

ARTICLE 9. ADMINISTRATIVE MECHANISMS**PART I: PLANNING COMMISSION; BOARD OF APPEALS**Section 9-1. Appointment and Terms of Planning Commission Members

1. There shall be a Planning Commission consisting of five or seven (7) members, all of whom shall be residents of the Town of North East and qualified by knowledge and experience in matters pertaining to the development of the Town. All five or seven (7) members shall be appointed by the Mayor and Commissioners. Members shall be appointed for a term of 5 years or until their successors are appointed and qualified. The respective terms of the members shall be on a staggered basis. Vacancies shall be filled by appointment by the Mayor and Commissioners for the unexpired term only. Members of the Planning Commission shall serve without compensation. A member of the Planning Commission may be removed for inefficiency, neglect of duty, or malfeasance in office after a public hearing before the Mayor and Commissioners. The Mayor and Commissioners shall file a written statement of reasons for the removal of any member of the Planning Commission.
2. One member of the Commissioners shall also be an ex-officio voting member of the Planning Commission and shall be selected by the Mayor and Commissioners. The term of this member shall correspond to his or her term as a member of the Commissioners. The term on the Planning Commission of the member of the Commissioners shall cease whenever their official term as a member of the Commissioners terminates.

Section 9-2. Meetings of the Planning Commission

1. The Planning Commission shall establish a regular meeting schedule and shall meet frequently enough so that it can take action on all complete applications in an expeditious manner. The Planning Commission shall hold meetings quarterly or more often as the Planning Commission's duties require. If there is no business before the Planning Commission, the Chairman may cancel the meeting. (AMENDED PER ORDINANCE 2010-09-02)
2. The Planning Commission need not conduct its meetings strictly in accordance with quasi-judicial procedures but shall conduct its meetings so as to obtain necessary information and to promote the full and free exchange of ideas.
3. Minutes shall be kept of all Planning Commission proceedings and shall be open to the public.
4. All Planning Commission meetings shall be open to the public and whenever feasible, the tentative agenda for each meeting shall be made available in advance of the meeting.

5. Whenever the Planning Commission is called upon to make recommendations on any proposal requiring a public hearing, the Town Administrator shall post on or near the subject property one or more notices that are sufficiently conspicuous in terms of size, location and content to provide reasonably adequate notice to potentially interested persons of the matter that will appear on the Commission's agenda at a specified date and time. Such notices shall be posted at least two weeks prior to the meeting at which the matter is to be considered.

Section 9-3. Quorum and Voting

1. A quorum for the Planning Commission shall consist of a majority of the Commission membership (excluding vacant seats). A quorum is necessary for the Commission to take official action.
2. All actions of the Planning Commission shall be taken by majority vote, a quorum being present.
3. A roll call shall be taken upon the request of any member.

Section 9-4. Planning Commission Officers

1. The Planning Commission shall elect by the 31st day of January of each year a chairperson and vice-chairperson who shall serve for one year. If the Planning Commission fails to elect a chairperson by the 31st day of January each year, the Mayor and Commissioners will appoint a chairperson.
2. The chairperson and vice-chairperson may take part in all deliberations and vote on all issues.
3. The ex-officio member of the Planning Commission shall not serve as chairperson or vice-chairperson of the Planning Commission.

Section 9-5. Powers and Duties of the Planning Commission

1. The Planning Commission may:
 - (a) Make studies and recommend to the Mayor and Commissioners plans, goals, and objectives relating to the growth, including annexations, development and redevelopment of the Town and develop a comprehensive plan in accordance with the provisions of Article 66B of the Annotated Code of Maryland.
 - (b) Develop and recommend to the Mayor and Commissioners policies, ordinances, administrative procedures and other means for carrying out plans in a coordinated and efficient manner.

