District
Designated Growth Areas	TR	Future Town District

The Comprehensive Plan implies that the TR district would be eliminated. ERM believes that to avoid creating a large number of nonconformities, it may be advisable to retain the *developed* portions of the TR district in a separate district (for example, the area southeast of St. Michaels).

Designated Growth Areas	TR	TR
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The following tables outline the key elements of these new districts along with options reflecting the Comprehensive Plan’s direction to review certain policies such as the bonus density for clustering.

**1. Western Rural Conservation District**

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<i>RAC<sup>1</sup></i>	<i>Western Rural Conservation - WRC</i>	
<b>Purpose</b>		Conserve the rural character of the non-critical area portions of the narrow necks of western Talbot County	
<b>District Area</b>		Areas designated on Comp Plan land use map	
<b>Uses</b>		<p>Base permitted use list on RAC use list</p> <p><b>Options</b></p> <p>a. Disallow some uses permissible in the RAC.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>Day care center – group</li> <li>Educational institutions;</li> <li>Group homes – large;</li> <li>Exposition Center or fairgrounds;</li> <li>Off-road outdoor recreation</li> <li>Indoor Shooting Range;</li> <li>Meeting Halls;</li> <li>Private airports;</li> <li>Product recycling</li> </ul> <p><b>OR</b></p> <p>b. Continue to allow these uses but apply RC use standards. For example: for educational institutions: “In the RC Zone, public allowed, in accordance with 27.02.02; private allowed subject to impervious limitation of 15% of the site or 20,000 square feet, whichever is less”</p>	Comp Plan page 3-10: Open space, agriculture, forestry, and low density single-family detached residential uses are the preferred uses.

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<i>RAC</i> <sup>1</sup>	<i>Western Rural Conservation - WRC</i>	
<b>Development Types</b>			
Rural subdivision	<ul style="list-style-type: none"> <li>Property 6 acres or less: 1 du per 2 acres</li> <li>Property more than 6 acres: 3 dus plus 1 du per 20 acres</li> </ul>	<p><b>Options</b></p> <p>a. Rural Subdivision – same as RAC</p> <p><b>OR</b></p> <p>b. Lot size averaging per section A above.</p> <p><b>OR</b></p> <p>c. Eliminate the rural subdivision and mandate clustering per section A above.</p>	<p>If clustering is to be encouraged, but no density bonus is to be granted (see option a. under cluster subdivision), then mandatory clustering would help achieve preservation goals.</p> <p>If clustering is mandated then flexibility on clustering requirements may be needed –see discussion above under A. Land Preservation and Cluster Provisions.</p>
Cluster subdivision	<ul style="list-style-type: none"> <li>Property 6 acres or less: not applicable</li> <li>Property more than 6 acres: 3 dus plus 1 du per 10 acres</li> </ul>	<ul style="list-style-type: none"> <li>Property 6 acres or less: not applicable</li> <li><b>Property more than 6 acres</b></li> </ul> <p><b>Options</b></p> <p>a. Cluster permitted, but no density bonus; that is 3 dus plus 1 du per 20 acres</p> <p><b>OR</b></p> <p>b. 3 dus plus 1 du per 15 acres</p>	<p>Comp Plan page 3-11: Review policy for awarding bonus density with a view towards limiting its use.</p> <p>1 du per 15 acres would provide a limited density bonus compared to current zoning.</p>
Cluster subdivision with TDR	<ul style="list-style-type: none"> <li>Property 6 acres or less: not permitted</li> <li>Property more than 6 acres: 3 dus plus 1 du per 5 acres</li> </ul>	<p>Not permitted; WRC cannot be a TDR receiving area.</p> <p><b>Option</b></p> <p>Area can send TDRs</p>	<p>Will need to change the regulation (190-15) requiring that TDR exchanges be within the same election district (no receiving areas would be available in some EDs)</p>

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<i>RAC</i> <sup>1</sup>	<i>Western Rural Conservation - WRC</i>	
<b>Minimum lot size</b>	1 acre 0.25 acre (cluster) Actual minimums tend to be larger due to health dept. requirements	Same	

<sup>1</sup> A small area west of St. Michaels is currently zoned TR and would be rezoned to WRC

**2. Future Town District - Comprehensive Plan designated growth areas.**

New Zoning District

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<b>TR</b>	<b>Future Town – FT (Name? Town Residential Future TR-F?)</b>	
<b>Purpose</b>		Support the orderly expansion of the towns by discouraging premature urban or suburban development in these areas. Comp Plan page 3-5	Coordinate with the towns in the review and approval of development projects adjacent to the towns Comp Plan page 3-5
<b>District Area</b>		Designated growth areas on Comp Plan land use map	
<b>Uses</b>	Limited suite of agricultural, residential, recreational, institutional and service uses	No changes	
<b>Development Density (maximum)</b>	1 du per acre without sewer 4 du per acre with sewer	1 du per 20 acres without sewer 4 du per acre with municipal sewer <ul style="list-style-type: none"> <li>• Conditions of subdivision approval: <ul style="list-style-type: none"> <li>– Planning Commission/Planning Officer shall consider the comments of the town on the development (regarding roads, curbs, gutter, streetlights etc.)</li> <li>– Planning Commission/Planning Officer shall find that the design and improvements for the development are consistent with future plans of the town.</li> </ul> </li> <li>• The Planning Commission may require modifications to ensure consistency.</li> <li>• Conditions of special exception or variance approval.</li> </ul>	Generally, development with sewer will not be available until these areas are annexed. Development on a shared system would be incompatible with future town development. However, zoning should allow for the possibility that development with sewer might occur: <ul style="list-style-type: none"> <li>• Town (Easton, Oxford, Trappe) might agree to extend sewer with an agreement to annex at some future time.</li> <li>• In St. Michaels County might extend sewer.</li> </ul> If inter-jurisdictional agreements

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<b>TR</b>	<b>Future Town – FT (Name? Town Residential Future TR-F?)</b>	
		– Similar language as above for the Board of Appeals.	on TDRs could be made, these could perhaps be TDR receiving areas.
		Recognize existing developed areas as a separate district – modeled on existing TR district regulations for development with sewer.	Existing developed areas under TR would become non-conforming under the proposed FT district (if it only has a 1 du per 20 acre option), until they are annexed – (for example, the area south of St. Michaels).  These areas may never annex – if substantially developed. County provides sewer.  If zoned “future town at 1 du per 20”, infill devt would need many variances.
<b>Minimum lot size</b>	1 acre without sewer 10,000 sf with sewer (including shared facility)	1 acre without sewer With municipal sewer: set by the Planning Commission	Minimum lot size in Easton’s R10-A district is 10,000 sf or is “set by the Planning Commission” in Planned Unit Developments.

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<b>TR</b>	<b>Future Town – FT (Name? Town Residential Future TR-F?)</b>	
<b>Average lot size</b>	2 acres or less	<p>Lots with sewer – not applicable.</p> <p>Lots without sewer:</p> <p><b>EITHER</b></p> <p>a. No requirement.</p> <p><b>OR</b></p> <p>b. Maximum lot size: 2 acres or the minimum size permitted by the Office of Environmental Health</p>	<p>Engineers/designers have pointed out that the average lot size of 2 acres or less conflicts with the Office of Environmental Health requirements that typically require lots of at least two acres.</p> <p>Requiring a maximum or an average lot size, arguably, would preserve more land for future town development.</p>

### 3. Countryside Preservation District

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<i>TR and RAC</i>	<i>Countryside Preservation District CP</i>	
<b>Purpose</b>		Permanently preserve these districts as agriculture, forest, wetlands, countryside and other large open spaces. Physically and visually define the limits of urban growth around the towns and disrupt the continuity and outward expansion of urban form to insure that the towns maintain their unique identity in the landscape and that urban sprawl does not erode the rural character of the County.	Comp Plan page 3-10 Limit density to 1 du per 20 acres. Encourage clustering to preserve open space. Designate as a TDR sending area Preserve views from roads.
<b>District Area</b>		Areas designated on Comp Plan land use map	
<b>Uses</b>		Base the permitted use list on RAC use list <b>Option</b> Disallow some uses permissible in the RAC if deemed incompatible with the CP district. See list above under WRC – essentially the same question as for the RAC but for a different geographic area.	
<b>Development Types</b> <b>RAC</b>			
Rural subdivision	<ul style="list-style-type: none"> <li>Property 6 acres or less: 1 du per 2 acres</li> <li>Property more than 6 acres: 3 dus plus 1 du per 20 acres</li> </ul>	<b>Options</b> a. Rural Subdivision – same as RAC. <b>OR</b> lot size averaging <b>OR</b> eliminate the rural subdivision and mandate clustering per WRC above.	

