



Legislation Details (With Text)

File #: O-22-21 **Version:** 1 **Name:**

Type: Ordinance **Status:** In Committee

File created: 6/9/2021 **In control:** City Council

On agenda: 9/27/2021 **Final action:** 10/11/2021

Title: Administrative Hearing Officer By Contract Established - For the purpose of establishing the position of Administrative Hearing Officer by Contract; providing for certain Contractual terms of service and line of authority; providing for certain powers and duties; revising the powers and duties of the Planning Commission; revising the powers and duties of the Board of Appeals;; revising procedures for major site design plan applications, planned developments, special exceptions, variances, and nonconforming uses and structures; providing for appeals; providing that certain catchlines are not law and may not be considered to have been enacted as part of this ordinance; and matters generally relating to the Administrative Hearing Officer position.

Sponsors: Ross Arnett

Indexes: Board of Appeals, Planning Commission, Rules and City Government Committee

Code sections:

Attachments: 1. O-22-21 First Reader, 2. O-22-21 Staff Report, 3. O-22-21 Fiscal Impact Note, 4. O-22-21 Board of Appeals Comments 6-23-21, 5. O-22-21 Staff Report to PC, 6. O-22-21 PC Findings and Recommendations

Date	Ver.	Action By	Action	Result
10/11/2021	1	City Council	withdrawn without objection	Pass
10/5/2021	1	Rules & City Government Committee		
9/27/2021	1	City Council	declare the public hearing closed	
6/14/2021	1	City Council	adopt on first reader	Pass
6/14/2021	1	City Council	refer to Board of Appeals	
6/14/2021	1	City Council	refer	
6/14/2021	1	City Council	refer	

Administrative Hearing Officer By Contract Established - For the purpose of establishing the position of Administrative Hearing Officer by Contract; providing for certain Contractual terms of service and line of authority; providing for certain powers and duties; revising the powers and duties of the Planning Commission; revising the powers and duties of the Board of Appeals;; revising procedures for major site design plan applications, planned developments, special exceptions, variances, and nonconforming uses and structures; providing for appeals; providing that certain catchlines are not law and may not be considered to have been enacted as part of this ordinance; and matters generally relating to the Administrative Hearing Officer position.

CITY COUNCIL OF THE
City of Annapolis

Ordinance 22-21

Introduced by: Alderman Arnett
Co-Sponsored by:

Referred to
Planning Commission

Board of Appeals
Rules and City Government Committee

AN ORDINANCE concerning

Administrative Hearing Officer By Contract - Established

FOR the purpose of establishing the position of Administrative Hearing Officer by Contract; providing for certain Contractual terms of service and line of authority; providing for certain powers and duties; revising the powers and duties of the Planning Commission; revising the powers and duties of the Board of Appeals;; revising procedures for major site design plan applications, planned developments, special exceptions, variances, and nonconforming uses and structures; providing for appeals; providing that certain catchlines are not law and may not be considered to have been enacted as part of this ordinance; and matters generally relating to the Administrative Hearing Officer position.

BY repealing and reenacting with amendments the following portions of the Code of the City of Annapolis, 2021 Edition

20.32.020
20.32.030
20.32.040
20.32.050
21.08.030
21.08.040
21.10.010
21.10.020
21.20.010
21.20.020
21.20.030
21.20.040
21.22.060
21.22.120
21.24.010
21.24.050
21.24.070
21.24.080
21.24.090
21.24.130
21.26.030
21.26.050
21.26.060
21.26.070
21.26.090
21.28.020
21.28.040
21.28.050
21.28.060
21.28.070
21.30.010
21.54.080
21.54.090
21.54.160
21.54.170
21.54.190
21.68.040
21.68.070
21.70.110
21.71.070
21.71.170

BY repealing the following portions of the Code of the City of Annapolis, 2021 Edition
20.24.170
21.08.070

BY adding the following to the Code of the City of Annapolis, 2021 Edition
21.08.025
21.08.070
21.10.035

SECTION I: BE IT ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the Code of the City of Annapolis shall be amended to read as follows:

TITLE 20 - SUBDIVISIONS
CHAPTER 20.24 - DESIGN STANDARDS
20.24.170 - Site design plan review.

The Planning Commission shall not approve a preliminary plat absent a specific finding that the plat meets the provisions of Chapter 21.22, Site Design Plan Review.

CHAPTER 20.32 - VARIANCES
20.32.020 - Required findings.

The Board of Appeals shall not vary the regulations of this title THE ADMINISTRATIVE HEARING OFFICER SHALL NOT GRANT A VARIANCE unless findings are made based upon the evidence presented in each specific case that:

- A. Because of the particular physical surroundings, shape or topographical conditions of the specific project involved, a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out;
- B. The conditions upon which a petition for a variance is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification;
- C. The purpose of the variance is not based exclusively upon a desire to increase financial gain;
- D. The alleged difficulty or hardship is caused by this title and has not been created by any persons presently having an interest in the property;
- E. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located;
- F. The proposed variance will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values within the neighborhood;
- G. With respect to proposed lots comprised of land which, as of January 1, 1981, was unimproved by buildings or structures, the proposed variance will not authorize lot areas or lot widths which are less than eighty percent of those required by the applicable zoning regulations of the City. With respect to other proposed lots, the proposed variance may authorize any lot areas or lot widths complying with Subsections A through F of this section.

20.32.030 - Board ADMINISTRATIVE HEARING OFFICER action.

Prior to the granting of any variance, the ADMINISTRATIVE HEARING OFFICER Board of Appeals shall stipulate conditions and restrictions as in their HIS OR HER judgment will secure substantially the objectives of the standards or requirements so varied or modified. In all cases in which variances are granted, the ADMINISTRATIVE HEARING OFFICER Board shall require evidence and guarantees as it HE OR SHE may deem necessary as proof that the conditions stipulated in connection with the variance are being and will be satisfied. No variance shall be granted under this chapter except by the affirmative vote of a majority of all members of the Board.

20.32.040 - Resubmittal after denial.

No application for a variance which THAT has been denied by the ADMINISTRATIVE HEARING OFFICER Board of Appeals shall be resubmitted for a period of one year from the date of the order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the ADMINISTRATIVE HEARING OFFICER Board of

Appeals.

20.32.050 - Appeals.

Appeals from decisions of the ADMINISTRATIVE HEARING OFFICER Board of Appeals under this chapter shall be made to the BOARD OF APPEALS IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 21.30 Circuit Court of Maryland for Anne Arundel County pursuant to Maryland Rules, Title 7, Chapter 200, or its successors.