- (c) Make recommendations to the Mayor and Commissioners concerning proposed zoning classifications and reclassifications.
 - (d) Hear and decide applications for land development and approve subdivision plats and site development plans.
 - (e) Make recommendations to the Board of Appeals on special exceptions.
 - (f) Prepare and forward to the Mayor and Commissioners an annual report in accordance with Article 66B of the Annotated Code of Maryland.
 - (g) Exercise any other powers as set forth in Article 66B of the Annotated Code of Maryland.
2. The Planning Commission may adopt rules and regulations regarding its governing procedures and operations not inconsistent with the provisions of this Ordinance.
 3. The Planning Commission may delegate authority for review and approval action to the Town Administrator as deemed appropriate.

Section 9-6. Appointment and Terms of the Board of Appeals

1. There shall be a Board of Appeals consisting of five members to be appointed by the Mayor and confirmed by the Commissioners. The members shall be individuals who are residents of the Town. No member of the Board of Appeals shall be a member of the Planning Commission. Appointment shall be for staggered terms of three years. If a vacancy occurs by resignation or otherwise, among the members of the Board of Appeals, the Mayor and Commissioners shall appoint a member for the unexpired term. Members of the Board of Appeals shall serve without compensation. A member of the Board of Appeals may be removed for cause, on written charges and after a public hearing before the Mayor and Commissioners.
2. The Commissioners shall designate a member of the Board of Appeals who shall be an alternate who may be empowered to sit on the Board in the absence of a member of the Board.

Section 9-7. Meetings of the Board of Appeals

1. The Board of Appeals shall establish a regular meeting schedule. The meetings of the Board of Appeals shall be held at the call of the chairperson and at other times determined by the Board. There shall be at least one regular meeting per month. If there is no business before the Board of Appeals, the Chairman may cancel the meeting. (AMENDED PER ORDINANCE 2010-09-02)

2. The Board of Appeals shall conduct its meetings strictly in accordance with procedures set forth in Sections 9-24 through Section 9-30.
3. All meetings of the Board of Appeals shall be open to the public and whenever feasible, the tentative agenda for each meeting shall be made available in advance of the meeting.
4. The Board shall keep a record of all proceedings and minutes showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, which shall be immediately filed in the office of the Town Administrator and shall be a public record.

Section 9-8. Quorum

1. A quorum for the Board of Appeals shall consist of a majority of the Board membership (excluding vacant seats). A quorum is necessary for the Board to take official action.
2. A member who has recused himself or herself or has been excused as provided in Section 9-9 shall be counted as present for purposes of determining whether a quorum is present.

Section 9-9. Voting

1. The concurring vote of three members of the Board membership shall be necessary to reverse any Order, requirement, decision, or determination of the Zoning Administrator, Planning Commission or Town Administrator, as may be the case, or to decide in favor of the applicant any matter upon which it is required to pass under any ordinance or to grant any variance.
2. A member shall cast a vote in the affirmative or negative and shall not abstain from voting unless he or she has recused himself or herself or has been excused in accordance with Subsections 3 and 4. Once a member is physically present at a Board meeting, any subsequent failure to vote shall be recorded as an affirmative vote unless the member has recused himself or herself in accordance with Subsection 3 or has been excused in accordance with Subsection 4.
3. A member shall recuse himself or herself from participation in a matter in which the member may have a conflict of interest or an appearance of a conflict of interest. A member should identify the fact that he or she will be recusing himself or herself before any testimony is taken with regard to that application.
4. A member may be excused and permitted to leave a meeting by majority vote of the remaining members present for any good and sufficient reason other than the member's desire to avoid voting on matters considered at that meeting.

5. A motion to allow a member to be excused from the remainder of the meeting is in order only if made by or at the initiative of the member directly affected.
6. A roll call shall be taken upon the request of any member.

Section 9-10. Board of Appeals Officers

1. The Board of Appeals shall annually elect by the 31st day of January of each year a chairperson who will preside over the Board's meetings and one vice-chairperson, who will preside over the Board's meetings in the absence of the chairman. The person so designated shall serve in this capacity for a term of one year. If the Board of Appeals fails to elect a chairperson by the 31st day of January each year, the Mayor and Commissioners will appoint a chairperson.
2. The chairperson or any member temporarily acting as chairperson may administer oaths to witnesses who appear before the Board.
3. The chairperson and vice-chairperson may take part in all deliberations and vote on all issues.