	<i>Current</i>	<i>Proposed</i>	<i>Comments</i>
	<b>TR and RAC</b>	<b>Countryside Preservation District CP</b>	
Cluster subdivision	<ul style="list-style-type: none"> <li>Property 6 acres or less: not applicable</li> <li>Property more than 6 acres: 3 dus plus 1 du per 10 acres</li> </ul>	<ul style="list-style-type: none"> <li>Property 6 acres or less: not applicable</li> <li>b. Require that development of four lots or more be clustered at 1 du per 20 acres.</li> <li><b>OR</b></li> <li>c. Property more than 6 acres: 3 dus plus 1 du per 15 acres</li> </ul>	<p>Option b requires clustering rather than encourages it.</p> <p>The current encouragement to cluster in the RAC comes from the density bonus: development at 1 du per 10 acres versus 1 du per 20 acres. The Comprehensive Plan (pages 3-9, 3-10) implies that density bonuses should be limited in the CP district.</p> <p>Option c gives an incentive; but smaller than in the current RAC.</p>
Cluster subdivision with TDR	<ul style="list-style-type: none"> <li>Property 6 acres or less: not permitted</li> <li>Property more than 6 acres: 3 dus plus 1 du per 5 acres</li> </ul>	Not permitted; the Comprehensive Plan designates the CP as a TDR sending area, not a receiving area.	
<b>Existing TR areas to be rezoned to CP</b>	<p>1 du per acre without sewer</p> <p>4 du per acre with sewer</p>	Areas currently zoned TR would use the options described in the preceding rows.	

Mapping issues:

- i. There appears to be a small area of LI north east of Easton in the proposed CP. Does this stay LI?
- ii. Areas around Thrice Field Court and north of Yacht Club Rd. near St. Michaels are zoned RR but are CP in the Comp Plan. Do these areas stay RR?
- iii. TR area southwest of Easton. Sliver of TR along Rt. 333 should stay TR (area is designated “moderate density residential” in the Comp Plan).

## Issues and Options – Phase 2

### C. Process and Administration

#### 1. Community input in the planning and design process

*The Comprehensive Plan (page 13-3) recommends that applicants for major subdivisions and commercial/industrial development be encouraged to actively seek community input in the planning and design process prior to submission of the development plan. The Plan suggests that applicants may be required to advertise and conduct a community meeting within the vicinity of the proposed development site prior to submission of the final plan to the County Planning Office and Planning Commission.*

#### **Current Code treatment**

In the current code community input takes the following forms:

Public notice is given of the Technical Advisory Committee meeting for major subdivision sketch plans through mailing to adjacent property owners, posting on the property and posting on the Internet (Subdivision Regulations Section 168.17.C-1). The public may attend the TAC meeting and, for plans that will not have a Planning Commission public meeting, may give written comments to the planning staff.

The Planning Commission meeting provides opportunity for community input on general site plans and major subdivision plans.

Community meetings are required only for proposals for wireless communication towers with a height of 100 feet or greater. The meeting must be held at least one week prior to the Planning Commission meeting and is advertised through mailing to adjoining property owners, posting a sign on the property, and newspaper advertisement.

#### **Discussion**

If additional community input is desired it should take place at the sketch plan stage. At later plan stages, the basic form and design of the development has been established and the community would likely feel the meeting was for form only and not to seek its input.

Some counties, such as Baltimore and Howard require that developers hold informational meetings prior to submission of the initial plan for the development (usually the sketch plan). It is important that these meetings be informational, and an opportunity for the community to offer input and ideas. They should not be seen as negotiating meetings between the developer and the community, essentially making decisions prior to the established TAC and Planning Commission processes. The meetings should be conducted by the developer, who would then submit a brief summary of the discussion with the plan submittal. County staff generally would not attend the meeting.

The Comprehensive Plan recommends that applicants be “encouraged” to seek community input. Talbot County’s plan review process is straightforward and does not provide opportunities for incentives to encourage pre-submission meetings with the community. (Incentives typically would be in the form of faster processing of submitted plans.) If community meetings are presented as an option, some applicants may choose to use it for projects where pre-submission meetings have potential to lessen controversy and debate at the Planning Commission stage.

We do not recommend community meetings for special exceptions or variances as the community input process through the Planning Commission and the Board of Appeals is already established and appears to operate well.

## Options

### EITHER

- a. Leave current community input process intact.

### OR

- b. Require applicants to advertise and conduct a community information meeting prior to submission of a sketch plan for a major subdivision.
- c. Require applicants to advertise and conduct a community information meeting prior to submission of a general site plan, if:
  - the plan proposes construction of a primary commercial or industrial structure, and
  - the site is adjacent to or within a defined distance of residentially-zoned property.

### OR

- d. Provide procedures for community meetings within the subdivision and site plan process, but make this an option rather than a requirement.

## 2. Waivers for site plans and subdivision plans

*Increase the number of minor waivers that the Planning Officer can grant. Allow the Planning Commission to waive zoning and subdivision requirements rather than requiring Board of Appeals variances.*

The planning staff and private sector engineers and surveyors expressed a need to examine the opportunities for applicants to receive waivers from the Planning Officer or Planning Commission. Minor waivers granted by the Planning Officer can speed up the development review process. Waivers granted by the Planning Commission, for plans that it must review, provide flexibility in design of new development.

### Current Code Treatment

For site plans, the Code authorizes the Planning Officer to waive submittal requirements (190-92.E(1)) and to determine whether commercial or industrial expansions require a simplified or general site plan (190-92.F). The Planning Officer may also grant waivers to the simplified site plan requirement for minor development activity in the Critical Area (190-93.B(4)).

The Planning Commission has broad authority to grant waivers related to site plans. Section 190-92.K states, in part, "...the Planning Commission, in specific cases, may waive any technical requirements of this chapter where such requirement is found to be unreasonable. No such waiver shall be adverse to the purpose of this chapter."

For subdivisions, the Code gives waiver authority to the Planning Officer, with a recommendation from the Planning Commission. The Subdivision Regulations in Section 168-11 authorize the Planning Officer to grant "variances, exceptions and waiver of conditions to these subdivision regulations." Section 168-11 provides general criteria for evaluating waivers, and requires that the waiver petition be submitted in writing when the sketch plan or preliminary plat is filed.

### Discussion

The zoning and subdivision regulations provide basic waiver authority and establish a process which can work well with some refinements.

A procedure for waivers is outlined in the Subdivision Regulations. The Zoning Regulations provide authority for site plan waivers, but provide no process or criteria for decision-making. Site plan waivers need provisions similar to those for subdivision waivers, including:

- A requirement that the written waiver request accompany the plan submission;
- General criteria for approval of waivers; and
- Establishing the authority to make recommendations and decisions on waivers, and to hear appeals of the decisions.

Currently, the Planning Commission must make the decision on all site plan waivers and a recommendation on all subdivision waivers. Approval of simplified site plans and minor subdivisions could be streamlined if waivers for these plans were approved by the Planning Officer without a Planning Commission public meeting. These types of plans are approved by the Planning Officer without a Planning Commission recommendation, so it would be logical to follow the same procedure for waivers requested for these plans.

Clarity is needed on which requirements can be waived as part of a site plan. The statement in 190-92.K, that the Planning Commission may waive “any technical requirement” of the Zoning Regulations, is overly broad. In the Code reorganization, distinctions should be made between requirements that can and cannot be waived through the site plan waiver process. The Regulations need to distinguish between zoning requirements (such as lot size, setbacks, and height) that clearly require a variance from the Board of Appeals, and design requirements which are intended to be subject to waiver requests.