TITLE 21 - PLANNING AND ZONING

CHAPTER 21.08 - DECISION MAKING BODIES AND OFFICIALS

21.08.025 - ADMINISTRATIVE HEARING OFFICER - BY CONTRACT.

A. ESTABLISHMENT. THE POSITION OF ADMINISTRATIVE HEARING OFFICER IS ESTABLISHED, WITH THE AUTHORITY TO DECIDE CERTAIN ADMINISTRATIVE APPLICATIONS IN ACCORDANCE WITH THE APPLICABLE CRITERIA OF THE CODE. THE ADMINISTRATIVE HEARING OFFICER SHALL BE CONTRACTUALLY RETAINED BY TO THE CITY MANAGER.

B. QUALIFICATIONS. THE ADMINISTRATIVE HEARING OFFICER SHALL BE A MEMBER IN GOOD STANDING OF THE BAR OF MARYLAND AND SHALL HAVE AT LEAST FIVE YEARS EXPERIENCE IN ADMINISTRATIVE LITIGATION, AND SHALL DEMONSTRATE A KNOWLEDGE OF ADMINISTRATIVE AND ZONING LAW, PRACTICE AND PROCEDURE AND SUCH OTHER TRAINING OR EXPERIENCE QUALIFYING THE INDIVIDUAL TO CONDUCT QUASI-JUDICIAL HEARINGS ON ZONING, DEVELOPMENT, AND OTHER RELATED MATTERS.

BC. DUTIES. THE ADMINISTRATIVE HEARING OFFICER HAS THE FOLLOWING POWERS AND DUTIES:

1. CONDUCT PUBLIC HEARINGS ON APPLICATIONS FOR PLANNED DEVELOPMENTS, SPECIAL EXCEPTIONS, VARIANCES, MAJOR SITE DESIGN PLAN REVIEW, AND MOVING OR EXPANDING NONCONFORMING USES.

2. RENDER AND ISSUE WRITTEN DECISIONS ON SUCH APPLICATIONS IN ACCORDANCE WITH THE APPLICABLE CRITERIA OF THE CODE.

21.08.030 - Planning Commission.

A. Establishment. The Planning Commission is established under the Land Use Article of the Annotated Code of Maryland as may be amended from time to time.

B. Membership. The Planning Commission shall consist of seven residents of the City who have a demonstrated interest with regard to planning policy and with regard to land use matters and procedures of the City. The members shall be appointed by the Mayor and confirmed by the City Council.

C. Term. The term of office of each member of the Planning Commission shall be as provided in the Land Use Article of the Annotated Code of Maryland as may be amended from time to time. The term of each member shall commence on July 1st of the year in the appointment is made.

D. Rules. The Planning Commission may adopt rules to assist the Commission in carrying out its duties under this Zoning Code.

E. Duties. The Planning Commission shall have the following powers and duties:

1. Review all proposed amendments to this Zoning Code and Zoning Map and to report to the City Council its findings and recommendations in the manner prescribed in this Zoning Code, Chapter 21.32 and Chapter 21.34.

2. Receive the Planning and Zoning Director's recommendations related to the effectiveness of this Zoning Code and report its conclusions and recommendations to the City Council not less frequently than once a year.

3. CONSIDER APPLICATIONS FOR Hear and decide applications on planned developments, if the Planning and Zoning Director convenes a work session on an application and requests that the Planning Commission participate in the work session, pursuant to the provisions of Zoning Code Chapter 21.24.

4. Execute all powers conferred to Planning Commissions under the Land Use Article of the Annotated Code of Maryland as may be amended from time to time.

5. CONSIDER APPLICATIONS FOR On referral by the Director of Planning and Zoning of a major site design plans, IF THE PLANNING AND ZONING DIRECTOR CONVENES A WORK SESSION ON AN APPLICATION AND REQUESTS THAT THE PLANNING COMMISSION PARTICIPATE IN THE WORK SESSION, PURSUANT TO THE PROVISIONS OF ZONING CODE CHAPTER 21.22 the Planning Commission shall hold a public hearing and make recommendations.

6. On referral by the Director of Planning and Zoning on structures greater than three thousand two hundred fifty square feet in R2-NC zoning districts the Planning Commission shall hold a public hearing and make recommendations.
7. The Planning Commission shall provide written RECOMMENDATIONS TO THE DIRECTOR OF PLANNING AND ZONING IF IT IS REQUESTED TO DO SO IN CONNECTION WITH ITS CONSIDERATION OF A MATTER. findings for every decision under this title. The application shall be approved only if the majority of the members of the Planning Commission find that all of the necessary review criteria have been met.
8. For applications under Section 21.08.030(E)3. of this title, the Planning Commission shall grant or deny applications based on whether they satisfy all the standards imposed by Section 21.24.090. The Commission may consider each standard individually but shall only vote on the application as a whole.

21.08.040 - Board of Appeals.

