

## ***ARTICLE 10. BOARD OF APPEALS***

### **1000      Establishment of Board**

To provide for the competent interpretation and the full and equitable achievement of the purposes of this Ordinance, there is hereby established a Board of Appeals.

### **1001      Membership. Terms of Office**

The Board shall consist of three members. The terms of office of the members shall be three years. Members shall be appointed by the Mayor, confirmed by the Town Council, and removable for cause upon written charges and after public hearing. The Mayor shall designate one alternate member to sit on the Board in the absence of any member of the Board.

### **1002      Procedures, Meetings, Records and Decisions**

- A.      Procedures The Board shall elect a chairman from its membership, shall appoint a secretary, and shall prescribe rules in accordance with the provisions of this Ordinance and any applicable laws of Maryland for the conduct of its affairs.
- B.      Meetings Meetings of the Board shall be held at the call of the chairman and at such other times as the Board may determine. The chairman, or in his absence, the acting chairman, may administer oaths and compel the attendance of witnesses. All meeting of the Board shall be open to the public. Two members present shall constitute a quorum.
- C.      The Board shall keep minutes of its proceedings, showing the vote of each member upon each question, or, if a member is absent or fails to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the Zoning Administrator and shall be a public record. All actions or decisions of the Board shall be taken by resolution in which two members, present during the proceedings, must concur. Each resolution shall contain or be appended to a statement of grounds and any findings forming the basis of such action or decision.

### **1003      Who May Appeal to the Board**

Appeals to the Board may be taken by any person aggrieved by, or by any officer, department, board or bureau of the Town affected by, any decision of the Zoning Administrator. Nothing in this Section should be construed as contravening the provisions set forth in Article 9, Section 900, designating the Zoning Administrator as an agent of the Town Government, and placing him under the direction of the Mayor and Town Council.

**1004**      **Powers and Duties-Interpretation**

Upon appeal from a decision by the Zoning Administrator, the Board shall decide any question:

- A      Where it is alleged there is error in any order, requirement, decision or determination, including any order requiring an alleged violation to stop, cease, and desist, made by the Zoning Administrator in the enforcement of this Ordinance, or
- B.      Involving the interpretation of any provisions of this Ordinance, including determination of the exact location of any district boundary if there is uncertainty with respect thereto.

**1005**      **Powers and Duties-Variances**

- A.      Upon appeal from a decision by the Zoning Administrator and accompanied by a request for a variance, the Board shall have the power to vary or adapt the strict application of any of the requirements of this Ordinance in the case of exceptionally irregular, narrow, shallow or steep lots, or other exceptional physical conditions whereby such strict application would result in practical difficulty and unnecessary hardship depriving the owner of the reasonable use of the land or building involved, but in no other case.
- B.      In general, the power to authorize a variance from the terms of this Ordinance shall be sparingly exercised and only under peculiar and exceptional circumstances.
- C.      No variance in the strict application of the provisions of this Ordinance shall be granted by the Board unless the Board finds that the following requirements and standards are satisfied.

The appellant must show that the variance will not be contrary to the public interest and that practical difficulty and unnecessary hardship will result if is not granted. In particular, the appellant shall establish and substantiate his appeal to show that the variance is in conformance with the requirements and standards listed below:

1. That the granting of the variance shall be in harmony with the general purpose and intent of this Ordinance, and shall not be injurious to the neighborhood or otherwise detrimental to the public welfare.
2. That the granting of the variance will not permit the establishment within a District of any use which is not permitted in that District.

