

3.6.3 Resource Conservation District

The Resource Conservation District (herein sometimes RCD) is intended to be applied to the areas within and along watercourses within the Town's planning jurisdiction in order to preserve the water quality of the Town's actual or potential water supply sources, to minimize danger to lives and properties from flooding in and near the watercourses to preserve the water-carrying capacity of the watercourses, and to protect them from erosion and sedimentation, to retain open spaces and greenways and to protect their environmentally-sensitive character, to preserve urban wildlife and plant life habitats from the intrusions of urbanization, to provide air and noise buffers to ameliorate the effects of development, and to preserve and maintain the aesthetic qualities and appearance of the Town.

(a) *Definitions and Rules of Interpretation*

In the interpretation and application of this Article, all provisions shall be: (a) considered as minimum requirements, (b) strictly construed in favor of the public interest and community benefit, and (c) deemed neither to limit nor repeal any other powers provided by Town ordinance or State statute. The following terms and phrases, among others, shall have specific meanings for purposes of this Section, and are defined in [Appendix A](#):

Ditch
Ephemeral Stream
Intermittent Stream
Land Disturbance
Modified Natural Stream
Obligate and Facultative Wetland Vegetation
Perennial Stream
Perennial Water Body
Stream
Stream Bank
Stream Channel
Stream Corridor

(b) *Establishment of Resource Conservation District*

The Resource Conservation District (RCD) is hereby established as a district that overlays other zoning districts established in [Article 3](#). The Resource Conservation District shall consist of:

- (1) Land within stream corridors as established in Section [3.6.3\(c\)](#), and
- (2) Land with vertical elevation at or below the Resource Conservation District elevation as established in Section [3.6.3\(d\)](#).

The Resource Conservation District does not apply to areas exempt from this Section as further described in subsection Section [3.6.3\(i\)](#), below.

(c) *Resource Conservation District Stream Corridors*

The corridors in [Table 3.6.3-1](#) are hereby established as part of the Resource Conservation District. These distances shall be measured as the horizontal, linear distance from the stream bank. There shall be three zones to stream corridors, with dimensions as shown in [Table 3.6.3-1](#).

Table 3.6.3-1: Definition of Stream Corridor Zones

Type of Stream or Water Body	Corridor Zone		
	Stream Side	Managed Use	Upland
Perennial Stream	50' from Stream Bank	50' from Stream Side Zone	50' from Managed Use Zone *
Intermittent Stream	50' from Stream Bank	None Required	None Required
Perennial Water Body	50' from Stream Bank	None Required	None Required

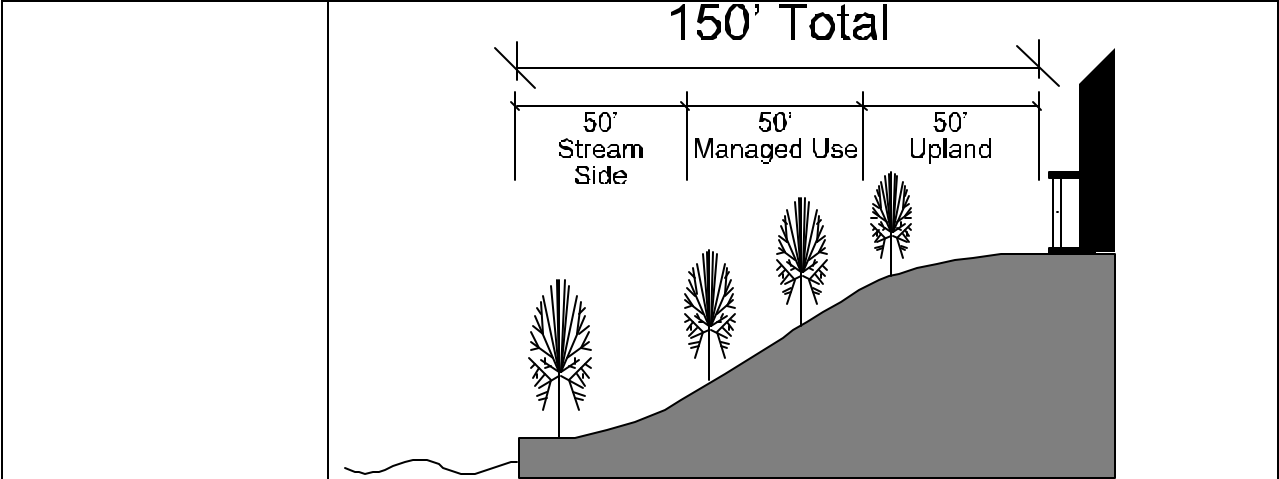
For purposes of Table 3.6.3-1, an asterisk (*) means “Or out to the point of Resource Conservation District Elevation, whichever is greater.”