Section 9-11. Duties of the Board of Appeals

1. The Board of Appeals shall hear and decide:
 - a. Appeals from any order, decision, requirement or interpretation made by the Zoning Administrator, Planning Commission, or Town Administrator.
 - b. Applications for Special Exception Uses.
 - c. Applications for Variances.
 - d. Any other matter the Board is required to act upon by Town Ordinance.
2. The Board may adopt rules and regulations governing its procedures and operations not inconsistent with this Ordinance.

Section 9-12. Appeals

1. Appeals to the Board of Appeals concerning the interpretation or administration of this Ordinance may be taken by any person aggrieved or by any officer, department, board, or bureau of the governing body of the Town affected by any decision of the Zoning Administrator. Such appeals shall be taken within fifteen days from the date that actual notice is received by applicant. A written application shall be filed with the Zoning Administrator specifying the grounds for appeal and shall be accompanied by the filing fee set by the Mayor and Commissioners,

- grounds of the appeal and payment of any appropriate fee for the appeal. The Zoning Administrator shall transmit to the Board the notice of appeal and any documents constituting the record of the action from which the appeal is taken.
2. The Board of Appeals shall hold a public hearing within 60 days of the date of the notice of the appeal. Notice of the hearing shall be given via first class mail to the appellant and shall be published in a newspaper of general circulation one time at least fifteen days prior to the hearing. The appellant shall appear in person or by agent or attorney. The Board shall issue a written opinion of its decision within thirty days of the date of the public hearing.
 3. In exercising the above-mentioned powers, the Board of Appeals may, so long as such action is in conformity with the terms of this Ordinance, reverse or affirm wholly or partly, or may modify the order, requirement, decision or determination as ought to be made, and to that end shall have powers of the Zoning Administrator from whom the appeal is taken.

Stay of proceedings: An appeal stays all proceedings in furtherance of the action appealed from, unless the administrative official from whom the appeal is taken certifies to the Board of Appeals after the notice of appeal is filed that by reason of facts set forth in the written certification, a stay would cause, in his or her opinion, imminent peril to life or property. In such a case, the proceedings shall not be stayed unless the Board of Appeals or a court of competent jurisdiction stays the proceedings for good cause shown and through the issuance of a restraining order after notice is given within a reasonable time.

Section 9-13. Applications for Special Exceptions

1. A written application for a special exception shall be filed with the Zoning Administrator accompanied by the filing fee set by the Mayor and Commissioners.
2. A hearing on the application shall be set for the next meeting of the Board of Appeals after which notice may be given in accordance with Section 9-25.

Section 9-14 Powers of the Board of Appeals to Grant a Special Exception

In granting any special exception, the Board of Appeals may prescribe appropriate conditions and safeguards in conformity with this Ordinance. Violation of such conditions and safeguards when made a part of the terms under which the special exception is granted, shall be deemed in violation of this Ordinance and punishable under Section 10-11 of this Ordinance.

No special exception shall be approved by the Board of Appeals unless such Board shall find:

1. That the establishment, maintenance, and operation of the special exception will not be detrimental to or endanger the public health, safety, convenience, morals, order or general welfare.
2. That the special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish or impair property values within the neighborhood.
3. That the exterior architectural appeal and functional plan of any proposed structure will not be so at variance with either the exterior architectural appeal and functional plan of the structures already constructed or in the course of construction in the immediate neighborhood or the character of the applicable district, as to cause substantial depreciation in the property values within the neighborhood.
4. That adequate utilities, water, sewer or septic system, access roads, storm drainage and/or other necessary public facilities and improvements have been or are being provided.
5. That adequate measures have been or will be taken to provide ingress and egress so designed as to minimize traffic congestion in the public streets.
6. That the proposed special exception is not contrary to the objectives of the current Comprehensive Plan for the Town of North East.
7. That the special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located or to the special requirements established for the specific use.
8. Conditions and Guarantees. Prior to the granting of any special exception, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exceptions as is deemed necessary for the protection of the public interest and to secure compliance with Section 9-15.