- A. Establishment. The Board of Appeals is established pursuant to and has the authority to execute all of the powers granted to Boards of Appeals by the Land Use Article of the Annotated Code of Maryland as may be amended from time to time.
- B. Membership. The Board of Appeals shall consist of five members who shall be residents and registered voters of the City of Annapolis and who shall serve without compensation. The regular members and one alternate member shall be appointed by the Mayor and confirmed by the City Council and be removable for cause, upon written charges, and after public hearing. When an alternate member is absent, the Mayor with the confirmation of the City Council may designate a temporary alternate.
- C. Term. The term of office of each member of the Board of Appeals shall be for three years, as provided in the Land Use Article of the Annotated Code of Maryland as may be amended from time to time. Vacancies shall be filled for the unexpired term of any member whose term becomes vacant.
- D. Rules. The Board of Appeals shall adopt rules in accordance with the provisions of this section and in accordance with the provisions of the Land Use Article of the Annotated Code of Maryland as may be amended from time to time. The Board shall adopt and amend rules as follows:
 1. After a public session to consider the proposed rules or amendments, the Board shall adopt and periodically amend rules of practice and procedure.
 2. The Board shall give reasonable notice of the date, time, and place of the public session and the category of rule or amendment to be considered at the session.
 3. After approval by the Board, the rules of the Board of Appeals shall be published and shall be available to the public through the Department of Planning and Zoning.
- E. Duties. The Board of Appeals shall have the following powers and duties:
 1. To hear and decide appeals, pursuant to the provisions of Zoning Code Chapter 21.30 where it is alleged there is error in any order, requirement, decision or determination made by an administrative official or body in the enforcement of: (a) this Zoning Code; or (b) any ordinance adopted pursuant to this Zoning Code.
 2. To hear and decide applications for special exceptions pursuant to Chapter 21.26 of this Zoning Code.
 3. To hear and decide applications for variances from the terms of this Zoning Code, pursuant to the provisions of Chapter 21.28 and from the terms of Title 20 - Subdivisions, pursuant to the provisions of Chapter 20.32.
 4. To hear and decide applications for zoning district boundary adjustments pursuant to the provisions of Zoning Code Chapter 21.20.
 5. To hear and decide applications for physical alteration of a nonconforming use pursuant to the provisions of Chapter 21.68.
 6. To hear and decide all matters referred to it or upon which it is required to decide by this Zoning Code, and as prescribed by the Land Use Article of the Annotated Code of Maryland as may be amended from time to time.
- 3.7. The Board of Appeals shall provide written findings for every application and decision under this title. The application OR DECISION shall be approved only if the majority of the members of the Board of Appeals each find that all of the necessary review criteria have been met.
8. For applications under Section 21.08.040(E)2.-4. of this title, the Board of Appeals shall grant or deny applications based on whether they satisfy all the standards imposed by this Code. The Board may consider each standard individually but shall only vote on the application as a whole.
- F. Meetings. The meetings of the Board of Appeals shall be held at the call of the chair and at other time determined by the Board. The Board shall provide public notice of any meeting by publication in at least one newspaper of general circulation in the City not less than fifteen days prior to the meeting. The chair or the acting chair may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public. The Board shall make a transcript of all proceedings, showing the vote of each member on each question, or the member's absence or failure to vote. The board shall immediately file the transcript of its proceedings in the Office of Planning and Zoning. Each transcript shall be a public record. If a recording or a transcript of a recording is not prepared in the normal course of the Board's proceedings, the party who requests a copy of the recording or its transcript shall pay the cost of preparing the recording or transcript.

21.08.070 - Review and decision-making authority.

Annapolis Zoning Code Summary of Review and Decision-Making Authority

Type of
Decision

Planning and
Zoning
Director
Planning
Commission
Board of
Appeals
Historic
Preservation
Commission
City Council
Circuit Court

Administrative Adjustments

Administrative Interpretations

Change of
Nonconforming Use

Demolition
Permits
(selected, per
Chapter 21.14)

Determination of
Nonconforming Use

Major and
Minor Site
Design Plans

Use and
Occupancy Permit

Stop Work Order,
Corrective
Measures Orders

Revocation of Permits

Planning
Commission

Business
Planned
Development

Residential
Planned
Development

Expansion of
Nonconforming Use

Special Mixed
Planned
Development

Special Exception

Zoning District
Boundary
Adjustments

Historic
Preservation
Commission

Certificate of Approval

Zoning Map Amendment

Zoning Text Amendment

Type of
Decision
Planning and
Zoning
Director
Planning
Commission
Administrative Hearing
Officer
Board of

Appeals
Historic
Preservation
Commission
City Council
Circuit Court
ADMINISTRATIVE ADJUSTMENTS
DECISION

APPEAL

ADMINISTRATIVE INTERPRETATIONS
DECISION

APPEAL

CHANGE OF
NONCONFORMING USE
DECISION

APPEAL

DEMOLITION
PERMITS
(SELECTED, PER
CHAPTER 21.14)
DECISION

APPEAL

DETERMINATION OF
NONCONFORMING USE
DECISION

APPEAL

MINOR SITE
DESIGN PLANS
DECISION

APPEAL

MAJOR SITE
DESIGN PLANS
REVIEW/ FINDINGS

DECISION
APPEAL

USE AND
OCCUPANCY PERMIT
DECISION

APPEAL

SIGN PERMIT
DECISION

APPEAL

STOP WORK
ORDER,
CORRECTIVE
MEASURES ORDERS
DECISION

REVOCAION OF
PERMITS
DECISION

BUSINESS
PLANNED
DEVELOPMENT
REVIEW/
FINDINGS

DECISION
APPEAL

RESIDENTIAL

PLANNED
DEVELOPMENT
REVIEW/ FINDINGS

DECISION
APPEAL

SPECIAL MIXED
PLANNED
DEVELOPMENT
REVIEW/
FINDINGS

DECISION
APPEAL

APPEAL

APPEAL
MOVING OR
EXPANDING
NONCONFORMING USE
REVIEW/ FINDINGS

DECISION
APPEAL

SPECIAL EXCEPTION
REVIEW/ FINDINGS

DECISION
APPEAL

VARIANCE
REVIEW/ FINDINGS

DECISION
APPEAL

ZONING DISTRICT
BOUNDARY
ADJUSTMENTS
REVIEW

DECISION

APPEAL
HISTORIC
PRESERVATION
CERTIFICATE OF
APPROVAL
REVIEW

DECISION

APPEAL
ZONING MAP
AMENDMENT
REVIEW
RECOMMENDATION

DECISION

APPEAL
ZONING TEXT
AMENDMENT
REVIEW
RECOMMENDATION

DECISION

APPEAL

CHAPTER 21.10 - GENERAL APPLICATION PROCEDURES AND FEES

21.10.010 - Common procedures for review of applications.

Applications submitted for review and approval pursuant to the Zoning Code will be processed in accordance with the procedures of this section and any other procedures that are established in a Division II chapter in connection with a specific zoning application. The specific procedures established in other Division II chapters may reference sections of the common procedures for review of applications.

A. Pre-application Conference. The purpose of a pre-application conference shall be to acquaint the Planning and Zoning Director with a potential application and to acquaint the potential applicant with the requirements of the zoning code, building codes, and other relevant criteria and procedures. A pre-application conference shall not be an exhaustive review of all potential issues. The pre-application conference is informational only, and is not an approval in any manner of a proposal. Prior to the submission of an application required by the zoning code, a pre-application conference with the Planning and Zoning Director shall be in accordance with the following:

1. Required Conference. A pre-application conference with the Planning and Zoning Director shall be held for the following types of applications:

- a. Major site design plan applications.
- b. Planned development applications.
- c. Zoning map or text amendments.

2. Optional Conference. For all other applications, the Planning and Zoning Director may hold a pre-application conference.

B. Community Meeting. The purpose of a community meeting is to inform persons and community associations, including but not limited to, homeowners associations, condominium associations, resident associations, and business associations. The prospective applicant shall address the items identified by the Planning and Zoning Director's checklist

and receive comments and concerns about the development proposal so that the prospective applicant may become aware of those comments and concerns before submission and formal consideration of the application. The list of associations and their contact information shall be maintained by the Office of the Mayor.