The presence of an Ephemeral Stream as defined in [Appendix A](#) does not place the underlying and nearby land within the Resource Conservation District. Restrictions associated with Ephemeral Streams are contained in Section [5.4](#).

For single-family or two-family development on lots that were lawfully established prior to January 27, 2003 (or those lots identified on a Preliminary Plat approved by the Town Council prior to January 27, 2003), the Resource Conservation District Stream Corridor boundary shall be that as prescribed by the Chapel Hill Development Ordinance in effect prior the enactment of this Land Use Management Ordinance on January 27, 2003.

With respect to continuation or expansion of development existing as of January 27, 2003, the Resource Conservation District Stream Corridor boundary shall be that as prescribed by the Chapel Hill Development Ordinance in effect prior the enactment of this Land Use Management Ordinance on January 27, 2003. For new development other than single-family or two-family on an existing lot (created before January 27, 2003), the Resource Conservation District boundary shall be determined as described in this section.

A graphic illustration of Stream Corridor Zones follows:



Corridor Zone	Location and Required Width of Zone
<i>Stream Side</i>	<i>50' from Stream Bank</i>
<i>Managed Use</i>	<i>50' from outer edge of Stream Side zone</i>
<i>Upland</i>	<i>50' from Managed Use zone, or out to RCD Elevation, whichever is greater</i>
Total Corridor Area	150' minimum from each side of Stream Bank

(d) *Resource Conservation District Elevation*

A Resource Conservation District Elevation is hereby established and defined to be the elevation three (3) feet above the 100-year floodplain elevation. The 100-year floodplain elevation shall be established as:

- (1) The regulatory floodplain as delineated in the latest revision of the Flood Insurance Rate Maps, Flood Boundary Floodway Maps, and Flood Insurance Study for the Town of Chapel Hill, North Carolina, Orange, Durham, and Chatham Counties, as designated by the Associate Director of the Federal Emergency Management Agency; or
- (2) For flood areas shown on the Flood Insurance Rate Maps, Flood Boundary Floodway Maps, and Flood Insurance Study for The Town of Chapel Hill, North Carolina, Orange, Durham, and Chatham Counties as designated by the Associate Director of the Federal Emergency management Agency, but where the base flood elevations and flood hazard factors have not been determined, the 100-year floodplain plan elevation shall be calculated using engineering methodology compatible (as determined by the Town Manager) with that used to develop the Flood Insurance Rate Maps, Flood Boundary, Floodway Maps, and Flood Insurance Study; or
- (3) For development proposals near perennial streams in unmapped areas that involve more than 5 acres or more than 50 lots, the 100-year floodplain elevation shall be calculated using engineering methodology compatible (as determined by the Town Manager) with that used to develop the Flood Insurance Rate Maps, Flood Boundary, Floodway Maps, and Flood Insurance Study.

(e) *Permitted Uses and Activities in Resource Conservation District*

- (1) Provided they are permitted within the General Use District, and subject to the provisions of subsections (f), (g), and (h) of this Section, the uses permitted in Column (A) of [Table 3.6.3-2](#) shall be permitted uses within the Resource Conservation District. Such uses shall be restricted to the corridor zones indicated in Columns (B), (C), and/or (D) of [Table 3.6.3-2](#).
- (2) No land disturbance, other than for a use or activity expressly permitted in subsection (1) above, is permitted within the Resource Conservation District unless a variance is approved pursuant to subsection (j), below.