Section 9-15. Conditions Attached to Approvals of Special Exceptions

Where, in these regulations, special exceptions are permitted, provided they are approved by the Board, and where the Board is authorized to decide appeals or approve certain uses, such approval, decision, or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

1. No outside signs or advertising structures except professional or directional signs;
2. Limitation of signs as to size, type, color, location, or illumination;

3. Amount, direction, and location of outdoor lighting;
4. Amount and location of off-street parking and loading space;
5. Cleaning or painting of buildings or structures;
6. Gable roof or other roof type;
7. Building constructions and materials;
8. Buildings connected or disconnected with other buildings;
9. Exits or entrances, doors and windows;
10. Paving, shrubbery, landscaping or ornamental or screening fences, walls or hedges;
11. Time of day or night for operating;
12. Prohibition against store fronts;
13. Prohibition against structural changes;
14. Control or elimination of smoke, dust, gas, noise or vibration caused by operations;
15. Requirements for termination of a use, based on lapse of time or such other conditions as the Board may specify;
16. Such other conditions as are necessary.

Section 9-16. Applications for Variances

1. A written application for a variance shall be filed with the Zoning Administrator accompanied by the filing fee set by the Mayor and Commissioners.
2. A hearing on the application shall be set before the Board of Appeals and notice shall be given in accordance with Section 9-25.

Section 9-17. Powers of the Board of Appeals to Grant a Variance

No variance shall be approved by the Board of Appeals unless such Board shall find:

1. Such variance from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this Ordinance would result in unnecessary hardship.

2. That special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures, or buildings in the same district;
3. That literal interpretation of the provision of this Ordinance would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this Ordinance;
4. That the special conditions and circumstances do not result from the actions of the Applicant;
5. That granting the variance requested will not confer on the applicant any special privilege that is denied by this Ordinance to other lands, structures, or buildings in the same zoning district nor will it be detrimental to adjacent properties.
6. The character of the district will not be changed by granting a variance. No nonconforming use or neighboring lands, structures, or buildings in the same zoning district, and no permitted use of lands, structures, or buildings in other zoning districts shall be considered grounds for the issuance of a variance.
7. That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance;
8. That the granting of the variance will not be injurious to the neighborhood, or otherwise detrimental to the public welfare;
9. That lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

Under no circumstances shall the Board of Appeals grant a variance to allow a use not permissible under the terms of this Ordinance in the zoning district involved, or any use expressly or by implication prohibited by the terms of this Ordinance in said zoning district.

10. Conditions and Guarantees. Prior to the granting of any variance, the Board of Appeals shall stipulate such conditions and restrictions upon the establishment, location, construction, and operation of the variance as is deemed necessary for the protection of the public interest and to secure compliance with Section 9-18.

Section 9-18. Conditions Attached to Variance Approvals

Where the Board is authorized to approve variances, such approval, decision, or authorization shall be limited by such conditions as the case may require, including the imposition of any of the following specifications:

1. No outside signs or advertising structures except professional or directional signs;
2. Limitation of signs as to size, type, color, location, or illumination;
3. Amount, direction, and location of outdoor lighting;
4. Amount and location of off-street parking and loading space;
5. Cleaning or painting of buildings or structures;
6. Gable roof or other roof type;
7. Building constructions and materials;
8. Buildings connected or disconnected with other buildings;
9. Exits or entrances, doors and windows;
10. Paving, shrubbery, landscaping or ornamental or screening fences, walls or hedges;
11. Time of day or night for operating;
12. Prohibition against store fronts;
13. Prohibition against structural changes;
14. Control or elimination of smoke, dust, gas, noise or vibration caused by operations;
15. Requirements for termination of a use, based on lapse of time or such other conditions as the Board may specify;
16. Such other conditions as are necessary.

Section 9-19. Powers of the Board of Appeals to Grant a Variance in the
"CAO" District (REPEALED BY ORDINANCE 2008-03-01)

Section 9-20. Disapproval of Application

If an appeal, application for a variance or application for a special exception is disapproved by the Board, thereafter the Board shall take no further action on another application for substantially the same proposal, on the same premises, until after one year from the date of such disapproval. If an appeal to the Board is accepted and the public hearing date is set and duly advertised and properly posted and thereafter the applicant withdraws the appeal, he shall be precluded from filing another application for substantially the same proposal on the same premises for one (1) year.