For subdivisions, the requirements that are subject to a waiver petition should be expanded. A subdivision proposal currently can include requested waivers only to provisions of the Subdivision Regulations. The Subdivision Regulations are primarily procedural, with limited design requirements. Many of the design requirements are found in the Zoning Regulations. Allowing waivers from additional design requirements, with appropriate criteria for evaluating the waivers, can improve subdivision design and provide flexibility needed for particular sites.

Board of Appeals approval should continue to be required for variances from zoning bulk requirements such as lot size, lot width and setbacks. The Board of Appeals variance process is well established in state and local law and in Court decisions. However, some numerical requirements that are applied only during subdivision can be placed under the subdivision requirements, thus being subject to waiver petitions. Open space requirements are often included in subdivision design requirements, where they are subject to waivers, rather than being in the zoning bulk regulations. Further discussion is provided under “Design” issues.

## **Options**

The following options are mostly procedural changes and adjustments in authority without “choices” between options.

- Provide a process for waivers from design or technical requirements for site plans similar to the waiver process in the subdivision regulations.
- Provide that the approval authority and appeal process for waiver petitions is the same as the approval authority and appeal process for the particular type of subdivision or site plan.
- As one exception to the above option, authorize the Planning Officer to waive submission requirements for site plans or subdivision plans without a Planning Commission recommendation.
- Clarify which requirements can be waived as part of the site plan approval process.
- Expand the waivers that can be granted in connection with a subdivision plan to include subdivision design requirements that are currently found in the Zoning Regulations.
- Consider allowing the open space requirement to be a subdivision requirement subject to waiver by the Planning Commission.
- Revise the criteria for waivers of subdivision regulations to be more design-oriented and less similar to the criteria for zoning variances. Require that design goals be considered in considering waivers. Allow positive consideration to be given to waivers that allow design alternatives which would further the goals of the development regulations. Apply the same criteria to waivers for site plans.

### 3. Clarity and specificity of development review procedures.

*In April, 2005, the County Council adopted a review and approval process for subdivision and site plans. The resolution establishes submission deadlines for applications to be considered at upcoming Technical Advisory Committee (TAC) and Planning Commission meetings and authorizes planning staff to limit the number of development plans that will be considered at a TAC meeting. The resolution clarifies the steps in the development review process.*

*Persons involved in submission of plans for County review have questioned whether the development review schedule could include time limits for county review and assurance that comments from all reviewing agencies will be available in a timely manner,*

#### **Current Code Requirements**

The County Code currently contradicts the Talbot County Charter in the approval authority for subdivision plans. Since the 2002 general election, the charter has required that the Planning Commission approve major subdivisions. The Subdivision Regulations need to be updated to reflect this change; currently they authorize the Planning Officer to approve all subdivisions.

The Code establishes the following procedure for subdivision sketch plans:

- Mandatory pre-application conference with planning staff.
- Submittal to Planning Office. After submission, applicant must be notified in writing within five working days whether the application is determined to be complete or incomplete.
- For minor subdivisions, Planning Officer must render a decision within 30 days of submission of a complete application. If plan is approved, applicant has one year from approval date to submit the preliminary/final plat.
- For major subdivisions, the Planning Officer schedules the complete application for the next available TAC meeting. Public notice is provided of the TAC meeting.
- When the Planning Officer determines that requirements of sketch plan review have been fulfilled, application is placed on next available Planning Commission agenda. Public notice of Planning Commission meeting is provided.
- Planning Commission renders its recommendation at the initial meeting or at a subsequent meeting if the application is tabled. (According to the Charter, this should be changed – the Planning Commission issues a decision, not a recommendation.)
- Planning Officer issues a “notice to proceed” or a “notice of noncompliance” no later than 10 working days after Planning Commission makes its decision. The notice to proceed may include required changes in the sketch plan to be incorporated in the preliminary plat.

The subsequent stages of subdivision review – a combined preliminary/final plat for minor subdivisions, and a preliminary plat and final plat for major subdivisions, have similar stages. The pre-application conference with planning staff is not required and public notice of the TAC meeting is not required. The Code requires that the plan be referred to other agencies for comment, but does not require a TAC meeting for the preliminary plat stages. There is no code requirement for review by other agencies for the final plat. However, the process recently approved by County Council resolution requires a TAC meeting at each stage of subdivision; the TAC meeting is the easiest way for reviewing agencies to coordinate their comments.

Applicants must submit plans for the next stage of the subdivision process within one year of approval of the prior stage. Time extensions may be granted by the Planning Officer, with recommendation by the Planning Commission for major subdivisions.

Procedures for site plans are given in the zoning regulations and are less detailed than the subdivision procedures. For general site plans, the zoning regulations establish the following procedures:

- Mandatory pre-application meeting with Planning staff.
- Submittal to Planning Office. Planning Officer reviews application for completeness. If found to be complete, the application is accepted.
- Copies are sent to appropriate agencies for review.
- Planning Commission reviews application and Planning Officer staff report at a public meeting and approves, approves subject to conditions or disapproves the plan.
- If approved, applicant submits revised site plan meeting all conditions and Planning Officer may issue building permits in accordance with the plan.

Simplified site plans are approved by the Planning Officer rather than the Planning Commission and have no public meeting.

### **Discussion**

The procedures for subdivision and site plans outlined in the code lack any reference to the period between the TAC meeting and the Planning Commission meeting. During this period, technical comments of reviewing agencies must be coordinated and transmitted to the applicant. The applicant must submit revised plans to address these comments and the revised plans must be reviewed for compliance. Sometimes this step needs to be repeated more than once.

The County’s development review resolution adds a “compliance review” meeting to address this stage. This stage should be referred to in the code. The Code needs to clearly authorize the Planning Officer to defer placing plans on the Planning Commission agenda until the plans are technically complete and correct.

The Code should also authorize the Planning Officer to limit the number of plans placed on a TAC agenda, to ensure that agencies have time to review plans based on their staff resources. This authority is not clear in the Code, which currently requires the Planning Officer to place a submitted plan on the “next available TAC meeting.” The development review resolution recently adopted by the County Council limits the number of plans placed on the agenda of a TAC meeting. The details provided in the resolution, such as the number of plans allowed per TAC meeting and the weighting system, do not need to be in the Code, but the Code should establish the Planning Officer’s authority to limit the TAC agenda.

The Code establishes no time frame within which the County’s technical review of plans must be completed and agency comments transmitted to the applicant. Such time limits are difficult to impose because of the different agencies involved in the review. The Planning Officer coordinates plan review but cannot compel other agencies to meet time limits. Other agencies, including County, state and sometimes federal departments, respond to their own codes and regulations and will not necessarily comply with time limits imposed by zoning or subdivision regulations.

### **Options**

These options are mostly procedural changes and adjustments without “choices” between options.

- a. Revise the County Code to reflect the Charter requirement that major subdivision plans and commercial/industrial site plans be approved by the Planning Commission.
- b. Add stages of plan review outlined in the Talbot County Plat/Site Plan Review and Approval Process to the County Code procedures for site plan and subdivision plan review.
 

Include authority to send plans back through the process for due cause (such as incompleteness, unresponsiveness to prior comments).
- c. In the Code, authorize the Planning Officer to set reasonable limits on the volume of plans to be considered monthly on the TAC agenda.

#### 4. Consider a faster process for minor plan review

*Representatives from the engineering and design firms have inquired whether minor subdivision plan review could be streamlined by not requiring these plans to be placed on the agenda of a TAC meeting.*

##### **Current Code Requirements**

The Subdivision Regulations impose a 30-day time limit on review of sketch plans and preliminary/final plats for minor subdivisions. The Code does not require that these be placed on the TAC agenda.

##### **Discussion**

Comments were received from engineering/surveying firms requesting that review of minor subdivision plans be speeded up by not placing these plans on the TAC agenda, but instead having agencies send their comments in writing to the planning office. Since the code has a strict deadline for review of these plans and does not require a TAC meeting, these comments address current procedures rather than code provisions.