Table 3.6.3-2: Permitted Uses within Resource Conservation District

(A)	(B)	(C)	(D)
Use	Stream Side Zone	Managed Use Zone	Upland Zone
Trails, greenways, open space, parks, and other similar public recreational uses and private recreational uses (consistent with Section 5.5.2(b) of this Ordinance) that do not require the use of fertilizers, pesticides, or extensive use of fences, or walls	P	P	P
Outdoor horticulture, forestry, wildlife sanctuary, and other similar agricultural and related uses not enumerated elsewhere in this Table that do not require land-disturbing activities or use of pesticides, or extensive use fences or walls	P	P	P
Pastures or plant nurseries that do not require land-disturbing activities or use of pesticides, or extensive use fences or walls	N	P	P
Gardens, play areas and other similar uses which do not require the use of pesticides for routine maintenance	N	P	P
Lawns, golf course fairways, play fields and other areas which may require the use of fertilizers or pesticides	N	N	P
Archery ranges, picnic structures, playground equipment and other similar public and private recreational uses that do not require the use of fertilizers, pesticides, or extensive use fences or walls	N	P	P
Public utility and storm drainage facilities where there is a practical necessity to their location within the Resource Conservation District	P	P	P
Streets, bridges, and other similar transportation facilities where there is a practical necessity to their location within the Resource Conservation District	S	S	S
Sidewalks	P	P	P
Accessory land-disturbing activities ordinarily associated with a single-family or two-family dwelling, such as utility service lines, gardens, and similar uses	N	P	P
Public maintenance of streets, bridges, other similar transportation facilities and/or public utility and storm drainage facilities	P	P	P
Detention/retention basin and associated infrastructure	N	P	P
Lakes, ponds, and associated infrastructure, such as dams, spillways, riser pipes and stilling basins, that are located outside of the regulatory floodplain, shall be permitted with a Special Use Permit pursuant to Section 4.5 of this Chapter and only if a demonstrated public purpose is served	S	S	S
Stream and riparian area restoration and maintenance	P	P	P

“P” means the activity is permitted as of right, “N” means that the activity is prohibited; “S” means that the activity is permitted only upon approval of a Special Use Permit or a subdivision application by the Town Council; “V” means that the activity is permitted only with a variance granted by the Board of Adjustment.

(f) Dimensional Regulations

- (1) In lieu of the dimensional regulations generally applicable to the General Use District, the following standards shall apply to the Resource Conservation District, for all uses except public greenways and necessary public utilities:

Table 3.6.3-3: Dimensional Regulations in RCD

(A)	(B)	(C)	(D)
Dimensional Requirement	Stream Side Zone	Managed Use Zone	Upland Zone
Floor Area Ratio	.01	.019	Same as underlying zoning district
Impervious Surface Ratio (unsewered areas)	.06	.12	.12
Impervious Surface Ratio (sewered areas)	.10	.20	.20
Disturbed Area Ratio	.20	.40	.40

Application of these regulations shall be established in Section [3.6.3\(h\)](#), below.

(g) Standards for Development in Resource Conservation District

The following standards and criteria shall apply to any portion of a development or, as appropriate, to any land disturbance, within the Resource Conservation District:

- (1) The lowest floor elevation of all permanent structures shall be placed at least eighteen (18) inches above the Resource Conservation District elevation and in such a manner as not to adversely impede the flow of waters. (This clause refers to floors of buildings. It does not refer to bridges or roads.)
- (2) Wherever practicable no stormwater discharge shall be allowed directly off an impervious surface into a stream channel.
- (3) Safe and convenient access, such as streets and driveways shall be provided to any development at or above the Resource Conservation District elevation unless otherwise authorized by the Town Manager. Utility lines, roads and driveways shall be located, as much as practicable, parallel to the flow of waters. Where a road, driveway, or utility line necessarily must cross a watercourse, such crossing shall be located and designed so as to allow convenient access by wildlife through and beyond such crossing, and shall be designed to safely convey floodwaters to the same extent as before construction of said crossings.