Section 9-21. Lapse of Special Exception or Variance

After the Board of Appeals has approved a special exception or granted a variance, the special exception or variance so approved or granted shall lapse after the expiration of one year if no substantial construction or change of use has taken place in accordance with the plans for which such special exception or variance was granted, or if the Board does not specify some longer period than one year at the time of approval, then the provisions of these regulations shall thereafter govern.

Section 9-22. Change of Conditions of Special Exception or Variance

If an applicant requests a change in the conditions of a special exception or variance, he may transmit the same to the Board with the original record without requiring that a new application be filed. Notice in accordance with Section 9-25 shall be required unless the Zoning Administrator determines that the requested change is minor relative to the original approval.

Section 9-23. Revocation of Special Exception or Other Permit

1. A special exception, construction authorization, or other permit may be revoked by the permit-issuing authority in accordance with the provisions of this section if the permit recipient fails to develop or maintain the property in accordance with the plans submitted, the requirements of this Ordinance, or any additional requirements lawfully imposed in the permit or special exception.
2. Special Exception: Before a special exception may be revoked, ten (10) days notice of the intent to revoke the special exception shall be given to the recipient via certified mail by the Zoning Administrator. The notice shall state the alleged grounds for the revocation. The notice shall state that an appeal of the revocation shall be taken within fifteen days from the date that actual notice is received by applicant. A written application shall be filed with the Zoning Administrator specifying the grounds for appeal and shall be accompanied by the filing fee set by the Mayor and Commissioners. The Zoning Administrator shall transmit to the Board the notice of appeal and any documents constituting the record. The Board of Appeals shall hold a public hearing within sixty (60) days of the date of the notice of the appeal. Notice of the hearing shall be given via first class mail to the appellant and shall be published in a newspaper of general circulation one time at least fifteen days prior to the hearing. The appellant shall appear in person or by agent or attorney. The burden of presenting evidence sufficient to authorize the Board of Appeals to conclude that the special exception should be revoked shall be upon the party advocating that position. The Board shall issue a written opinion of its decision within thirty days of the date of the public hearing.
3. Construction Authorization, sign permit or other permit: Before a construction authorization, sign permit, or other permit may be revoked,

- ten (10) days notice of the intent to revoke the permit shall be given to the recipient via certified mail by the Zoning Administrator. The notice shall state the alleged grounds for the revocation. The notice shall state that an appeal of the revocation shall be taken within fifteen days from the date that actual notice is received by applicant. A written application shall be filed with the Zoning Administrator specifying the grounds for appeal and shall be accompanied by the filing fee set by the Mayor and Commissioners. The Zoning Administrator shall transmit to the Board the notice of appeal and any documents constituting the record. The Board of Appeals shall hold a public hearing within 60 days of the date of the notice of the appeal. Notice of the hearing shall be given via first class mail to the appellant and shall be published in a newspaper of general circulation one time at least fifteen days prior to the hearing. The appellant shall appear in person or by agent or attorney. The burden of presenting evidence sufficient to authorize the Board of Appeals to conclude that the permit should be revoked shall be upon the party advocating that position. The Board shall issue a written opinion of its decision within thirty days of the date of the public hearing.
4. No person or persons may continue to make use of land or buildings or take any action in accordance with any construction authorization, sign permit, or other permit after such permit has been revoked in accordance with this section.

PART II - HEARING PROCEDURES FOR APPEALS AND APPLICATIONS

Section 9-24. Hearing Required on Appeals and Applications

1. Before making a decision on an appeal or an application for a variance, special exception, or a petition from the planning staff to revoke a special exception, the Board of Appeals shall hold a hearing on the appeal or application.
2. The hearing shall be open to the public and all persons interested in the outcome of the appeal or application shall be given an opportunity to present evidence and arguments and ask questions of person who will testify.
3. The Board of Appeals may place reasonable and equitable limitations in the presentation of evidence and arguments and the cross-examination of witnesses so that the matter at issue may be heard and decided without undue delay.
4. An applicant, appellant or other such person who has made a request of the Board for a hearing and/or his or her representative or agent or attorney shall be present at the hearing. Failure to appear shall result in disapproval.