3. That special circumstances or conditions, fully described in the findings, apply to the land or buildings for which the variance is sought, which circumstances or conditions are such that strict application of the provisions of this Ordinance would deprive the applicant of the reasonable use of such land or building or create unnecessary hardship. If the hardship is general, that is, shared generally by land or buildings in the neighborhood, relief shall be properly obtained only by legislative action or by court review of any attack on the validity of the Ordinance.
  4. That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose. It is not sufficient proof of hardship to show that greater profit would result if the variance were awarded. Furthermore, hardship complained of cannot be self-created; it cannot be claimed by one who purchases with or without the knowledge of restrictions; it must result from the application of the Ordinance, it must be suffered directly by the property in question; and evidence of variance granted under similar circumstances shall not be considered.
- D. The Board may prescribe any safeguard that it deems appropriate or necessary to secure substantially the objectives of the regulations or provisions to which the variance applies. Any conditions set by the Board under the provisions hereof, shall be conditions precedent, and the variance granted by this Section shall not become effective until such conditions are carried out in full. In the event that the conditions are not fully carried out, and/or kept and maintained as required, no action can be taken on the property based on the variance granted, and the nonconforming status of the property, if any, shall be forfeited, and thereafter the property shall be treated as any other property.
- E. Persons with Disabilities After having received a complete written application, the Board may grant a variance allowing modifications to specific requirements of this Ordinance that the applicant proves to the satisfaction of the Board are necessary to provide a "reasonable accommodation" under the Americans With Disabilities Act and/or the Federal Fair Housing Act and/or applicable State law, as amended, to serve persons whom the applicant proves have "disabilities" as defined in and protected by such laws.

**Powers and Duties-Changing of One Nonconforming Use to Another Non-Conforming Use**

- A. Upon appeal from the decision of the Zoning Administrator, that a person is or would be in violation of this Zoning Ordinance, by changing one nonconforming use to another nonconforming use, the Board shall have the power to approve the change, but only under the following conditions and circumstances.
- B. The Board shall not entertain a request to change a nonconforming use designated by the letters "SE", in Section 405, Article 4, Table of Use Regulations, to a use which is designated by the letter "N", in Section 405 thereof.
- C. The Board shall grant the change, only if the applicant shows to the satisfaction of the Board that the proposed new use will be no more objectionable in external effects than the existing nonconforming use in regards to the various criteria set forth in subsection 1006-D hereof.
- D. Before granting the requested change, the Board must be satisfied that the proposed new use will be no more objectionable with regard to the following specific criteria:
  - 1. Traffic generation and congestion, including truck, passenger car, and pedestrian traffic.
  - 2. Noise, smoke, dust, fumes, vapors, gases, heat, odors, glare or vibration.
  - 3. Storage and waste disposal.
  - 4. Appearance.
  - 5. Compatibility with the neighborhood.
- E. The criteria set forth in subsection 1006-D hereof are designated minimal requirements only. A showing that each of these specific requirements has been met, does not entitle an applicant to approval by the Board for changing one nonconforming use to another nonconforming use.

- F. In granting the proposed change, the Board may impose whatever conditions it deems necessary and appropriate to make the continued new nonconforming use as compatible as possible with the rest of the neighborhood in which it is located, including alterations to the exterior of any building, changes in any traffic flow, or parking, upon the property, the construction of screening, fencing, planting of shrubbery, and any other such conditions. Any conditions set by the Board under the provisions hereof, shall be conditions precedent, and the change granted under this Section shall not become effective until such conditions are carried out. In the event that the conditions are not fully carried out and/or kept and maintained, and the change has been made, the nonconforming status of the property, if any, shall be forfeited, and thereafter the property shall be treated as any other property.

**1007 Powers and Duties-Special Exceptions**

- A. The Board shall have the power to approve Special Exceptions for any of the uses for which this Ordinance requires obtaining of such Exceptions and for no other use or purpose. The Board shall not grant a Special Exception except in conformance with the conditions and standards of this Ordinance.
- B. In granting a Special Exception, the Board shall make findings of fact consistent with the provisions of this Ordinance. The Board shall grant a Special Exception only if it finds adequate evidence that any proposed use submitted for a Special Exception will meet all of the following general requirements as well as any specific requirements and standards listed for the proposed use. The Board shall, among other things, require that any proposed use and location be:
1. In accord with the Town's Comprehensive Development Plan and consistent with the spirit, purposes, and intent of this Ordinance.
  2. Suitable for the property in question, and designed to be in harmony with and appropriate in appearance with the existing or intended character of the general vicinity.
  3. Suitable in terms of effect on street traffic, present and future transportation patterns, and safety with adequate access arrangements to protect streets from undue congestion and hazard.
  4. Population changes.
  5. Availability of public facilities.
  6. Recommendation of the Planning Commission.