- A. Streets and bridges shall be spaced at an average interval of at least 400 feet within the proposed development, and not closer than 200 feet from streets on contiguous property. This distance shall be measured from the edge of the paved surface.
 - B. Shared driveways shall be permitted and encouraged within the Managed Use and Upland Areas of the RCD in order to minimize impervious surface coverages.
- (4) The site plan shall be designed to minimize adverse environmental and flooding effects on the Resource Conservation District and to achieve the purposes of this Chapter. Permanent structures shall be located, to the maximum extent feasible, as far from the watercourse, and as close to the outer boundary of the Resource Conservation District, as is practical. Permanent structures shall be clustered as much as practical, to minimize land disturbance, to maximize undeveloped open space, and to maximize retention of natural vegetation and buffers. Integrated Management Practices, as described in Section [5.4](#), shall accompany all development within the Resource Conservation District.
- (5) Water supply, sanitary sewer, and on-site waste disposal systems shall be designed to:
- A. prevent the infiltration of flood waters into the system(s),
 - B. prevent discharges from the system(s) into flood waters and,
 - C. avoid impairment during flooding to minimize flood damage. Finished floor elevations to be served by sanitary sewer shall be at or above the rim elevation of the nearest upstream manhole cover or be otherwise approved by the Town Manager. Sanitary sewer manholes must be provided with locking, watertight manhole covers, or be elevated to a height sufficient to prevent submersion or infiltration by floodwaters. All sewer and sewer outfall lines shall use gravity flow to a point outside the Resource Conservation District or be otherwise approved by the Town Manager and the Orange Water and Sewer Authority (OWASA).
- (6) Electrical, heating, ventilation, plumbing, gas, air-conditioning, and other service/utility facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding during the base flood discharge.
- (7) To the maximum extent feasible, all utility and service facilities shall be installed, constructed and otherwise protected so as to remain operational should floodwaters reach the Resource Conservation District elevation.

- (8) Land disturbing activity shall be kept to the minimum feasible. The smallest practicable area of land shall be exposed at any one time during development. Such minimal area shall be kept exposed as short a duration of time as is practical. Temporary vegetation or mulching shall be used as needed to protect exposed areas. Natural plant covering and vegetation shall be retained and protected to the maximum degree practical when developing the site, as shall natural features and terrain. Disturbed areas shall be replanted with native trees, shrubs and ground cover.
- (9) Cutting or filling shall be permitted within the watercourse only if the resulting change to the hydraulic characteristics of the watercourse will:
- A. Reduce or maintain the water surface elevation during the base flood discharge in the vicinity of the development; provided however, that in no case will cutting or filling be permitted within the watercourse if greater than a one foot per second increase in the velocity would result; or
 - B. Reduce or maintain the velocity of flow during the base flood discharge in the vicinity of the development; provided however, that in no case will cutting or filling be permitted within the watercourse if greater than 1/2 foot rise in the base flood elevation would result.
- (10) All new construction and/or substantial improvements (including the placement of prefabricated buildings and manufactured homes) shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure.
- (11) All manufactured homes permitted to be placed within Resource Conservation District shall be anchored to resist flotation, collapse, or lateral movement by meeting the minimum requirements of the North Carolina Building Code (latest revision).
- (12) Any manufactured home, new manufactured home park or new manufactured home subdivision permitted to be placed within the Resource Conservation District shall:
- A. have stands or lots elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at least 18 inches above the Resource Conservation District Elevation;
 - B. have adequate surface drainage;
 - C. provide access for haulers;
 - D. have lots large enough to permit steps when the mobile home is placed on pilings; and

- E. have pilings placed in stable soils no more than ten (10) feet apart, and reinforcement shall be provided for pilings more than six feet above ground level.
- (13) Development shall not be permitted if it results in any increased regulatory floodway elevation, during base flood discharge, as certified by a registered professional engineer.
- (14) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria:
 - A. A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided.
 - B. The bottom of all openings shall be no higher than one foot above grade.
 - C. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

(h) *Procedures in Resource Conservation District*

(1) Other Approvals Required

No permit or approval required to be issued by the Town under the provisions of this Article shall be valid until all other permits or variances for the same proposal required by any other ordinance of the Town or statute of the State of North Carolina or the United States have been received from those agencies from which such permits or variances are required.

(2) Records and Filings

- A. The Town Manager shall maintain records of all development permits, approvals, certification of as-built finish floor elevation(s), certification of flood proofing measures, or variances regarding development within the Resource Conservation District. Such records shall include all actions on applications for such permits, approvals, or variances, as well as any conditions attached thereto. A Letter of Map Revision (LOMR) must be approved by the Federal Emergency Management Agency, or its successor agency, prior to variance approval by the Town. The Town Manager shall

report variances granted for the relocation or alteration of riverine watercourses to adjacent communities, the N.C. Department of Crime Control, or its successor agency, and Public Safety and the Federal Emergency Management Agency, or its successor agency. Such report shall contain assurance that the relocation or alteration maintains the watercourse's flood carrying capacity.