Planning staff has found that the TAC meetings provide the most efficient means to have the reviewing agencies complete their comments on plans and coordinate the comments with those of other agencies (in order to avoid contradictory comments from different agencies). To place a plan on the next scheduled TAC meeting, a deadline of more than 30 days is generally required depending on when during the month the plan is submitted. Occasionally, according to the recently adopted resolution limiting the size of the TAC agenda, a plan could be deferred to the next month's TAC meeting. This would further delay plan review.

##### **Options**

##### **EITHER**

a. Retain the current code requirement that a decision be made by the Planning Officer on minor subdivision plans within 30 days, and revise current procedures to achieve this;

##### **OR**

b. Revise the Subdivision Regulations to provide a more realistic time within which decisions must be made on minor subdivisions. Revised regulations should reflect the TAC schedule and could require that a decision be transmitted to the applicant within several working days after the TAC meeting?

#### 5. Review procedure for a concept plan review prior to sketch plan.

*A concept plan would be reviewed before percolation tests are done, and would be helpful in presenting/discussing the major/important design concepts of a project*

##### **Current Code Requirements**

The Code does not provide for review of concept plans prior to sketch plans, except within the RAC District. Section 190-57 requires the following: "When a subdivision is proposed within the RAC District, the applicant shall submit a master plan (sketch plan) for the entire parcel. This plan shall tentatively show any future plans for continued development of the parcel. The plan is nonbinding and merely represents an effort to think through options for the property."

##### **Discussion**

Concept plans can be helpful in presenting the important design concepts of a project, especially where developer does not know whether the Planning Officer or Planning Commission will prefer a cluster or non-cluster development. The current requirement for a "pre-application conference" with planning staff (168.17.A) could be expanded in its goals to include broader design discussion (the current language implies a more technically oriented meeting). However, in some cases, the public setting of the Planning

Commission would provide a useful forum for such a discussion.

Concept plans would typically be discussed before percolation tests are done and would be based on preliminary engineering. Therefore, any discussion of the plan would need to be nonbinding.

The concept plan could raise frustrations due to the nonbinding nature of the plan. The problems that could arise are similar to those that could come from required or optional community meetings. Since the input the developer receives is nonbinding, it could be frustrating for neighboring property owners whose perception would be that decisions are being made.

One possibility raised in discussions of issues is to change the nature of the sketch plan process to be more conceptual. However, since the sketch plan decision controls subsequent plan submittals, this stage requires sufficient engineering to determine that the development is feasible as proposed.

### **Options**

#### **EITHER:**

- a. Expand the goals of the required pre-application conference 168.17A to allow discussion of design concepts and planning goals for the site,

#### **OR**

- b. Provide an option for submission of a “concept plan” for major subdivisions. Concept plans would receive advisory comments from the Planning Officer and the Planning Commission, after a public meeting with the Planning Commission.

### **6. Delete ability to create multiple minor subdivisions on a single parcel.**

*The ability to create multiple minor subdivisions on a single parcel can be used to avoid a comprehensive review before the Planning Commission*

### **Current Code Requirements**

Section 168-15 of the Subdivision Regulations contains the following definitions:

Major subdivision – All subdivisions not classified as minor subdivisions, including but not limited to subdivision of four or more lots, or any size subdivision requiring any new road or street or extension of County facilities or the creation of any public improvements

Minor subdivision – Any subdivision containing not more than three lots fronting on an existing street, not involving any new public or private road, or the extension of County facilities or the creation of any public improvements, and not adversely affecting the remainder of the parcel or adjoining property, and not in conflict with any provisions of the Comprehensive Plan, Chapter 190, Zoning, these regulations, or any other applicable state or County plans and regulations.

Section 168-16.E authorizes the Planning Officer to determine whether a subdivision is major or minor. Since the definitions above contain some ambiguity, this authority is necessary.

### **Discussion**

The code currently allows multiple minor subdivisions to be divided off of one parcel. This allows land owners to create an unlimited number of lots while avoiding a comprehensive review before the Planning Commission. A revision to address this loophole is clearly needed. In most jurisdictions, a minor subdivision is the first three lots subdivided off a parcel after the subdivision regulations are adopted.

A model for the type of language needed is found in Talbot County’s zoning regulations in the density provisions for the RAC District: “Residential density calculations for a parcel, lot or tract shall be based on the size of the original parcel, lot or tract as of June 22, 1991.” (Section 190-57.A(4)(a))

### **Option**

Revise the definition of a minor subdivision to clarify the intent that the first three lots divided off a parcel after the effective date of the regulations constitute a minor subdivision.

## **7. The Comprehensive Plan recommends that the role of the Historic Preservation Commission be increased in subdivision and site plan review.**

### **Current Code Requirements**

The Historic District Commission's primary area of authority is over alterations of structures within historic districts. The Commission also reviews applications for wireless communication towers for impact on historic resources.

### **Discussion**

Most of Talbot County's historic resources are not within historic districts. Historic buildings that are not within a historic district do not have protection from alterations or demolition, unless an easement has been placed on the property providing such protection. Subdivision and land development regulations do not provide a good avenue for providing such protection; the establishment of a historic district is necessary to preserve a building from inappropriate alterations. However, subdivision regulations can provide design guidelines for new development that allow new lots to be placed in a manner sensitive to the setting of the historic structure, without hindering the applicant's ability to develop the property. To accomplish this, the subdivision and site plan requirements need to include guidelines that clearly indicate the limited purpose for which a development plan is reviewed by a historic preservation commission or planner.

If such guidelines are in place, subdivision and site plans for properties which contain an identified historic resource can be reviewed by either the Historic Preservation Commission or a planner who serves as staff to the Commission and understands the goals of site planning to preserve the setting of a historic resource.

### **Options**

#### **EITHER:**

a. Require that all subdivisions or site plans for properties that contain historic resources identified in the Comprehensive Plan (Map 12-1) be reviewed by the Historic Preservation Commission, who would provide advisory comments to the Planning Officer.

#### **OR**

b. Alternatively, require that the review be provided by the planner who provides staff support to the Historic Preservation Commission.

#### **IF OPTION A OR B IS IMPLEMENTED**

c. Provide guidelines and limits in the zoning and subdivision regulations to guide the review of site plans and subdivision plans for their impact on the setting of a historic resource.

### ***D. Natural Resource Conservation***

#### **In Critical Areas, require installation of de-nitrification systems at the time of an arms-length sale of real property**

Denitrification systems are a means of reducing nitrogen discharge from septic systems which are a significant contributor to water quality degradation of the Chesapeake Bay and tributary streams. The de-nitrification systems action item is one of four groundwater quality implementation strategies in the Comprehensive Plan (page 7-7). The Department of Public Works prepared an On-Site Sewage Disposal Strategy in June 2005 to address these four items. The County has not yet formally adopted the strategy. The strategy envisions a program that would create an On Site Sewage Disposal Sanitary District.

*Amendments to the zoning code would likely not be needed to implement the program, and are not recommended in this Issues and Options Paper*

One discussion in the draft On-Site Sewage Disposal Strategy is interesting in that it envisions exploring “the options to extend sewer from centralized wastewater treatment facilities or constructing community-based treatment systems typically referred to as shared sanitary facilities” (page 4). Such options could support the clustering and TDR options discussed above in this Issues and Options Paper.

### **E. Design**

Most of the issues that had been identified under design are addressed in earlier sections, see Table 1.

#### **1. Provide more flexibility (especially in average lot size requirements) to allow design that makes sense.**

The average lot size issue is discussed above in Section A4 with respect to land preservation and cluster provisions. The issue in the VC districts is somewhat different and is discussed here.

#### **Current Code treatment**

In the VC district the average *maximum* lot size is two acres or less (190-60, 190-61). Under Health Department regulations for individual septic systems the *minimum* lot size is frequently two acres or more. Cases arise when it is not possible for engineers/designers to meet both maximum and minimum requirements necessitating a variance from the maximum lot size requirements.

#### **Discussion**

The purpose of maximum lot sizes is to promote efficient use of land. However, in the VC district the two-acre average maximum seems excessively large. Two acres is a large lot in a village context where one would expect denser development. In such a context we expect an owner/developer would be motivated by the cost of land to create small lots without the requirement for a maximum lot size.

