ORDINANCE NO. ____

Introduced by:_____

AN ORDINANCE OF THE TOWN OF DENTON TO AMEND CHAPTER 128, ZONING, OF THE DENTON TOWN CODE, TO MAKE NECESSARY REVISIONS TO THE CRITICAL AREA PROGRAM TO COMPLY WITH RECENT LEGISLATIVE UPDATES

WHEREAS, Md. Code Ann. Local Government § 5-213 authorizes municipalities to adopt zoning regulations, subject to any right of referendum of the voters at a regular or special election as may be provided by the municipal charter; and

WHEREAS, Md. Code Ann. Land Use § 4-102 authorizes municipalities to regulate zoning and land use to promote the public health, safety and welfare; and

WHEREAS, during the 2026 Legislative Session, the General Assembly passed various House and Senate Bills to alter certain standards and requirements for variances from land use requirements and updating other standards and procedures under the Critical Area Program; and

WHEREAS, pursuant to that legislation, and corresponding updates to Md. Code Ann., Natural Resources Article, Title 8, Subsection 18, the Planning Commission reviewed the Town Code and made recommendations to address certain necessary amendments; and

WHEREAS, the Town believes it is in the best interest of the Town to adopt the amendments as proposed by the Planning Commission to provide consistency with and meet the requirements of the Natural Resources Article.

NOW, THEREFORE, BE IT ENACTED, the Denton Town Council hereby ordains as follows:

SECTION 1: Chapter 128, Article IV, Section 128-24 is hereby amended as follows:

§ 128-24 Growth allocation.

. . .

C. Standards. When locating new Intensely Developed Areas (IDA) or Limited Development Areas (LDA), the following requirements shall apply:

(1) A new IDA shall only be located in an LDA or adjacent to an existing IDA. **For purposes of this section, adjacent means (1) sharing a common boundary line, or (2) being separated by a public of private street, road, right-of-way, or other utility or access easement.**

(2) A new LDA shall only be located adjacent to an existing LDA or an IDA. **For purposes of this section, adjacent means (1) sharing a common boundary line, or (2) being separated by a public or private street, road, right-of-way, or other utility or access easement.**

. . .

SECTION 2: Chapter 128, Article IV, Section 128-25 is hereby amended as follows:

§ 128-25 Grandfathering.

A. Continuation of existing uses.

(1) The continuation, but not necessarily the intensification or expansion, of any use in existence on April 3, 1989, may be permitted unless the use has been abandoned for more than one year or is otherwise restricted by existing municipal ordinances.

(2) If any existing use does not conform with the provisions of this article, its intensification or expansion may be permitted only in accordance with the variance procedures in § ~~128-26~~ **128-182**.

. . .

SECTION 3: Chapter 128, Article IV, Section 128-26 is hereby amended as follows:

§ 128-26 ~~Variances.~~ **Reserved. For variances, previously provided in this Section, see § 128-182.**

~~A. Applicability. The Town has established provisions where, owing to special features of a site or other circumstances, implementation of this article or literal enforcement of provisions within this article would result in unwarranted hardship to an applicant, a Critical Area variance may be obtained.~~

~~(1) In considering an application for a variance, the Town shall presume that the specific development activity in the Critical Area that is subject to the application and for which a variance is required does not conform with the general purpose and intent of the Natural Resources Article of the Annotated Code of Maryland, § 8-1801, COMAR Title 27, as amended from time to time, and the requirements of this article.~~

~~(2) "Unwarranted hardship" means that without a variance, an applicant would be denied reasonable and significant use of the entire parcel or lot for which the variance is requested.~~

~~B. Standing. In accordance with Natural Resources Article, § 8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.~~

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

(1) Special conditions or circumstances exist that are peculiar to the land or structure involved, and that literal enforcement of provisions and requirements of this article would result in unwarranted hardship;

(2) A literal interpretation of the provisions of this article will deprive the applicant of the use of land or a structure permitted to others in accordance with the provisions of this Critical Area Ordinance;

(3) The granting of a variance will not confer upon an applicant any special privilege that this Critical Area Ordinance would deny to other lands or structures within the Critical Area;

(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition relating to land or building use, either permitted or nonconforming on any neighboring property; and

(5) The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the general spirit and intent of the State Critical Area Law and this article.

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

(1) After hearing an application for a Critical Area Ordinance variance, the Board of Appeals shall make written findings reflecting an analysis of each standard.

(2) If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the Board of Appeals shall consider that fact.

(3) The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection A above.

(4) The Board of Appeals shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request in accordance with Subsection G below.