- C. In granting the proposed Special Exception, the Board may impose whatever conditions it regards as necessary and appropriate to make the Special Exception as compatible as possible with the rest of the neighborhood in which it is located, and to insure that any proposed developments will secure substantially the objectives of this Ordinance, including alterations to the exterior of any building, changes in traffic flow, or parking, upon the property, the construction of screening, fencing, planting of shrubbery, and any other such conditions. Any conditions set by the Board, under the provisions hereof, shall be conditions precedent, and the Special Exception granted hereunder shall not become effective until such conditions are fully carried out and/or kept and maintained, and any such Special Exception shall be void and any development carried out pursuant thereto shall be illegal insofar as it is not in strict compliance with the provisions of this Ordinance.

**1008 Rules for Filing Appeals and Applications**

- A. General Rules
  - 1. Any appeal shall be made by filing the same with the Zoning Administrator within thirty days after the date of the Zoning Administrator's decision.
  - 2. All appeals and applications made to the Board shall be in writing on standard forms prescribed by the Board.
  - 3. All appeals and applications shall list names and addresses of all adjoining owners including those across the streets from the subject property.
  - 4. All appeals and applications shall refer to the specific provisions of the Ordinance involved.
- B. Appeals concerning the interpretation of any provisions of this Ordinance shall exactly set forth the interpretation that is claimed.
- C. Appeals for variance from the strict application of this Ordinance shall include a copy of the zoning permit application denied by the Zoning Administrator, if any, together with a statement with any supporting data regarding the applicable requirements in Sections 1005 and 1006 or any other applicable requirements.
- D. Applications for Special Exceptions shall include a zoning permit application with all information required therein and a statement with any supporting data regarding the merits of the proposed use at the proposed location and how the proposal complies with the general and specific requirements of this Ordinance.

**1009**      **Notice of Hearings**

Upon transmittal to the Board of an application filed with the Zoning Administrator for a Special Exception, variance or appeal from alleged error of the Zoning Administrator, the Board shall fix a reasonable time (not less than fifteen days nor more than forty-five days from the transmittal date) for a public hearing thereon and give notice as follows:

- A.      Publish a notice containing the name of the applicant or appellant; the date, time, and place fixed for the hearing; and a brief statement of the Special Exception sought by the applicant, or the error alleged by the appellant, or of the variance or other question which is subject to appeal, in at least one newspaper of general circulation within the Town, once each week for two successive weeks, with the first such publication of Notice appearing at least fourteen (14) days prior to the hearing.
- B.      Post in a conspicuous place on the property involved, a notice of pending action containing the same information as in subsection 1009-A above, such posting to take place at least fifteen days prior to the date fixed for the public hearing.
- C.      Give the written notice of the time and place of such hearing sent by certified mail to the applicant or appellant and to the owners of record of property contiguous to or opposite the property affected.

**1010**      **Review by the Planning Commission on Applications for the Special Exceptions, Variances and Interpretations**

- A.      The Zoning Administrator shall submit to the Board an advisory opinion from the Planning Commission on any application for a Special Exception and the Board shall consider such advisory opinion prior to making a decision on an application.
- B.      The Board may also request an advisory opinion from the Planning Commission on any application for a variance, interpretation, appeal or any other matter upon which the Board is or may be required to act.

**1011**      **Decisions by the Board-General Considerations**

- A.      Decisions by the Board shall be rendered within fifteen working days of the hearing on said variance, application, exception, interpretation or appeal, unless a later date is mutually agreed upon by the Board and applicant.
- B.      In exercising its powers concerning interpretation appeals, the Board may, in

conformity with law and the provisions of this Ordinance, reverse or affirm, wholly or in part, or may modify the order, requirement, decision or determination appealed from and make such order, requirement, decision, or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