- B. The Town Manager shall notify any applicant in writing of the decision on any application for any permit, approval, or variance with respect to property within the Resource Conservation District and shall file a copy of it with the Town's Planning Department.

The applicant shall record any variance with the Orange County Register of Deeds within sixty (60) days after written notice of approval of such variance by the Board of Adjustment.

(3) Exemptions

When a landowner or other affected party believes that the Town's Geographic Information System (GIS) coverages inaccurately depict surface waters, he or she shall consult the Town Manager. Upon request, the Town Manager shall make an on-site determination. When considering affirmative exemption requests, the Town Manager shall examine the particular parcel of land, existing information related to the parcel or the area, and other relevant information. Requests for affirmative exemption shall be in writing and shall include an explanation of the request. Any disputes over on-site determinations shall be referred to the Town Manager in writing. A determination of the Town Manager as to the accuracy or application of the Town's GIS data is subject to appeal as provided in Section [4.10](#). Surface waters shall not be subject to this Section if an on-site determination shows that they fall into one of the following categories:

- A. Ditches and manmade conveyances, such as gutters, other than modified natural streams.
- B. Man-made ponds and lakes located outside natural drainage ways.
- C. Ephemeral streams.

(4) Requirements for Development Applications

Every application which proposes development or land-disturbing activities wholly or partially within the Resource Conservation District shall include the following, unless affirmatively exempted by the Town Manager in part or entirely, for the whole area covered by the application:

- A. a utilities plan;
- B. a grading plan showing existing and final contours;
- C. a sedimentation and erosion control plan;
- D. a storm water management plan;
- E. a soils analysis;
- F. plans view showing: the topography of the site at a minimum horizontal scale of 1:60, at two-foot contour intervals; the location of streams, watercourses, stormwater runoff channels, etc; the limits of the floodway and floodplain; existing or proposed storm and sanitary sewers and sewer outfalls; septic tank systems and outlets, if any; existing and proposed structures and development; the 100-year flood and RCD elevations and limits; and existing and proposed tree lines;
- G. profile view showing: at a minimum horizontal scale of 1:60, and minimum vertical scale of 1:10, the elevations of the watercourses bed; waterway openings of existing and proposed culverts and bridges within or near the site; size and elevation of existing or proposed sewer and drain outlets; the 100-year water surface elevations and limits; and the elevation of the Resource Conservation District;
- H. a description of existing vegetation, including significant trees and shrubs; and a landscape plan for the completed development;
- I. a description of wildlife habitats, noting the types of habitat on site and their potential as habitats for various species of wild life and identifying any relevant limiting factors;
- J. description of proposed storage of materials and of waste disposal facilities;
- K. certificate from a registered professional engineer or architect with respect to floodproofing, or from a registered professional engineer or surveyor with respect to elevation, that any floodproofing measures on nonresidential uses or finished elevations meet the requirements of this Article;
- L. copies of notifications to and responses by adjacent communities, the North Carolina Department of Crime Control, or its successor agency, and Public Safety, and the Federal Emergency Management Agency, or its successor agency, regarding any proposed alteration or relocation of a riverine watercourse;

- M. the increase in elevation of the 100-year flood upstream from the development, velocity changes and rate of rise changes, runoff, water quality change, sediment deposit rate changes, and the duration of the flood. The Town Manager shall approve the methodology used to determine the changes;
- N. a list of owners of properties located within 500 feet of the subject property boundaries with the full name and address of each property owner, with stamped, pre-addressed mailing envelopes for each owner on the mailing list.

(i) ***Development in the Resource Conservation District***

- (1) Development in Resource Conservation District after January 27, 2003.

Development and land-disturbing activities within the RCD are prohibited after the effective date (January 27, 2003) of this Section unless exempted by this Section, or permitted by subsection (e) of this Section, or allowed pursuant to a variance authorized by this Section and approved by the Board of Adjustment.