As noted earlier the Comprehensive Plan calls for a planning program for village centers that would address a range of planning and design issues in villages including sewer options. .

In the short term the conflict between maximum and minimum lot sizes should be resolved to avoid the need for variances. Options would be to eliminate the average maximum lot size requirement or to raise it.

#### **Options**

##### **EITHER**

a. Eliminate the average lot size requirements in the VC district.

##### **OR**

b. Revise the maximum average lot size requirements in the VC district to be two acres or the minimum size permitted by the Office of Environmental Health.

## **2. To encourage affordable housing and better use of land consider permitting a duplex building to be built on a single lot (CI)**

### **Current Code treatment**

The term duplex is not defined in the definitions section of the code. It is described in the General Table of Land Use Regulations (190-19) as two attached single-family dwelling units. As conditions of approval, each unit of a duplex must be located on a separate lot, and such units are allowed only on individual lots smaller than 2 acres.

Talbot County allows certain types of accessory residential use:

- An accessory apartment up to 300 square feet (500 sf in a detached structure) in conjunction with a single-family detached dwelling. Permitted in the VC district only.
- Employee residences – generally up to 1,500 sf.
- Guest residences (guesthouses)

### **Discussion**

A duplex located on a single lot would really be a two family dwelling. It is difficult to envision how such a structure could be placed on a single lot with two units being in separate ownership.

Talbot County’s zoning regulations define the term two-family dwelling as a detached residential building containing two dwelling units, designed for and occupied by two families. However, the term is not used anywhere else and this type of use is not permitted anywhere in the County. Perhaps the use was permitted prior to the last major code update?

Many jurisdictions do allow two-family dwellings and they are one way in which jurisdictions can help meet their affordable housing needs. One common approach is to allow a “granny flat” or apartment with a separate entrance in a single-family dwelling allowing a relative to live independently. Conversely such units can allow an elderly person living in the main dwelling to rent out the other unit to a person or family who thereby provide some income, oversight and security to the person in the main dwelling. Talbot County currently allows such units only in the VC district.

Charles County and Howard Counties allow such units as a matter of right in most residential zoning districts. Howard County limits the size of such units to 800 square feet of floor area or one-third of the total floor area of the building, whichever is less. Howard County also allows two-family dwellings as a conditional use (special exception) subject to approval by the Board of Appeals. The Board must find that the dwelling will be designed to be compatible in scale and character with the surrounding residential neighborhood, as demonstrated by architectural elevations or renderings submitted with the petition.

Allowing additional units in Talbot County is complicated by the fact that residential development in the County’s zoning districts is density based (the number of permitted units is expressed as dwelling units per acre); an additional unit could count against the maximum permitted density. Depending on the selected options it may be necessary to amend the definition of density in 190-14 to read “the number of principal dwelling units per acre” – a revision that is likely needed in any case to address other existing accessory residential uses such as employee residences and guest residences.

The issue of additional dwelling units with respect to density in the Critical Area was addressed by the MD General Assembly in the 2004 session. Under HB 1345 SB 795 in calculating density in the RCA (1 du per 20 acre area) a jurisdiction may consider one additional dwelling unit up to 900 square foot per lot or parcel as part of the primary dwelling.

## Options

- a. Permit accessory apartments in Talbot County's residential districts subject to approval by the Planning Officer. Add appropriate size limits. Specifically exclude such units from the development density calculations.
- b. Allow two family dwellings (larger than accessory apartments) by special exception, subject to a finding of compatibility by the Board of Appeals.

### *F. Issues relating to Growth Allocation and Intra-Family Transfers*

**1. Consider using growth allocation as an incentive requiring recipients to fulfill some public purpose in exchange for the benefit bestowed.**

#### **Current Code treatment**

Growth allocation is the process whereby land in the Chesapeake Bay Critical Area can be changed from one designation - Resource Conservation Area (RCA), Limited Development Area (LDA), or Intensely Developed Area (IDA) – to another. Typically the change is to allow a higher intensity use than is permitted under the current designation. Higher intensity uses typically being more profitable, the awarding of growth allocation can add significant value to a property. Procedures and conditions for awarding growth allocation are set forth in 190-109.D.(4) (b) The Code says that the Council is to consider an application in light of the following:

- [1] Consistency with the purposes and intent of the Talbot County Comprehensive Plan;
- [2] Compatibility with existing and proposed development and land use in the surrounding area;
- [3] Availability of public facilities;
- [4] The effects on present and future transportation patterns;
- [5] The effect of population change within the immediate area;
- [6] The past, present, and anticipated need for future growth of the County as a whole;
- [7] The location, nature, and timing of the proposed growth allocation in relation to the public interest in ordered, efficient, and productive development and land use;
- [8] The protection of the public health, safety and welfare.

#### **Discussion**

Awarding growth allocation is in part a discretionary act on the part of the approving body. This is made clear in 190-109.D.(4)(c).

The fact that an application for a growth allocation district boundary amendment complies with all the specific requirements and purposes set forth in this chapter shall not be deemed to create a presumption that the proposed growth allocation district boundary amendment would in fact be compatible with surrounding land uses, and is not, in itself, sufficient to require approval.

The Code does not specifically state that the Council can attach conditions to growth allocation awards, except in one type of growth allocation, Awarding of supplemental growth allocation to municipalities in the County. 190-109.D (9)(d). Here the code states:

(the Council) may impose such conditions, restrictions, and limitations upon the use of any such supplemental growth allocation, if any, as the Council may consider appropriate.

Since growth allocation is in part a discretionary act there seems to be no reason why the Code cannot specify that the Council can apply conditions, restrictions, and limitations to all types of growth allocation, not only when awarding supplemental growth allocation to municipalities. Such conditions could include incentives to recipients to “fulfill some public purpose in exchange for the benefit bestowed”. Other

Counties use benefit criteria in their consideration of growth allocation. For example, one of the criteria used by Queen Anne’s County is that “proposed development projects determined by the County to be of *substantial economic benefit and located in a designated growth area* shall be given priority for growth allocation” (Queen Anne’s County Code 14:1-76).

## Options

These options are mostly procedural changes and adjustments without “choices” between options.

- a. Add a criterion to 190-109.D.(4) (b), specifying that the Council consider economic benefits when considering growth allocation. The eight current criteria are somewhat duplicative and could be combined and reduced in number.
- b. Add a statement to 190-109.D. that the Council may impose conditions on the use of growth allocation.

## **2. Review and clarify the conditions that apply to a parent parcel after an intra-family lot is created under an intra-family transfer (§ 190-58.G)**

### Current Code Requirements

The RC district regulations in Section 190-58.G allow subdivision of land for the purpose of intra-family transfers. Intra-family transfers allow additional subdivision of parcels that would be allowed subdivision into 2 or fewer lots under the 20-acre density. Intra-family transfers are limited by the following requirements:

- Parcels at least 7 and not more than 12 acres may be subdivided into 2 lots. Parcels 12-60 acres in size may be subdivided into 3 lots.
- Intra-family transfers do not apply to parcels of 60 or more acres. For these parcels, the allowed density of one dwelling per 20 acres governs the allowed subdivision.
- A parcel that is subdivided may be transferred only to a member of the owner’s immediate family for the purpose of establishing a residence for that family member.
- The residence may not be rented except to a family member and may not be conveyed to a non-family member except under limited purposes and with approval of a variance by the Board of Appeals.

### Discussion

Clarification is needed on whether the ownership restrictions on a lot created through intra-family transfer also apply to the remainder of the original parcel.

Section 190-58.G allows property owners to transfer a portion of their land to family members in cases where the 20-acre density would not allow subdivision. It may have been the original intent to allow lot creation for family members, without preventing the transfer of the parent parcel to a new, unrelated owner. It is not reasonable to encumber land so that none can ever be sold out of the family.

Clearly, however, the intent of restricting lot creation to intra-family transfers can easily be thwarted if the remainder of the parent parcel can be sold out of the family. A property owner can create a lot through intra-family transfer, transfer the new lot to a close family member as defined in the zoning regulations, then buy it back themselves and sell the remainder of the parent parcel out of the family.