Section 9-25. Notice of Hearing

The Zoning Administrator shall give notice of a hearing required by the provisions of this Article as follows:

1. Notice of the public hearing shall be posted on the subject property and at the Town Office and notice shall be published in a newspaper of general circulation in the Town one time at least fifteen days prior to the public hearing.
2. Notice shall be given to the appellant or applicant and any other person who makes a written request for such notice by mailing to such persons a written notice sent via first class postage prepaid mail before the hearing.
3. The notice required by this section shall state the date, time and place of the hearing, reasonably identify the lot that is the subject of the application or appeal, and give a brief description of the action requested or proposed.
4. When notice for any other actions set forth in this Ordinance is mailed, first class, postage prepaid, the recipient will be presumed to have received said notice three days from the date of the notice.

Section 9-26. Evidence

1. The provisions of this section shall apply to all hearings for which notice is required by Section 9-25.
2. All persons who intend to present evidence to the Board, rather than arguments only, shall be sworn.
3. All findings and conclusions necessary to the issuance or denial of the requested permit or appeal (crucial findings) shall be based on reliable, credible evidence. Competent evidence (evidence admissible in a court of law) shall be preferred wherever available, but in no case shall crucial findings be based solely upon incompetent evidence unless competent evidence is not reasonably available, the evidence in question appears to be particularly reliable and the matter at issue is seriously disputed.

Section 9-27. Record

A tape recording shall be made of all hearings required by Section 9-24 of this Article and such recording shall be kept for at least two (2) years. Accurate minutes shall also be kept of all proceedings and a record shall be prepared made showing the vote of each member on each question or the member's absence or failure to vote, filed immediately in the town office and shall be a public record.

The Zoning Administrator shall also make arrangements to have a certified stenographer present at all hearings. If any applicant, appellant, representative, attorney or other such person requests a verbatim transcript, the Zoning Administrator shall request the same from the certified stenographer. Any person requesting a verbatim transcript shall pay the costs of preparing such a transcript.

Whenever practicable, all documentary evidence presented at a hearing as well as all other types of physical evidence shall be made part of the record of the proceedings and shall be kept for a period of two (2) years from the date of the hearing.

Section 9-28. Written Decision

Any decision made by the Board of Appeals regarding an appeal, variance, or the issuance of a special exception or revocation of a special exception shall be reduced to writing and mailed, first class, postage prepaid, to the applicant, appellant, or all other persons who have made a written request for the same.

In addition to a statement of the Board's ultimate disposition of the case and any other information deemed appropriate, the written decision shall state the Board's findings and conclusions.

Section 9-29. Postponement of Hearings; Continuances; Withdrawal of Application

1. Requests for postponement of a scheduled hearing shall be filed in writing with the Zoning Administrator not less than fifteen (15) days prior to the date of the hearing. The applicant must pay all costs associated with the postponement.
2. The Board may continue a hearing until a subsequent meeting date and keep the hearing open to take additional information up to the point that a final decision is made. The Board shall announce the hour and date of continuance of a hearing while in session. The applicant must pay a sum of money sufficient to pay all costs of the continuance.
3. An applicant may withdraw an application up until such time as testimony is taken on the application. If an applicant wishes to present the application for consideration again, the applicant must file a new application and pay the fees set by the Mayor and Commissioners.
4. The Board may, upon its own initiative, postpone a scheduled hearing at any time.

Section 9-30. Appeals from the Board of Appeals

Any person or persons, or any officer, board, taxpayer, department, or bureau of the Town aggrieved by any decision of the Board of Appeals may seek review

by the Circuit Court of such decision, in the manner provided by the laws of Maryland and particularly by Article 66B, Annotated Code of Maryland.

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