- (2) Application of Resource Conservation District Ordinance to Use of Lawfully Established Development Existing on January 27, 2003 (or for which a vested right has been established) Outside of the Regulatory Floodplain.

Section [3.6.5](#) shall not apply to the continued use, operation or maintenance of any lawfully established development (outside of the regulatory floodplain) existing, or for which construction had substantially begun, on or before January 27, 2003 (or for which a vested right had been established). With respect to the requirements of Section [3.6.5](#), such development shall not be considered as nonconforming within the meaning of [Article 7](#) of this Chapter.

- (3) Exemptions for Expansion, Reconstruction, Rehabilitation, Renovation or Expansion of Development Existing on January 27, 2003 (or for which a vested right had been established) Outside of the Regulatory Floodplain.

- A. This Article shall not apply to expansion, use, operation, maintenance, reconstruction, rehabilitation, or renovation of any lawfully established development (outside of the regulatory floodplain) existing, or for which construction had substantially begun, on or before January 27, 2003 (or for which a vested right had been established). With respect to the requirements of this Article, such development shall not be considered as nonconforming within the meaning of [Article 7](#) of this Chapter.

- B. Within the part of the Resource Conservation District that is outside of the regulatory floodplain, expansion of development is allowed only under the following circumstances:

1. With respect to the requirements of Section [3.6.5](#), any single-family or two-family dwelling or single dwelling unit within a townhouse development may be expanded. With respect to the requirements of Section [3.6.5](#), the dwelling or dwelling unit as expanded pursuant to this subsection shall not be considered as nonconforming within the meaning of [Article 7](#);
 2. With respect to the requirements of Section [3.6.5](#), development, other than single-family or two-family dwellings or single dwelling units within a townhouse development, development on any single zoning lot may be expanded to the extent of ten percent (10%) or less of its footprint as it existed on January 27, 2003; however, this exemption shall not apply in cases where a development has been expanded one or more times since January 27, 2003, and where the past and proposed expansions, considered together, would increase the development's footprint by a total of more than ten percent (10%) of its footprint as it existed on January 27, 2003. With respect to the requirements of Section [3.6.5](#), such development as expanded pursuant to this subsection shall not be considered as nonconforming within the meaning of [Article 7](#).
- (4) Application of the Resource Conservation District to the Reconstruction, Rehabilitation Renovation, or Expansion of Development Existing Within the Regulatory Floodplain and Floodway.
- A. Within the regulatory floodplain, the reconstruction, rehabilitation, or renovation of a development existing, or for which construction had substantially begun, on or before March 19, 1984, is prohibited unless the reconstruction, rehabilitation, or renovation complies with the requirements of the Federal Emergency Management Agency, or its successor agency, in place at the time of reconstruction, rehabilitation, or renovation.
 - B. Within the regulatory floodplain, the **expansion** of a development existing, or for which construction had substantially begun, on or before March 19, 1984, is prohibited unless:
 - (1.) the expansion is permitted by subsection (e) and meets the design standards of subsection (g) of this Section; or
 - (2.) the expansion is permitted by a variance authorized by this Article and approved by the Board of Adjustment.

(j) *Variances in the Resource Conservation District*

(1) Application

An owner of property who alleges that the provisions of the Resource Conservation District leave no legally reasonable use of the property may apply to the Board of Adjustment for a variance. An application for a variance shall be filed with the Town Manager in accord with the provisions of Section [4.12](#) of this Chapter. In addition to the materials required by that subsection, the application must also comply with the submittal requirements of subsection (h) of this Section. On receipt of a complete application, the Town Manager shall cause an analysis to be made by appropriate Town staff based on the findings required in subsection (2), below. Within a reasonable period of time, the Town Manager shall submit the application and a report of his or her analysis to the Board of Adjustment.

(2) Required Findings

A. The review of the Board of Adjustment shall extend to the entire zoning lot that includes area within the Resource Conservation District. The Board of Adjustment shall grant a variance, subject to the protections of this Article, if it finds:

(1.) That the provisions of this Article leave an owner no legally reasonable use of the portion of the zoning lot outside of the regulatory floodplain; and

(2.) That a failure to grant the variance would result in extreme hardship.

B. In making such findings, the Board of Adjustment shall consider the uses available to the owner of the entire zoning lot that includes area within the Resource Conservation District.