- C. In making its decisions pursuant to the authority conferred by this Ordinance, the Board shall study the specific property involved, as well as the neighborhood, and consider all testimony for and against the issuance of the permit. The application for a permit shall not be approved where the Board finds the proposed building, addition, extension of building or use, sign, use or chance of use would adversely affect the public health, safety, security, morals, or general welfare, or would result in dangerous traffic conditions, or would jeopardize the lives or property of people living in the neighborhood. In deciding such matters, the Board may give consideration, among other things, to the following:
1. The orderly growth of the community, as expressed in the Comprehensive Development Plan or otherwise.
  2. The number of people residing or working in the immediate area concerned.
  3. Traffic conditions and facilities.
  4. The effect of such use upon the peaceful enjoyment of their homes and property by surrounding property owners and residents.
  5. The conservation of property values.
  6. The effect of odors, dust, gases, smoke, fumes, vibrations, glare and noise upon the surrounding property values.
  7. The most appropriate use of land and structure.
  8. Decision of the courts.
  9. The purpose of these regulations as set forth herein.
  10. Type and kind of structures in the vicinity where public gatherings may be held, such as schools, churches and the like.

**1012**      **Enforcement**

In any case where the Board of Appeals has set conditions precedent upon the granting of a variance, Special Exception, permission to change one nonconforming use to another nonconforming use, permission for the continuation of a nonconforming use, such conditions precedent shall be fully fulfilled and executed prior to the grant of the Board of Appeals becoming effective. In the event that such conditions precedent set by the Board are not carried out in full, the grant, permission, Special Exception, or other action taken by the Board shall not be effective, and the property or structure shall be treated as if the Board's action had never been taken. In the event that the conditions precedent are not carried out within a period of three months from the date of grant, the Board shall have the authority through the Town's attorney and Zoning Administrator, to enforce the Town's Zoning Ordinance as against the structure or property as if the Board had never taken action.

**1013**      **Time Limitations on Board Appeals**

A decision of the Board permitting the erection or alteration of a building shall be valid for a period of one year, unless a zoning permit for such erection or alteration is obtained within said period and the erection or alteration proceeds to completion in accordance with the terms of the decision. No decision of the Board permitting further uses of a building or land shall be valid for a period longer than one year, unless such use is established within said period; except that, where such use is dependent upon the erection or alteration of a building, such order shall continue in force and effect if a zoning permit for such erection or alteration is obtained within said period, and such erection or alteration proceeds to completion in accordance with the terms of the decision.

**1014**      **Time Limits on Re-Submitting Appeals**

If an application is disapproved, thereafter the Board shall not receive or act upon the same application or another application for substantially the same proposal on the same premises until after twelve months from the date of said disapproval.

**1015**      **Appeal to Court**

Any person or persons, jointly or severally, aggrieved by any decision of the Board, or any taxpayer of the Town or any officer, department, board or bureau of the Town may appeal the same to the Circuit Court for Garrett County.

**1016**      **Abandonment of Special Exceptions**

If any Special Exception granted by the Board under the provisions of this Article is substantially abandoned, or in any case, if the use represented by such a Special Exception is discontinued for a period of more than one year, the Special Exception granted by the Board under the provisions of this Article shall become null and void, and thereafter the property shall revert to its former zoning status. Thereafter, said Special Exception shall not be re-instituted, nor the use thereunder resumed, unless a new Special Exception is granted by the Board under the provisions of this Article.

**1017**      **Failure to Keep or Maintain Conditions Precedent**

If any variance, change from one nonconforming use to another nonconforming use, continuation of a nonconforming use or Special Exception granted by the Board under the provisions of this Article is granted subject to conditions precedent, the conditions precedent must be carried out in full in accordance with the terms hereof, and must thereafter be kept and maintained for as long as the variance, change from one nonconforming use to another nonconforming use, continuation of a nonconforming use or Special Exception is in effect. In the event that any such condition precedent is not kept or maintained, is allowed to lapse, or fall into disrepair, the variance, change from one nonconforming use to another nonconforming use, continuation of a nonconforming use or Special Exception granted by the Board under the provisions of this Article shall become null and void, and thereafter the property shall revert to its former zoning status. Thereafter, the said variance, change from one nonconforming use to another nonconforming use, continuation of a nonconforming use or Special Exception shall not be re-instituted, nor the use thereunder resumed, unless a new Special Exception is granted by the Board under the provisions of this Article.