1. Required Community Meeting. A community meeting shall be held before submission of an application that requires a certificate of adequate public facilities under Title 22 of the City Code and for a proposed subdivision that will contain a new street.
2. Optional Community Meeting. For all other types of applications, a community meeting shall be optional. Whenever a required community meeting is held, the prospective applicant may hold additional optional community meetings.
3. Before a community meeting may be held, the prospective applicant shall provide notice in accordance with Section 21.10.020(A) and (B) of this Code. A community meeting shall be held not earlier than one year prior to submission of an application and no later than fourteen days prior to submission of an application.
4. A prospective applicant who has conducted a community meeting shall provide a written summary of the community meeting to the Planning and Zoning Director within thirty days after the conclusion of the community meeting, unless already submitted with the application. The written summary shall include a list of meeting attendees, a summary of attendee comments, an overview of discussions related to the development proposal, and any other information the prospective applicant deems appropriate. The written summary shall be submitted with the application and be made available by the Planning and Zoning Director for public inspection. Anyone attending the community meeting may submit a written response to the prospective applicant's summary to the Planning and Zoning Director, which response the Planning and Zoning Director shall include with the application file. If an application is not filed within one year after a community meeting occurs, then before an application is filed, the prospective applicant shall hold another community meeting to be conducted in accordance with the provisions of this section.
- C. Application Forms and Submittals. All applications required under this Zoning Code shall be submitted with all required information on such forms, and in such number, as required by the Planning and Zoning Director. The Planning and Zoning Director shall have the authority to request additional information not specifically listed on the application forms to ensure compliance with this code. All applications shall be accompanied by required application fees in accordance with Section 21.10.050.
- D. Review for Completeness. All applications shall be submitted to the Planning and Zoning Director. Within no more than fifteen days of receipt of an application, the Planning and Zoning Director shall determine whether the application is complete. If the Planning and Zoning Director determines that the application is not complete, the Director shall promptly notify the applicant in writing, specifying the deficiencies of the application, including any additional information that must be supplied and that no further action shall be taken by the City on the application until the deficiencies are corrected.
- E. Correction of Deficiencies. If the applicant fails to correct the specified deficiencies within fifteen days of the date of notification of deficiency, the application shall be deemed withdrawn and shall be returned to the applicant. The Planning and Zoning Director, upon written request, may, for good cause shown and without any notice or hearing, grant extensions of the maximum fifteen day time limit for remedying deficiencies.
- F. Staff Review and Report. If staff reports are provided for as part of the procedures for a specific type of application required by the Zoning Code, the Planning and Zoning Director shall circulate an application for review by the Planning and Zoning Department and by any other City department that the Planning and Zoning Director or the decision making body deems appropriate.
- G. Application Forwarded to Decision-Making OFFICIAL OR Body. Any application submitted to the Planning and Zoning Director for decision by the ADMINISTRATIVE HEARING OFFICER, Planning Commission, Board of Appeals, or other decision making OFFICIAL OR BODYbodies shall be forwarded to that decision making OFFICIAL OR body after the Director determines the application is complete.
- H. Coordinated Processing of Applications. If more than one type of application is required pursuant to the Zoning Code, the Planning and Zoning Director shall, to the extent possible, simultaneously process applications related to the same proposed development or activity, as long as all Zoning Code requirements for a particular application are satisfied. However, if the application requires Historic Preservation Commission approval, that approval shall be last.

21.10.020 - Notice requirements.

- A. Posting of property. If the Zoning Code Division II provisions applicable to a specific type of application provide for posting of property, unless specific notice procedures are otherwise provided for in another Zoning Code chapter or section, posting must be done follows:
 1. Notice must be posted on the property that is the subject of an application at least fifteen days prior to a decision on the application and in a manner prescribed by the Planning and Zoning Director.
 2. In the case of an application for demolition of buildings and structures pursuant to Section 21.40.060(C)(3), in the R2-NC district, notice must be posted on the property that is the subject of an application at least thirty days prior to a decision on the application and in a manner prescribed by the Planning and Zoning Director.

3. It is the responsibility of an applicant to post any notice required under Subsections (A)(1) or (A)(2) on the property that is the subject of an application, unless the applicant is not the property owner, in which case it is the responsibility of the property owner.

4. In the case of appeals to any Board of Appeals, failure of the property owner responsible pursuant to Subsection (A)(3), to post any notice required under Subsections (A)(1) or (A)(2) shall result in a stay of all proceedings, including those in furtherance of the action or decision appealed. The failure of a property owner, who is not the applicant, to post any notice required under Subsections (A)(1) or (A)(2) shall not be a basis for the dismissal of any appeal to any Board of Appeals. In such circumstances, any issued permits, including but not limited to building, use and occupancy, and other permits, shall be suspended and/or revoked until such time as the property owner posts the notice. Should injunctive proceedings become necessary to require the posting, all costs shall be borne by the property owner and assessed as a lien against the property.

5. Any sign posted on a property by an applicant must be removed by the applicant within seven days following the decision.

B. Notice to Nearby Property Owners. If the Zoning Code Division II provisions applicable to a specific type of application provide for notice to nearby property owners, unless specific notice procedures are otherwise provided for in another Zoning Code chapter, notice must be given as follows:

1. The applicant shall send written notification to:

a. All parties with a financial or vested interest in the property that is the subject of the application;

b. Property owners and tenants of property located within two hundred feet of any property boundary of the proposed development, except that this written notification requirement shall be four hundred feet for planned developments, subdivisions that do not meet the criteria for an exemption under Section 20.08.030, and major site design plan applications;

c. The Alderperson representing the ward for which the project is planned;

d. The President or other person in a position of authority of any Community Association, including but not limited to, homeowners associations, condominium associations, resident associations, and business associations whose geographic boundaries lie within two hundred feet of the proposed development, except that this written notification requirement shall be four hundred feet for planned developments, subdivisions that do not meet the criteria for an exemption under Section 20.08.030, and major site design plan applications. The list of associations and their contact information, including the name of the association's president or other person in a position of authority, the association's mailing address, and the association's email address shall be maintained by the Office of the Mayor, and,

e. In the case of a required community meeting, cause to be published, in a newspaper of general circulation in the city at least fifteen days before the community meeting, notification of such meeting.

2. Notice of public hearings must be mailed not less than fifteen days prior to the date of hearing.

3. Prior to any public meeting or public hearing on an application, the applicant must provide the Planning and Zoning Director with verification of mailing of written notification. An applicant must provide evidence that notices of the public hearing were mailed not less than fifteen days prior to the date of hearing.