(3) The Board of Adjustment shall grant the minimum variance necessary to afford appropriate relief under this Section. The Board may attach such reasonable conditions to the grant of a variance as it deems necessary to achieve the purposes of this Article.

(4) The Board of Adjustment shall not grant any variance if it finds that such a variance would:

A. result in any increased regulatory floodway water surface elevation during the base flood discharge as certified by a registered professional engineer; or

- B. result in significantly increased velocity of flow or deposit of sediment; or
- C. result in significantly increased erosion, significant additional threats to public safety; or
- D. result in significant threats to water quality; or
- E. result in the removal of significant wildlife habitat; or
- F. result in extraordinary public expense; or
- G. result in public nuisance; or
- H. impede the provision of greenway paths called for by the Town's Greenway Plan; or
- I. conflict with the provisions of any other law or ordinance.

(5) The Board of Adjustment may refuse to grant any variance if it finds that the owner of a lot, or any predecessor in interest, has subdivided such lot or has otherwise acted in an attempt to avoid or evade the provisions or intent of the Resource Conservation District.

(6) Burden of Proof

Any owner of property applying to the Board of Adjustment for a variance from the provisions of this Article shall have the burden of establishing that such variance should be granted by the Board.

(7) Presumption

Notwithstanding subsection (5), above, a showing that the portion of the Resource Conservation District outside of a regulatory floodplain overlays more than seventy-five percent (75%) of the area of a zoning lot, shall establish a rebuttable presumption that the Resource Conservation District leaves the owner no legally reasonable use of the zoning lot outside of the regulatory floodplain. Such presumption may be rebutted by substantial evidence before the Board of Adjustment.

(8) Referral

The Board of Adjustment, before taking final action on an application for a variance, may refer such application to Town advisory boards or commissions.

(9) Review Criteria

In reviewing applications for variances pursuant to this Article, the Board of Adjustment shall consider all technical evaluations, all relevant factors, other provisions of statute or ordinance, and:

- A. the danger to life and property due to flooding, sedimentation, and/or erosion damage at the site;
- B. the danger that structures or materials may be swept onto other lands to the injury of others;
- C. the danger to life and property from flood waters backed up or diverted by any obstruction or by debris collected by the obstruction;
- D. the susceptibility of the proposed development and its contents to flood damage and the effect of such damage on the individual owner;
- E. the importance of the services provided by the proposed development to the community;
- F. the necessity to the facility of a waterfront or low-lying location, where applicable;
- G. the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- H. the compatibility of the proposed use with existing and anticipated development within the vicinity;
- I. the relationship of the proposed use to the comprehensive plan and the stormwater management program for that area;
- J. the safety of access to the property in times of flood for ordinary and emergency vehicles;
- K. the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
- L. the effects of the proposed development on the heights, velocity, duration, and rate of rise of the flood waters upstream and downstream of the proposed site;

- M. the costs of maintaining or restoring public services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;
- N. the susceptibility of water supply and sanitation systems to contamination and unsanitary conditions during and after floods;
- O. the danger that issuance of the variance will set a precedent for future development in the Resource Conservation District which cumulatively may increase the flood hazard;
- P. the impact of the proposed use on the Town's open spaces and Greenway System;
- Q. the effect to water quality of the Town's actual or potential water supply sources;
- R. the effect on urban wildlife and plant life habitats;
- S. the effect on air and noise buffers which ameliorate the effects of development; and
- T. the degree to which drainage and flooding conditions in the vicinity would be improved by the proposed development.

(k) Transfer of Development Rights

The Resource Conservation District is hereby designated as a sending area for purposes of transferring development rights (see Section [3.9.2](#), below). Applicants are encouraged to attempt to transfer development rights within a Resource Conservation District before requesting a variance pursuant to subsection (j).

(l) Warning and Disclaimer of Liability

With respect to flood hazard, the degree of protection required by this Section is considered reasonable for regulatory purposes. Larger floods than anticipated or protected against herein will occur on occasion. This Section does not imply that land outside the Resource Conservation District or uses or variances permitted or allowed within such district will be free from flooding or flood damages. This Section shall not create any liability on the part of the Town, or any officer or employee thereof, for any flood damages that result from reliance on this Section or any administrative decision or process lawfully made thereunder.