E. Findings. Based on competent and substantial evidence, the Board of Appeals shall make written findings on whether the applicant has overcome the presumption of nonconformance as established in Subsection A above and, if applicable, Subsection B above. With due regard for the

~~person's technical competence and specialized knowledge, the written findings may be based on evidence introduced and testimony presented by:~~

~~(1) The applicant;~~

~~(2) The Town or any other government agency; or~~

~~(3) Any other person deemed appropriate by the Board of Appeals.~~

~~F. If the variance request is based on conditions or circumstances that are the result of actions by the applicant, the Board of Appeals shall consider that fact and whether the application has met the requirements of Subsection **I** below.~~

~~G. The applicant has the burden of proof and the burden of persuasion to overcome the presumption of nonconformance established in Subsection **A** above.~~

~~H. Within ten (10) working days after issuance of a written variance decision, the Board of Appeals shall notify the Critical Area Commission of its findings and decision to grant or deny the variance request.~~

~~I. After the Fact Requests.~~

~~(1) The Town will not accept an application for a variance to legalize a violation of this subtitle, including an unpermitted structure or other development activity until:~~

~~(a) Issues a notice of violation; and~~

~~(b) Assesses an administrative or civil penalty for the violation.~~

~~(2) The Town will not approve an after-the-fact variance unless an applicant has:~~

~~(a) Fully paid all administrative, civil, and criminal penalties imposed under Natural Resources Article, § 8-1808(c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;~~

~~(b) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and~~

~~(c) Performed the abatement measures in the approved plan in accordance with this Chapter or posted a bond for the abatement measures pending the outcome of the variance request.~~

~~(3) If the Board of Appeals denies the requested after-the-fact variance, then the Town shall:~~

~~(a) Order removal or relocation of any structure; and~~

~~(b) Order restoration of the affected resources.~~

~~(4) Application for an after-the-fact variance constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.~~

~~J. Appeals. Appeals from decisions concerning the granting or denial of a variance under these regulations shall be taken in accordance with all applicable laws and procedures of the Board of Appeals for variances. Variance decisions by the Board of Appeals may be appealed to the Circuit Court within thirty (30) days of the date on which the Board of Appeals issues its written decision in accordance with the Maryland Rules of Procedure. Appeals may be taken by any person, firm, corporation, or governmental agency aggrieved or adversely affected by any decision made under this article.~~

~~K. Conditions and mitigation. The Board of Appeals shall impose conditions on the use or development of a property that is granted a variance as it may find reasonable to ensure that the spirit and intent of this article are maintained, including, but not limited to, the following:~~

~~(1) Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the appropriate local body or approving authority, but not less than by planting on the site per square foot of the variance granted at no less than a three-to-one basis.~~

~~(2) New or expanded structures or lot coverage shall be located at the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.~~

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

SECTION 4: Chapter 128, Article IV, Section 128-29 is hereby amended as follows:

§ 128-29 Enforcement; violations and penalties.

. . .

I. Variances pursuant to a violation. **See § 128-182**. ~~Upon citing a violation, the Town may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subsection or any provisions of an order, permit, plan, or this article in accordance with the variance provisions of this article. However, the application shall not be reviewed, nor shall a final decision be made, until all abatement, restoration, and mitigation measures have been implemented and inspected by the Town of Denton. The property may be required to post a bond equal to 125%~~

~~of the value of the cost of all abatement, restoration, and mitigation measures. Application for a variance constitutes a waiver of the right to appeal under Subsection K below.~~

J. Permits pursuant to a violation. Failure to complete the required conditions of approval shall constitute a separate violation. The Town may not issue any permit, approval, variance, or special exception unless the person seeking the permit has:

(1) Fully paid all penalties as set forth in Subsection F above;

(2) Prepared a restoration or mitigation plan **prepared by a licensed forester or licensed landscape architect, or any other qualified professional approved by the Department**, **which plan is** approved by the Town, to abate impacts to water quality or natural resources as a result of the violation;

. . .

SECTION 5: Chapter 128, Article IV, Section 128-30 is hereby amended as follows:

§ 128-30 Buffer standards

. . .

B. Permitted activities. If approved by the Town, disturbance to the buffer is permitted for the following activities, provided mitigation is performed in accordance with an approved Buffer Management Plan as required per Subsection F of this section.

(1) A new development or redevelopment activity associated with a water-dependent facility or located in an approved Modified Buffer Area;

(2) A shoreline stabilization activity constructed in accordance with COMAR 26.24.02, COMAR 27.01.04, as amended from time to time, and this article;

(3) A development or redevelopment activity approved in accordance with the variance provisions of **§ 128-182** ~~this article~~;

. . .

SECTION 6: Chapter 128, Article XIV, Section 128-182 is hereby amended as follows:

§ 128-182 Standards for granting a variance within the Critical Area District.

A. In addition to the findings in § 128-181 above, the Board may grant a variance in the Critical Area District, provided that:

(1) Special conditions or circumstances exist that are peculiar to the land or structure within Denton's Critical Area Program, which would result in an unwarranted hardship. For purposes of this section, "unwarranted hardship" means that without a variance, the

applicant will be denied reasonable and significant use of the entire parcel or lot for which the variance is requested**; and**

(a) When requesting a variance for a new accessory structure or use, except for a new additional or accessory dwelling unit, a rebuttable presumption exists that an existing accessory structure or use on the parcel or lot demonstrates reasonable and significant use.