The regulations can be clarified to indicate whether the ownership restrictions apply to the remainder of the original parcel. Another option worth considering is eliminating the intra-family transfer provisions. Zoning regulations are not effective at governing ownership of land when ownership does not affect land use. Ownership requirements are difficult to administer and enforce.

## **Options**

### **EITHER**

a. Revise Section 190-58.G to clarify that the restrictions on out-of-family transfers apply to all of the lots in the subdivision, including the remainder of the original parcel;

### **OR**

b. Revise Section 190-58.G to clarify that the restrictions on out-of-family transfers do not apply to the remainder of the original parcel.

## ***G. Nonconforming Uses, Lots, Parcels and Structures***

### **1. Nonconforming use section needs to be completely rewritten**

### **2. Allow minimal expansions of nonconforming uses to be decided by the Planning Officer**

### **3. Eliminate Planning Commission recommendation for routine administrative variances**

Article XIII of the Zoning Regulations provides regulations for the following types of nonconformity:

- Nonconforming lot: A lot that does not comply with current area or width requirements.
- A subdivision that creates new nonconforming lots.
- Nonconforming structure or building: one that was lawful when built but does not conform in size, dimensions or location to current requirement of zoning district.
- Nonconforming use: A situation that occurs when property is used for a purpose or in a manner made unlawful by the use regulations applicable to the district in which the property is located.

### **1. Nonconforming structures or buildings**

#### **Current Code Requirements**

Outside of the Critical Area shoreline development buffer, nonconforming structures may be expanded upon approval of the Planning Officer with recommendation from Planning Commission. The proposed setback cannot be less than existing setbacks. The regulations provide general criteria related to scale, appearance and compatibility. (If a structure is within the Critical Area, but outside the shoreline buffer, there is an additional requirement related to impervious surface area.) A denial by the Planning Officer may be appealed to the Board of Appeals.

Within the Critical Area shoreline development buffer, nonconforming structures may be expanded upon approval of an administrative variance from the Planning Officer with a recommendation by the Planning Commission. It is not clear (to ERM) why the term “administrative variance” used here but not for expansion of nonconforming structures in other situations? It may be the term used by the Critical Area Commission. Setback must not be less than existing setbacks. The criteria for approval are similar to criteria for variances and include provisions related to Critical Area requirements. Mitigation is required for buffer encroachment. A denial by Planning Officer may be appealed to the Board of Appeals.

Generally, if a nonconforming structure is destroyed to an extent exceeding 50 percent of its replacement cost, it can only be replaced if the reconstruction occurs within one year of the damage, with a possible six-month extension approved by the Planning Officer.

## Discussion

The nonconforming structure issue most commonly dealt with by County planning staff is the need for “administrative variances” for expansion of structures within the Critical Area shoreline development buffer. Staff reports that these are generally routine and do not seem to warrant the required Planning Commission public meeting and recommendation. However, the criteria for administrative variances are similar to criteria for variances, which typically require a public hearing and more formal findings and conclusions than is provided by a purely administrative decision. Expansion of other nonconforming structures also requires evaluation of criteria addressing impact on neighboring properties, which can benefit from input from interested neighbors.

## Options

- a. Continue to allow Planning Officer approval for any expansion of a nonconforming structure, including “administrative variances,” but eliminate the required Planning Commission recommendation.
- a.i. As a more limited option, define limited expansions of nonconforming structures which do not require Planning Commission recommendations, such as vertical expansions and other expansions that do not increase building footprint by more than a defined limit.

## OR

- b. Establish a procedure for the Planning Officer to post property and conduct a public meeting before making a decision on expansion of a nonconforming structure, so that public input is possible if Planning Commission recommendation is eliminated.

## 2. Nonconforming uses

### Current Code Requirements

Nonconforming uses may be continued and may enlarge/expand no more than 20% in floor area. Nonconforming uses not involving structures may expand no more than 10% in site area. The zoning regulations provide no process or criteria for such expansions.

The regulations also provide no process for recognizing the existence of a legal nonconforming use.

### Discussion

Many zoning ordinances provide a procedure by which the jurisdiction can formally recognize a legal nonconforming use. Such a procedure is useful in violation cases and is sometimes desired by prospective owners and title companies before transferring title to a property. A determination that a nonconforming use exists can also establish the extent of the legal nonconforming use, such as the floor area and site area used. This provides a record to refer to if expansion requests come in later.

Talbot’s zoning regulations are also missing basic provisions stating that casual, temporary or intermittent use does not establish a nonconforming use, and that the nonconforming use status is lost if the use ceases for a given period of time, typically one year.

In many zoning ordinances expansion of a nonconforming use is treated in the same manner as a special exception, with approval by the Board of Appeals after a recommendation is made by the Planning Commission. Talbot’s regulations currently are very restrictive in the amount of expansion required and do

not specify a process.

## Options

These options are mostly procedural changes and adjustments without “choices” between options.

- a. Authorize the Planning Officer, based on facts of record and documentation submitted by the property owner, to determine whether a legal nonconforming use exists. Planning Officer’s written determination may be appealed to Board of Appeals.
- b. Require that the Planning Officer’s or Board’s determination that a nonconforming use exists also establish the extent of the legal nonconforming use, such as floor area and site area used.
- c. Allow small expansions – no more than 10% of structure or site area, with Planning Officer approval and no public hearing. Appeals of Planning Officer decisions would be made to the Board of Appeals.
- d. Allow larger expansions, up to 50% of the nonconforming building or site area, with Planning Commission recommendation and Board of Appeals approval.
- e. For any expansion of a nonconforming use, require evaluation of criteria similar to those used for special exceptions.

## 3. Other issues related to nonconformity

### Current Code Requirements

The Zoning Regulations define a nonconforming lot as one that was legally created but does not comply with current area or width requirements. If a nonconforming lot is undeveloped, it may be developed with a single-family dwelling. If a dwelling exists on a nonconforming lot, it may be expanded in compliance with setback and other bulk requirements unless a variance is granted.

The Code provides for two situations in which land may be subdivided to create new nonconforming lots:

- A lot improved with two or more dwellings may be divided to place one dwelling on each lot.
- If a portion of a parcel is in a zoning district, and the portion does not meet the density or lot width requirement of the new zoning district, the portion may be platted as a lot even though it does not meet requirements.

The definitions in Section 190-14 of the Zoning Regulations define two terms that are not used anywhere in the regulations:

- A “nonconforming project” is “A structure or development that is incomplete at the effective date of this chapter and would be inconsistent with regulations if completed as proposed or planned.”
- “Nonconformity, dimensional “ is “A nonconforming situation that occurs when the height, size, or minimum floor space of a structure or the relationship between an existing building or buildings and other buildings or lot lines does not conform to the regulations applicable to the district in which the property is located.”

Section 168-6 of the Subdivision Regulations has a vesting clause providing that the regulations do not apply to applications which received preliminary plat approval prior to the effective date of the Regulations.

### Discussion

No issues have been raised regarding the treatment of nonconforming lots.

Definitions of terms that are no longer used in the regulations should be deleted.

## **Options**

These options are mostly procedural changes and adjustments without “choices” between options.

- a. Delete the definitions of “nonconforming project” and “nonconformity, dimensional.”
- b. If needed at the time of drafting, refine Section 168-6 to address the vesting of in-process subdivision approvals that would not conform to the revised zoning or subdivision regulations.

## **H. List of uses**

### **1. Review the treatment of incidental retail sales in the LI (Limited Industrial) District**

#### **Current Code Treatment**

The LI District is Talbot’s only industrial district. Manufacturing, trucking, research, contracting, recycling and processing uses are permitted by right; certain compounding industries are permitted by special exception. Permitted non-industrial uses include personal and professional services, day care centers, mini-warehouses, and services for motor vehicles, farm equipment and marine equipment, including storage, service and repair.

General retail uses are not permitted in the LI District. Permitted retail uses in LI are restricted to the following: motor vehicle sales, building supply and lumber yards, farm machinery and supplies, and sale of monuments and memorial stones.