C. Notice of Formal Public Hearing. If notice of a formal public hearing is required, unless specific notice procedures are otherwise provided for in another Division II chapter of the Zoning Code, notice must be given as follows:

1. Notice of the application and any required public hearings at which the application will be considered shall be published in a newspaper of general circulation in the City at least fifteen days before the hearing.

2. Notice must be posted on the property that is the subject of an application by the applicant or the property owner, if not the same, at least fifteen days prior to any public hearing on the application and in a manner prescribed by the Planning and Zoning Director. Any sign posted on a property by an applicant must be removed by the applicant within seven days following the close of the public hearing. Failure to post shall be governed by Subsection (A)(4) above.

D. Notice of Public Meeting. If notice of a public meeting at which an application may be considered is required, unless specific notice procedures are otherwise provided for in another Division II chapter of the Zoning Code, notice must be given as follows:

1. Notice of the application and any public meeting at which the application will be considered shall be published in a newspaper of general circulation in the City no fewer than fifteen days before the meeting.

i. Notice must be posted on the property that is the subject of an application at least fifteen days prior to any public meeting on the application and in a manner prescribed by the Planning and Zoning Director. Any sign posted on a property by an applicant must be removed by the applicant within seven days following the public meeting.

E. Notice of Decision. Notice of any decision on the application by the Planning and Zoning Director or the decision making OFFICIAL OR body, must be given to the applicant, the Mayor and City Council, and any other persons who made written comments or testified at a hearing concerning the application, provided they included their legal name and valid mailing address or valid email address. Such notice of decision shall be by mail or email and provided by the Planning and Zoning Director not more than five days following the date of final decision.

F. Summary of Public Meeting and Hearing Requirements. The table below summarizes the types of applications requiring a public meeting or public hearing and the City official or decision making body responsible for conducting the

meeting or hearing. If more than one application or approval is required for a proposed development or activity, public hearings on each application may be simultaneously held by a decision making OFFICIAL OR body on related applications.

Summary of Public Meetings (PM) Public Hearings (PH)

Type of Application

Planning and

Zoning

Director

Planning

Commission

Board of Appeals

Historic

Preservatio n

Commissio n

City Council

Communit

y Meetings

(PM)

Administrative Adjustment

Certificate of Approval

Change of
Nonconformin g Use

Demolition Permits

Expansion of
Nonconformin g Use

Minor Site Design Plan

Major Site Design Plan

Planned Developments

Special Exceptions

Zoning District
Boundary
Adjustment

Zoning Text
Amendment

Zoning Map Amendment

Site Design
Review of R2NC Structures > 3,250 sq. ft.

21.10.035 - ADMINISTRATIVE HEARING OFFICER PROCEDURES.

A. APPLICATIONS DECIDED BY THE ADMINISTRATIVE HEARING OFFICER. IN ADDITION TO SUCH OTHER RULES THAT THE ADMINISTRATIVE HEARING OFFICER MAY ADOPT, THE FOLLOWING PROCEDURES APPLY TO ALL MATTERS BEFORE THE ADMINISTRATIVE HEARING OFFICER:

1. PUBLIC HEARINGS. PUBLIC HEARINGS BEFORE THE ADMINISTRATIVE HEARING OFFICER SHALL BE HELD AT THE CALL OF THE ADMINISTRATIVE HEARING OFFICER. THE ADMINISTRATIVE HEARING OFFICER, OR THE ACTING ADMINISTRATIVE HEARING OFFICER, MAY ADMINISTER OATHS AND COMPEL THE ATTENDANCE OF WITNESSES. ALL HEARINGS BEFORE THE ADMINISTRATIVE HEARING OFFICER SHALL BE OPEN TO THE PUBLIC AND RELEVANT TESTIMONY AND EVIDENCE ACCEPTED FROM ALL INTERESTED PARTIES. THE ADMINISTRATIVE HEARING OFFICER SHALL KEEP MINUTES OF ALL PROCEEDINGS, SHALL PRESERVE ALL DOCUMENTS AND MATERIALS ACCEPTED INTO EVIDENCE AT PROCEEDINGS, SHALL PRESERVE AUDIO OR VIDEO RECORDINGS OF ALL PROCEEDINGS, AND SHALL KEEP RECORDS OF ITS OFFICIAL ACTIONS, ALL OF WHICH SHALL BE FILED PROMPTLY WITH THE DEPARTMENT OF PLANNING AND ZONING, WHICH SHALL BE PUBLIC, AND WHICH SHALL CONSTITUTE THE ADMINISTRATIVE RECORD FOR PURPOSES OF A SUBSEQUENT APPEAL TAKEN TO THE BOARD OF APPEALS OR A SUBSEQUENT PETITION FOR JUDICIAL REVIEW FILED WITH THE CIRCUIT COURT.

2. APPEARANCE AND PRACTICE. AN INDIVIDUAL MAY APPEAR IN THAT PERSON'S BEHALF; A MEMBER OF A PARTNERSHIP MAY REPRESENT THE PARTNERSHIP; A BONA FIDE OFFICER OR REPRESENTATIVE OF A CORPORATION, TRUST OR ASSOCIATION MAY REPRESENT THE CORPORATION, TRUST OR ASSOCIATION; AND AN OFFICER OR EMPLOYEE OF A POLITICAL SUBDIVISION OR BODY OR DEPARTMENT MAY REPRESENT THE POLITICAL SUBDIVISION, BODY OR DEPARTMENT. A PERSON, FIRM, OR CORPORATION MAY BE REPRESENTED IN ANY PROCEEDINGS BY AN ATTORNEY AT LAW ADMITTED TO PRACTICE BEFORE THE COURT OF APPEALS OF THIS STATE OR OTHER AUTHORIZED REPRESENTATIVE.

3. TESTIMONY AND EVIDENCE. IN ADDITION TO THE APPLICANT'S PRESENTATION OF TESTIMONY, EVIDENCE, AND MATERIALS, AND IN ADDITION TO ANY REPORTS, RECOMMENDATIONS, OR OTHER INFORMATION TRANSMITTED BY CITY STAFF, RELEVANT TESTIMONY AND EVIDENCE EITHER IN FAVOR OF OR IN OPPOSITION TO THE APPLICANT MAY BE PRESENTED BY:

A. OWNERS OF PROPERTY WITHIN THE CITY.

B. TAXPAYERS OF THE CITY.

C. RESIDENTS OF THE CITY.

D. ANY OTHER PERSONS NOT IDENTIFIED ABOVE WHOSE PERSONAL OR PROPERTY INTEREST MAY BE AFFECTED SPECIALLY BY THE GRANTING OR DENIAL OF THE APPLICATION.