(2) A literal interpretation of this subtitle or the Denton Critical Area Program and this chapter will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area**; and**

(a) Except for new additional or accessory dwelling units, the applicant may make a comparison under A(2) of this Section only to other accessory structures that:

(i) Are located in the Critical Area;

(ii) Were developed after the adoption of the local jurisdiction's Critical Area Program;

(iii) Were conforming and legally authorized at the time of development;

(iv) Are similarly situated; and

(v) If located in a modified buffer area, were developed in accordance with requirements for modified buffer areas under the local jurisdiction's Critical Area Program.

(3) The granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the Denton Critical Area Program to other lands or structures within the Critical Area**; and**

(4) The variance request is not based upon conditions or circumstances that are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed, nor does the request arise from any condition conforming to any neighboring property**; and**

(5) The granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law, and the Denton Critical Area Program**; and**

(6) The application for a variance has been provided to the Critical Area Commission at least two weeks prior to the variance hearing**; and**

(7) A decision has been provided to the Critical Area Commission, in writing, immediately after the variance approval or denial; **and**

(8) The applicant demonstrates a substantial need for the variance that is not based on convenience, personal preference, or financial advantage; and

(9) The applicant demonstrates that the development cannot be located outside a habitat protection area.

. . .

F. A local jurisdiction may not accept an application for a variance to:

(1) Authorize a use that is not allowed by the critical area land classification of the lot or parcel;

(2) Adjust the amount or type of mitigation required by critical area regulations or a local critical area program; or

(3) Provide relief that could be obtained through an available administrative process that is approved as part of a local jurisdiction's critical area program.

G. Standing. In accordance with Natural Resources Article, § 8-1808(d)(2), Annotated Code of Maryland, if a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a local administrative proceeding.

H. After-the-Fact Requests.

(1) Upon citing a violation, the Town may accept an application for a variance regarding a parcel or lot that is subject to a current violation of this subsection or any provisions of an order, permit, plan, or this article in accordance with the variance provisions of this article. However, the application shall not be reviewed, nor shall a final decision be made, until all abatement, restoration, and mitigation measures have been implemented and inspected by the Town of Denton. The property may be required to post a bond equal to 125% of the value of the cost of all abatement, restoration, and mitigation measures. Application for a variance constitutes a waiver of the right to appeal.

(2) The Town will not accept an application of a variance to legalize a violation of this subtitle, including an unpermitted structure or other development activity until:

(a) Issues a notice of violation; and

(b) Assesses an administrative or civil penalty for the violation.

(3) The Town will not approve an after-the-fact variance unless an applicant has:

(a) Fully paid all administrative, civil, and criminal penalties imposed under Natural Resources Article, § 8-1808(c)(1)(iii)14-15 and (2)(i), Annotated Code of Maryland;

(b) Prepared a restoration or mitigation plan, approved by the local jurisdiction, to abate impacts to water quality or natural resources as a result of the violation; and

(c) Performed the abatement measures in the approved plan in accordance with this Chapter or posted a bond for the abatement measures pending the outcome of the variance request.

(4) If the Board of Appeals denies the requested after-the-fact variance, then the Town shall:

(a) Order removal or relocation of any structure; and

(b) Order restoration of the affected resources.

(5) Application for an after-the-fact variance constitutes a waiver of the right to appeal the terms of a notice of violation and its final adjudication, including the payment of any penalties and costs assessed.

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

(1) Adverse impacts resulting from the granting of the variance shall be mitigated as recommended by the appropriate local body or approving authority, but not less than by planting on the site per square foot of the variance granted at no less than a three-to-one basis.

(2) New or expanded structures or lot coverage shall be located at the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.

SECTION 7: If any section, subsection, sentence, clause, or phrase of this Ordinance is, for any reason, held to be unconstitutional, such decision shall not affect the validity of the remaining portions of this Ordinance. The Denton Town Council hereby declares that it would have passed this Ordinance and each section, subsection, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, and phrases be declared unconstitutional.

SECTION 8: In accordance with § C3-12 of the Town Charter, this ordinance and the rules, regulations, provisions, requirements, orders and matters established and adopted hereby shall take

effect and be in full force and effect seven (7) days from and after the date of its final passage and adoption, except that in accordance with Md. Code Ann., Land Use § 4-203(b)(3), this Ordinance shall not be effective until at least ten (10) days after a public hearing is held.

ENACTED THIS _____ DAY OF _____, 2026.

DENTON TOWN COUNCIL:

_____
Abigail McNinch, Mayor

_____
Dallas Lister, Councilperson

_____
Lester L. Branson, Councilperson

_____
Walter Keith Johnson, Councilperson

_____
Frank Taylor, Councilperson

ATTEST:

_____
Karen L. Monteith, Clerk-Treasurer

Approved for legal sufficiency this _____ day of _____, 2026.

_____
Lyndsey Ryan, Town Attorney

Date Introduced _____
Date Amendments Introduced _____
Date Passed _____
Effective Date _____

Text that is ~~stricken~~ reflects language omitted from the Town Code
Text in **bold and <u>underlined</u>** reflects additions to the Town Code