#### **Discussion**

Industrial districts are typically not limited purely to manufacturing, warehouse and office uses. Limited support services such as restaurants and gas stations are often permitted for the convenience of persons working in the district. Retail uses that involve large storage areas, such as motor vehicle sales and lumberyards, are often directed to industrial districts. It is also very common to allow the core industrial uses, i.e., manufacturing, warehouse and contracting operations, to provide incidental retail sales of items that are manufactured, distributed or stored on the premises. Retail uses and services open to the general public need to be strictly limited within industrial areas if the jurisdiction is to preserve its industrial-zoned land for employment uses.

Talbot’s regulations currently have no provision for retail sales accessory to a primary industrial use. It is reasonable to allow such uses, to allow for warehouse or factory outlets, or for incidental sales related to contracting services. To retain the industrial nature of the use, the area devoted to the sales needs to be limited and the sales themselves must be incidental to the primary use of the site. These provisions need to be carefully crafted to not allow “warehouse stores” in which a large “warehouse” is open to the public for retail sales. Provision needs to be made for limited parking and appropriate access for retail customers.

## **Options**

These options would make adjustments without “choices” between options.

- a. Add “accessory retail sales” as a use under “Retail Sales” in the General Table of Land Use Regulations.
- b. Require that the accessory retail use be limited to incidental sale of items manufactured, distributed or used in a primary use listed under the “Industrial” land uses.
- c. Limit the area devoted to an accessory retail use and open to the public to 10 percent of the building area.
- d. Add appropriate parking provisions.

## **2. Agricultural Retail Uses. Consider allowing agricultural retail uses, larger scale than farm produce stands, year round as a special exception or an accessory use to farms**

### **Current Code Treatment**

Produce stands are currently allowed as an accessory use in the RAC and RC Districts and as a primary use in the retail districts: VC, LC and GC. It is a seasonal use, allowed from April 15 through November 30, and requires County renewal of the permit each year. The structure, either a produce stand or space in an accessory farm building, is limited to 600 square feet. A 20-foot area around the structure may be used for product display.

### **Discussion**

Direct farm marketing has increased in importance as a source of income for farmers as the cost of agricultural supplies and equipment has increased while wholesale prices paid for agricultural products has not increased proportionally. Producers can receive a higher value by marketing their products directly to the public.

Value-added processing of farm products, such as making and selling jams, cheese and cured meats, can also increase farm income. In some cases, processing can be accomplished on the farm. For example, a kitchen approved by the Health Department for processing of canned goods could be installed with no impact on neighboring properties. In other cases, a farmer may have produce processed off the farm in an approved facility, then marketed at his own farm market, retaining the ability to directly market the produce.

Produce stands or farm markets are also a benefit to the community. Community residents appreciate being able to visit and purchase food directly from a farm. Some farmers offer farm tours and picnic areas in conjunction with a farm market. Pick-your-own operations can be an asset both to the farmer and the community. Although these uses are appreciated by the community, the uses need to be designed with consideration for the farm's immediate neighbors, who can be adversely affected by retail traffic.

### **Options**

These options are mostly procedural changes and adjustments to accommodate the proposed use without "choices" between options.

- a. Allow value-added agricultural processing as a permitted accessory use on farms, subject to a County permit, with limits on the size of the facility and setbacks. The primary product being processed would need to be grown on the farm where the processing occurs.
- b. Retain the current regulations for farm produce stands as an accessory use in RAC and RC. Add a special exception for farm markets that have a larger sales area and year round operation, without the required annual permit renewal. Continue to require that the produce sold be primarily grown on the Delmarva Peninsula, and to allow incidental sale and display of processed goods.
- c. Allow pick-your-own produce operations and cut-your-own Christmas tree or flower operations as accessory uses to farms, subject to a County permit, setbacks from property boundaries, parking and access requirements.

### ***I. Accessory Structures, Fences***

#### **1. Review rules for allowing accessory structures on a parcel before a principal structure; temporary uses**

The planning staff and Board of Appeals noted problems with the current provision allowing the Board of Appeals to approve, as a special exception, an accessory structure on a parcel that does not have the principal dwelling. Planning staff also has observed a need for broader provisions allowing temporary uses.

### **Current Code Requirements**

As in other jurisdictions, Talbot County's zoning regulations generally do not allow an accessory structure or use on a parcel that does not have an established principal structure or structure.

Section 190-14 defines an accessory structure as "A structure detached from a principal building on the same lot and customarily incidental and subordinate to the principal building or use." Similarly, an accessory use is defined as, "A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with such principal use."

Section 190-21 states that an accessory structure is permitted only if the principal structure or use is existing or under construction. As an exception to this rule, 190-21.C allows the Board of Appeals to approve a special exception for an accessory use or structure prior to establishment of a principal use or structure. This section provides no criteria for the Board to consider or time constraints within which a principal use must be established.

Section 190-22 allows temporary structures, including mobile homes or mobile offices, only on construction sites and for a period of six months. The Planning Officer may allow one six month extension.

## **Discussion**

The special exception for accessory structures has been used for purposes which are not within the intent of the Zoning Regulations. Temporary "sheds" approved under this provision have become weekend dwellings, and piers that should be accessory to a dwelling have been built on parcels that cannot pass a percolation test.

Accessory structures typically are not allowed on a parcel without a principal use because they are prone to be poorly maintained, they can be a hazard due to vandalism or fire, and they can be put to uses not intended (e.g., a shed being used as a cabin). Section 190-21.C as currently written provides no criteria guiding the Board of Appeals in placing restrictions on these accessory structures or indicating the circumstances under which they would be appropriate. The general criteria governing special exceptions are not useful in evaluating these requests.

The intent of Section 190-21 was probably to allow accessory structures temporarily, prior to construction of a dwelling or other principal structure. The requirements should clearly state this intent and should provide for a time limit within which construction on a principal structure must be completed. Removal of the accessory structure would be required if the principal structure is not completed within the given time.

Some zoning ordinances have provisions allowing approval of temporary uses that are not accessory uses. Talbot County's temporary use provision is limited to sites on which construction is occurring. Temporary use permits can be a useful way to provide zoning oversight of uses ranging from subdivision sales offices to festivals to temporary sheds.

## **Options**

These options are mostly procedural changes and adjustments in use provisions without "choices" between options.

- a. Revise Section 190-21.C to require the following:
  - The application for an accessory structure prior to a principal structure must show the plans for a principal use or structure on the site and explain the need for establishing the accessory structure first.
  - The Board of Appeals must place a 6-month or one year time limit within which the principal use or structure must be established or the temporary structure must be removed. The applicant may reapply to the Board of Appeals for one extension of the time limit.
- b. Expand Section 190-22, Temporary Uses. Allow some uses by right, such as garage sales or yard sales

(up to 15 days in a calendar year). Allow use of property for up to five days by a nonprofit, educational, cultural, or civic organization for a carnival, street fair, or similar activity including the erection of a tent or other temporary structure. The operator must obtain all permits required by law.

Allow the following uses with approval of the Planning Officer:

- Temporary sales or field offices on sites for which a final plat has been recorded or a site development plan approved.
  - Mobile homes for use as a residence for up to one year on a lot where a home was destroyed by fire or natural calamity.
- c. Allow other temporary uses not specifically listed, for a period up to 3 months with possible time extensions not to exceed one year. Require a finding that the temporary use would not have adverse impacts on neighboring properties and would not significantly alter the site's vegetation and topography. Because these uses would not be specifically listed or defined, require Board of Appeals approval. (Alternatively, establish the possibility of the Planning Officer conducting a public hearing and rendering a decision, with an appeal to the Board of Appeals.)

## **2. Accessory structure limits may be too permissive, allowing large structures**

### **Current Code Requirements**

The Zoning Regulations have no size or height requirements specific to accessory structures. The general height limit for buildings and structures is 40 feet. Certain building elements are allowed to exceed 40 feet, as listed in Section 190-79. Building area is not limited. Setback requirements and impervious surface coverage limits in the Critical Areas will in some cases limit building area.