E. REPRESENTATIVES OF CIVIC OR COMMUNITY ASSOCIATIONS, OR OF GOVERNMENTAL-ESTABLISHED GROUPS WHOSE FUNCTIONAL OR PROPERTY INTEREST MAY BE AFFECTED SPECIALLY BY THE GRANTING OR DENIAL OF THE APPLICATION.

F. ATTORNEYS AND OTHER AGENTS OR EXPERTS APPEARING ON BEHALF OF THOSE PERSONS LISTED ABOVE.

B. COMMUNICATING WITH THE ADMINISTRATIVE HEARING OFFICER. A PERSON MAY NOT COMMUNICATE OUTSIDE OF A PUBLIC HEARING WITH THE ADMINISTRATIVE HEARING OFFICER REGARDING ANY MATTER

WHILE THE MATTER IS PENDING. A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A MISDEMEANOR AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING ONE THOUSAND DOLLARS OR IMPRISONMENT NOT EXCEEDING SIX MONTHS OR BOTH. EACH ACT OF COMMUNICATION IN VIOLATION OF THIS SECTION IS A SEPARATE OFFENSE.

CHAPTER 21.20 - ZONING DISTRICT BOUNDARY ADJUSTMENTS

21.20.010 - Purpose and authority.

Where a zoning district boundary divides a tract in single ownership, the ADMINISTRATIVE HEARING OFFICERBoard of Appeals, in accordance with the procedures below, may approve an application to extend the zoning district regulations for the majority of the tract to any contiguous portion of the tract.

21.20.020 - Procedures.

A. Application Procedures. All applications for zoning district boundary adjustments shall be filed with the Planning and Zoning Director in accordance with the requirements of Section 21.10.010 Common Procedures for Review of Applications.

B. Review Procedures. In the review and decision of applications for zoning district boundary adjustments, the following procedures shall apply:

1. Staff Review. The Planning and Zoning Director, after having determined that the submission is complete, may distribute copies of the application to appropriate City departments for review.

2. Staff Report. The Planning and Zoning Director, prior to the required public hearing on the application, will prepare a staff report TO INCLUDE FINDINGS on the application and transmit the staff report AND ANY OTHER STAFF REPORTS FROM OTHER CITY DEPARTMENTS, AND THE APPLICATION to the ADMINISTRATIVE HEARING OFFICERBoard of Appeals.

3. Public Hearing. The ADMINISTRATIVE HEARING OFFICERBoard of Appeals shall hold a public hearing on the application. Notice of the application must be given by the applicant in accordance with the notice requirements set forth in Section 21.10.020(B) and 21.10.020(C).

4. Action on Application. Within thirty days of the conclusion of THEany public hearing or of receipt of the application by the Board of Appeals if no public hearing is held, the ADMINISTRATIVE HEARING OFFICERBoard of Appeals shall ISSUE A DECISION decide to: (1) approve the application; (2) approve the application subject to specific conditions; or (3) deny the application. The ADMINISTRATIVE HEARING OFFICERBoard of Appeals may impose such conditions or restrictions upon the premises benefited by a zoning district boundary adjustment as may be necessary to comply with the standards established in this chapter and the purposes of this Zoning Code.

5. Notice of Decision. Planning and Zoning Director shall give notice of the decision in accordance with the requirements set forth in Section 21.10.020(E).

21.20.030 - Review criteria and findings.

The ADMINISTRATIVE HEARING OFFICERBoard of Appeals may grant a zoning district boundary adjustment based upon the following findings:

A. Unique Conditions. Owing to conditions peculiar to the property and not because of any action taken by the applicant, a literal enforcement of the zoning law would result in practical difficulty as specified in the zoning law.

B. Public Welfare and Safety. The granting of the district boundary adjustment will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

C. Surrounding Properties. If a specific use is proposed, the applicant shall demonstrate that the proposed use will not impair an adequate supply of light and air to adjacent property, or substantially increase the congestion of the public streets, or increase the danger of fire, or endanger the public safety, or substantially diminish or impair property values with the neighborhood. If a specific use is not proposed, the applicant shall demonstrate the suitability of the property in question to the uses permitted under the proposed zoning classification.

D. Property Size. The granting of a zoning district boundary adjustment shall be limited to parcels of one acre or less in size.

E. Location. The zoning district boundary adjustment is for a property located in Ward 8.

21.20.040 - Appeals.

An appeal from a decision of the ADMINISTRATIVE HEARING OFFICERBoard of Appeals under this chapter shall be

made to the BOARD OF APPEALS IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 21.30 Circuit Court of Maryland for Anne Arundel County pursuant to Maryland Rules, Title 7, Chapter 200 or its successors. Alternatively, applicants may apply for a zoning map amendment pursuant to the provisions of Chapter 21.34.

CHAPTER 21.22 - SITE DESIGN PLAN REVIEW

21.22.060 - Procedures for major site design plan applications.

A. Application Procedures. Applications for major site design plan review shall [be referred to the Planning Commission for a public hearing. Such applications shall] comply with the requirements of Section 21.10.010 Common Procedures for Review of Applications, including a pre-application conference with the Planning and Zoning Director in accordance with the requirements of Section 21.10.010(A) and a community meeting in accordance with Section 21.10.010(B).

B. Review Procedures for Major Site Design Plan Applications. In the review and decision of major site design review applications, the following procedures shall apply:

1. Review of Preliminary or Final Site Design Plan. The Planning and Zoning Director will review any required preliminary plan submitted in connection with major site design plan applications. The Planning and Zoning Director will respond to the applicant with written comments on the preliminary plan within thirty days of the determination of completeness of the submission.
2. Staff Review. The Planning and Zoning Director, after having determined that the submission is complete, may distribute copies of the preliminary plan or final plan to appropriate City departments for review. Within fifteen days of receipt of any preliminary or final major site design plan, any City department reviewing the application will prepare a staff report on the application and transmit the staff report to the Director of Planning and Zoning.
3. Posting of Property. Notice must be posted on the property that is the subject of the application in accordance with the requirements in Section 21.10.020(A).
4. Optional Public Meeting/Work Session on Preliminary or Final Plan. The Planning and Zoning Director may hold a public meeting for the review of the preliminary or final site design plan if he finds that it is in the public interest to do so. The Planning and Zoning Director may hold, AND MAY REQUEST THAT THE PLANNING COMMISSION PARTICIPATE IN, a work session if he THE DIRECTOR finds that it is in the public interest to do so or if he finds that it will assist the Planning and Zoning Department in its review of the application. NOTICE OF A WORK SESSION MUST BE POSTED ON THE PROPERTY THAT IS THE SUBJECT OF THE APPLICATION IN ACCORDANCE WITH THE REQUIREMENTS IN SECTION 21.10.020(A). THE WORK SESSION SHALL BE AN INFORMAL DISCUSSION BETWEEN THE APPLICANT, CITY STAFF, AND, IF APPLICABLE, MEMBERS OF THE PLANNING COMMISSION, AND IT SHALL BE OPEN TO THE PUBLIC FOR THE PURPOSES OF THE PUBLIC'S OBSERVATION OF BUT NOT PARTICIPATION IN THE WORK SESSION. THE DEPARTMENT OF PLANNING AND ZONING SHALL KEEP MINUTES OF THE PROCEEDINGS OF EACH WORK SESSION, A COPY OF WHICH SHALL BE INCLUDED AS PART OF THE ASSOCIATED APPLICATION FILE. The Planning Commission may hold a work session prior to a public hearing on an application if the chairperson of the Planning Commission deems it necessary to assist it in its understanding of the application, notice of a public meeting or work session shall be in accordance with Section 21.10.020(D).
5. Public Hearing. The Planning Commission shall schedule and hold a public hearing on the complete preliminary or final site design plan. The applicant shall give notice of the hearing in accordance with the notice requirements of Section 21.10.020(B) and 21.10.020(C) and any other requirements established by the Planning Commission.
- 5.6. PUBLIC HEARING AND Decision on Preliminary or Final Plan. THE APPLICATION AND AnyANY staff reports PREPAREDreceived by the Planning Commission CITY DEPARTMENTS shall be considered at the public hearing forwarded BY THE PLANNING AND ZONING DIRECTOR TO THE ADMINISTRATIVE HEARING OFFICER. THE ADMINISTRATIVE HEARING OFFICER SHALL SCHEDULE AND HOLD A PUBLIC HEARING ON THE APPLICATION. THE APPLICANT SHALL GIVE NOTICE OF THE HEARING IN ACCORDANCE WITH THE NOTICE REQUIREMENTS SET FORTH IN SECTION 21.10.020(B) AND 21.10.020(C) AND ANY OTHER REQUIREMENTS ESTABLISHED BY THE ADMINISTRATIVE HEARING OFFICER. Within forty-five TWENTY days after the conclusion of the public hearing, the ADMINISTRATIVE HEARING OFFICERPlanning Commission shall decide to: (1) approve the application; (2) approve the application subject to specific conditions; or (3) deny the application, and SHALL issue a written opinion containing findings and conclusions.
- 6.7. Notice of Decision. The Planning and Zoning DirectorADMINISTRATIVE HEARING OFFICER shall give notice of the decision in accordance with the requirements set forth in Section 21.10.020(E).

21.22.120 - Appeal.

A. Any appeals of a decision of the Planning and Zoning DirectorADMINISTRATIVE HEARING OFFICER must be made to the Board of Appeals in conformance with the provisions of Chapter 21.30.

B. An appeal from a decision of the Planning Commission under this chapter shall be made to the Circuit Court of Maryland for Anne Arundel County.

CHAPTER 21.24 - PLANNED DEVELOPMENTS

21.24.010 - Purposes, authority and types.

A. Purposes. The purposes of planned developments are as follows:

1. To allow greater flexibility in order to encourage more creative design for the development of land than is generally possible under conventional zoning district regulations.
2. To promote orderly and thorough planning and review procedures that will result in quality design and counteract the negative effects of monotonous design.
3. To allow the grouping of buildings and a mix of land uses with an integrated design and a coordinated physical plan.
4. To promote development in a manner that protects significant natural resources and integrates natural open spaces into the design of a development project.
5. To encourage a design that takes into account the natural characteristics of the site in the placement of structures.
6. To promote development that is consistent with the goals of the Comprehensive Plan.

B. Types of Planned Developments, Where Permitted.

1. There are three types of planned developments: residential planned developments, business planned developments, and special mixed planned developments.
2. Planned developments may be permitted only where listed in the use tables for specific zoning districts in Chapter 21.48 of this Zoning Code.

C. Authority to Approve. The ADMINISTRATIVE HEARING OFFICER/Planning Commission is authorized to decide applications for planned developments.

21.24.050 - Bulk and density standards.

A. Bulk Standards. The ADMINISTRATIVE HEARING OFFICER/Planning Commission may adjust bulk standards, other than height, that are otherwise applicable in the zoning district, with the following exception: a twenty-percent increase in the height limit or other bulk standards shall be allowed for low income housing developed pursuant to Section 42 of the Federal Internal Revenue Code, and that meets the criteria of the Federal Low Income Housing Tax Credit Program.

B. Density Standards. The following density standards shall apply to planned developments:

1. In a residential planned development, the maximum number of dwelling units may not exceed the number of units determined by dividing the gross development area by the minimum lot area per dwelling unit (or per dwelling unit type if a mix of units is proposed) required by the district or districts in which the development is located. Gross development area shall be the area of the zoning lot as a whole. The area of land set aside for common open space or recreational use may be included in determining the number of dwelling units permitted. If the gross development area of the property includes property within the Resource Conservation Area of the Critical Area Overlay, density shall be determined, as per Section 20.24.130(G) and (H).
2. In a business or special mixed planned development, the maximum number of dwelling units may not exceed the number of units determined by dividing the gross residential development area by the minimum lot area per dwelling unit required by the R4 district.

21.24.070 - Procedures for planned developments.

A. Application Procedures. All planned development applications shall be submitted to the Planning and Zoning Director in accordance with the requirements of Section 21.10.010 Common Procedures for Review of Applications, which shall include the written summary of community meetings held in connection with a pre-application conference in accordance with the requirements of Section 21.10.010(A) and an application community meeting in accordance with Section 21.10.010(B). Applications shall be submitted on forms provided by the Planning and Zoning Director and accompanied by any required fees, preliminary or final plans or other required submittals.

B. Application Options. An applicant may elect one of the following procedural options:

1. An applicant may submit a preliminary plan for informal review by the Planning and Zoning Director and other City departments the Director deems appropriate, prior to the submission of a final planned development application.
2. An applicant may submit a preliminary plan for formal review and decision by the ADMINISTRATIVE HEARING OFFICE/Planning Commission.