### **Discussion**

Most jurisdictions place limits on the size of accessory residential buildings to ensure that in scale and character these buildings are subordinate to the residence. Height limits for accessory buildings are very common. Some jurisdictions have also found it desirable to limit the footprint of accessory buildings, especially in recent years as garages have tended to become larger. Height and area limits for accessory structures typically do not apply to agricultural buildings.

Howard County limits accessory structure height to 15 feet in suburban districts and 25 feet in rural districts. Barns and silos are exempt. In rural districts, garages are limited to 1,200 square feet in area on lots of 2 acres or less, and 2,200 square feet in area on lots larger than 2 acres. Dorchester County limits the cumulative floor area of all accessory buildings on a lot to 1,200 square feet or 1,600 square feet, depending on the zoning district. In addition, accessory buildings cannot exceed the footprint of the principal structure.

### **Options**

a. Limit the height of accessory residential structures to 25 feet. (An exemption may be needed for horse stables?) Do not apply this height limit to accessory agricultural structures.

b. Limit the floor area of accessory residential structures, with an exemption for horse stables. The limit should be more lenient for larger lots. Consider a cumulative limit of 1,200 square feet for all accessory structures on lots of 2 acres or less; a 1,600 square foot cumulative limit for lots of 2-5 acres, and a limit of 1,600 square feet per accessory building, with no cumulative limit, for lots of 5 acres or larger.

### 3. Excessive construction of long solid fences could mar rural character

#### Current Code Requirements

Fences are subject to a zero setback. This provision, oddly, appears in the definition of “setback” in 190-14.

Fence is defined as follows: “An artificially constructed barrier of any material or combination of materials erected to enclose or screen areas of land”.

Excluded specifically from the definition of structure (190-14) are the following:

- Fences (or walls used as fences) less than 4 feet in height, and
- Fences that are not visual barriers (ERM assumes that such fences are intended to mean, for example, post and rail fences, barbed wire fences).

The effect of these provisions is that such fences are not subject to regulations that affect structures, the key one being the setback provisions, though arguably too, height.

Other regulations pertaining to fences are contained in 190-84:

- Some of the above provisions are repeated.
- Fences up to 4 feet in height may enclose front yards.
- Fences up to 6 feet in height may enclose side or rear yards except that the height may not exceed 4 feet where the fence is within 30 feet of a dwelling with a primary entrance facing the fence. This limitation may be waived in writing by the owner of the adjacent dwelling.
- Fences associated with commercial, industrial or agricultural uses are exempt from height limitations. Where such fences adjoin land zoned Rural Residential (RR), Village Center (VC), or Town Residential (TR) the 4-foot rule in the bullet above applies.

#### Discussion

It would appear from the current code requirements that solid fences around residential uses may not exceed six feet in height. It also appears that fences (solid or open) around commercial, industrial or agricultural uses are exempt from height limitations and could, theoretically, be as high as 40 feet (190-79).

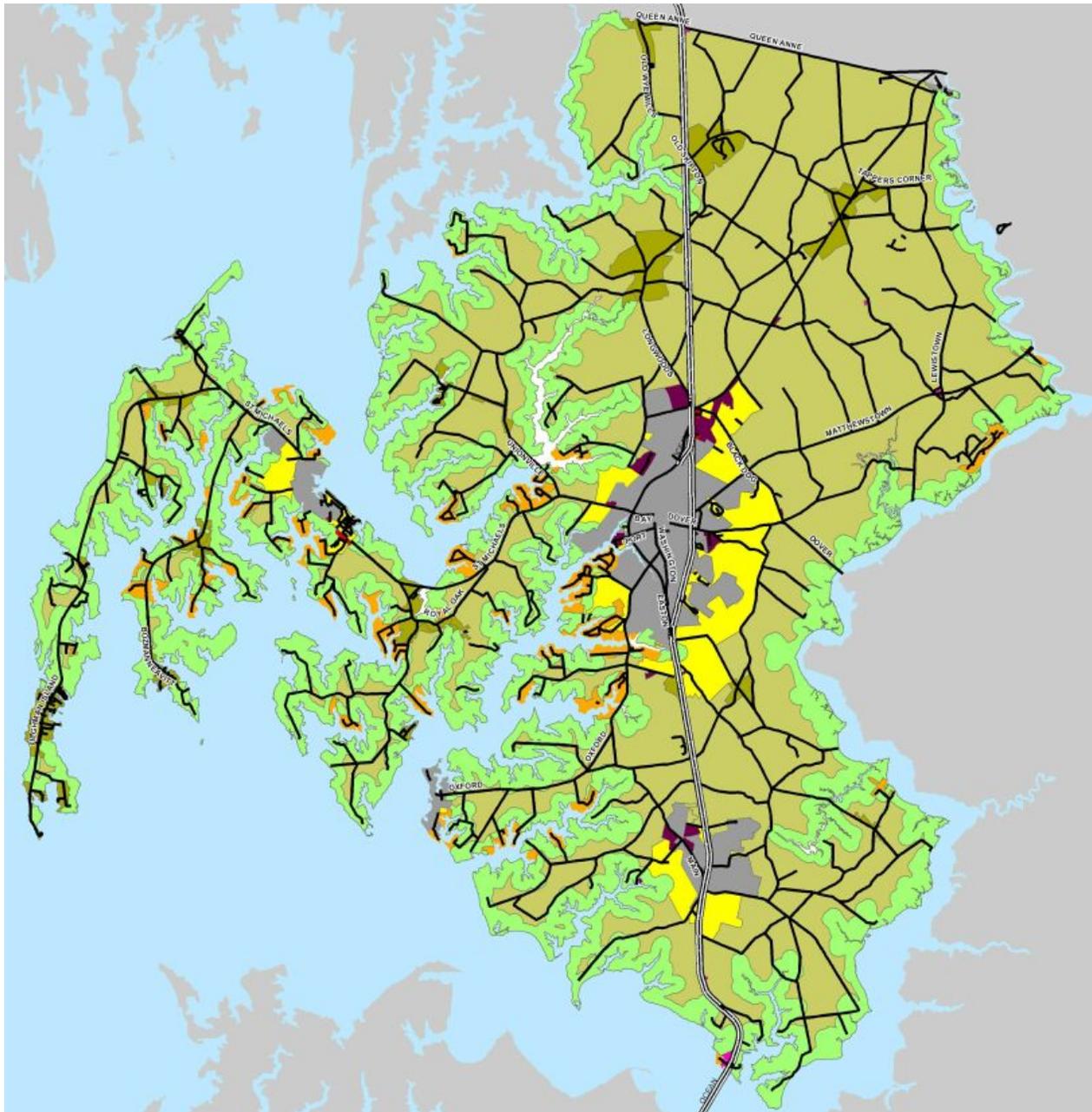
Talbot County’s open rural landscape is highly valued by residents and visitors. Maintaining rural character is a key Comprehensive Plan theme. Protecting this character is a valid public purpose, and excessively large fences over long distances could mar this character.

It would appear from the current code requirements that the intent is to allow solid fences up to six feet and to allow *open* fences around commercial, industrial or agricultural uses to exceed this height. A variance to the height limits could be granted in special circumstances. These regulations would be reasonable, and an excessively high fence should only be granted in unusual circumstances.

#### Options

The following options are adjustments without “choices” between options:

- a. Clarify in 190-84 that the intent of the code is to allow solid fences up to six feet and to allow *open* fences around commercial, industrial or agricultural uses to exceed this height.
- b. Clean up the regulations pertaining to fences (consolidate the regulations in one place and remove regulations from the definitions section.
- c. It may also be useful to define open versus solid fence, e.g. an open fence would be one in which, say, more than 50 percent of the fence area is left open.



## Existing Zoning

Talbot County, MD  
Draft

- RC - Rural Conservation
- RAC - Rural Ag Conservation
- VC - Village Center
- TR - Town Residential
- RR - Rural Residential
- GC - General Commercial
- LC - Limited Commercial
- LI - Limited Industrial
- MUNI - Incorporated Areas



Office of Planning and Zoning  
MS 6/05

# Talbot County Comprehensive Plan

## MAP 3-1 Land Use Plan