3. An applicant may elect to submit only a complete final planned development application.
- C. Review of Preliminary Planned Development Plans. The following procedures shall apply to the review of preliminary planned development plans.
 1. Staff Review. The Planning and Zoning Director may distribute copies of a preliminary plan for review by the appropriate City departments.
 2. Staff Comments on Preliminary Plan. Following review of any preliminary plan, the Planning and Zoning Director and any other City department reviewing the preliminary plan will provide the applicant with any written comments prepared in connection with the review of the preliminary plan and will transmit a copy of any written comments to the ADMINISTRATIVE HEARING OFFICER/Planning Commission.
 3. Optional Work Session or Public Meeting. If the Planning and Zoning Director deems necessary, the Director or the Planning Commission may hold a work session or public meeting for the review of the preliminary plan. Notice of the work session or public meeting must be given by the applicant in accordance with the notice requirements set forth in Section 21.10.020(D).
 4. Public Hearing. If the applicant requests action on a preliminary plan by the ADMINISTRATIVE HEARING OFFICER/Planning Commission, the ADMINISTRATIVE HEARING OFFICER/Planning Commission shall schedule and hold a public hearing on a preliminary planned development application. The applicant shall give notice of the hearing in accordance with the notice requirements set forth in Section 21.10.020(B) and 21.10.020(C) and any other requirements established by the ADMINISTRATIVE HEARING OFFICER/Planning Commission.
 5. Decision on Preliminary Plan. NO LATER THAN TWENTY
- D. Review of Final Plans and Application.
 1. Staff Review. The Planning and Zoning Director shall distribute copies of a final planned development application to appropriate City departments for review after having determined that the submission is complete.
 2. Staff Report. Following review of any complete final planned development application, the Planning and Zoning Director and any other City department reviewing the application will prepare a staff report TO INCLUDE FINDINGS on the final planned development application and WILL transmit the staff report, AND ANY OTHER STAFF REPORTS FROM OTHER CITY DEPARTMENTS, AND THE APPLICATION to the ADMINISTRATIVE HEARING OFFICER/Planning Commission prior to the required Planning Commission public hearing on the application.
 3. Public Hearing. The ADMINISTRATIVE HEARING OFFICER/Planning Commission shall schedule and hold a public hearing on the complete final planned development application. The applicant shall give notice of the hearing in accordance with the notice requirements set forth in Section 21.10.020(B) and 21.10.020(C) and any other requirements established by the ADMINISTRATIVE HEARING OFFICER/Planning Commission.
 4. Decision on Final Plan and Application. Any staff reports received by the ADMINISTRATIVE HEARING OFFICER/Planning Commission will be considered by the Administrative Hearing Officer at the public hearing. Within TWENTY - 5. Notice of Decision. The Planning and Zoning Director shall give notice of the decision in accordance with the requirements set forth in Section 21.10.020(E).

21.24.080 - Rights-of-way.

The ADMINISTRATIVE HEARING OFFICER/Planning Commission may authorize reductions in the right-of-way width and paving width based on the following findings:

- A. The proposed width will promote the public welfare and will not endanger public safety.
- B. The proposed width will not impede normal and orderly development and improvement of surrounding property.
- C. The proposed width will not impair the provision of adequate ingress, egress and access within the planned development.
- D. The proposed width of right-of-way has been approved by the Department of Public Works, the Fire Department or other appropriate City agencies.

21.24.090 - Planned development review criteria and findings.

In deciding planned development applications the ADMINISTRATIVE HEARING OFFICER/Planning Commission shall make written findings based on the following:

- A. The planned development is compatible with the character of the surrounding neighborhood and consistent with

the Comprehensive Plan and the purposes of planned developments.

B. The proposed locations of buildings, structures, open spaces, landscape elements, and pedestrian and vehicular circulation systems are adequate, safe, and efficient and designed to minimize any adverse impact upon the surrounding area.

C. The planned development will promote high quality design and will not result in greater adverse impacts to the surrounding area compared to the development that may otherwise be permitted pursuant to the Zoning Code if a planned development were not approved.

D. The planned development complies with the planned development use standards and bulk and density standards.

E. The planned development complies with the Site Design Plan Review criteria provided in Section 21.22.080.

F. The planned development plan includes adequate provision of public facilities and the proposed infrastructure, utilities and all other proposed facilities are adequate to serve the planned development and adequately interconnect with existing public facilities.

G. The planned development complies with Chapter 21.71 of the Annapolis City Code.

21.24.130 - Appeals.

Appeal of ADMINISTRATIVE HEARING OFFICER Planning Commission Decision. An appeal from a decision of the ADMINISTRATIVE HEARING OFFICER Planning Commission under this chapter shall be made to the BOARD OF APPEALS IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 21.30 Circuit Court of Maryland for Anne Arundel County.

CHAPTER 21.26 - SPECIAL EXCEPTIONS

21.26.030 - Procedures for special exceptions.

A. Application Procedures. All applications for special exceptions shall be filed with the Planning and Zoning Director in accordance with the requirements of Section 21.10.010 Common Procedures for Review of Applications.

B. Review Procedures for Special Exception Applications. In the review and decision of special exception applications, the following procedures shall apply:

1. Staff Review. The Planning and Zoning Director, after having determined that the submission is complete pursuant to Section 21.10.010, may distribute copies of the application to appropriate City departments for review.

2. Staff Report. Following review of any special exception application, the Planning and Zoning Director and any other City department reviewing the application will prepare a staff report TO INCLUDE FINDINGS on the application and transmit the staff report AND ANY OTHER STAFF REPORTS FROM OTHER CITY DEPARTMENTS, AND THE APPLICATION to the ADMINISTRATIVE HEARING OFFICER Board of Appeals prior to the required Board of Appeals public hearing on the application.

3. Public Hearing. The ADMINISTRATIVE HEARING OFFICER Board of Appeals shall hold a public hearing on each application. The hearing shall be conducted, and a record of the proceedings shall be preserved, in the manner the Board of Appeals, by rule, prescribes from time to time. Notice of the public hearing must be given by the applicant in accordance with the notice requirements set forth in Sections 21.10.020(B) and 21.10.020(C). At the hearing, a report from the Planning and Zoning Director shall be placed in evidence.

4. Action on Application. Within thirty TWENTY days of AFTER the conclusion of the public hearing, the ADMINISTRATIVE HEARING OFFICER Board of Appeals shall decide to: (1) approve the application; (2) approve the application subject to specific conditions; or (3) deny the application, AND SHALL ISSUE A WRITTEN OPINION CONTAINING FINDINGS AND CONCLUSIONS.

5. Conditions of Approval. The ADMINISTRATIVE HEARING OFFICER Board of Appeals may stipulate, conditions and restrictions upon the establishment, location, construction, maintenance and operation of the special exception as are deemed necessary for the protection of the public interest and to secure compliance with the requirements specified in Section 21.26.050. However, the ADMINISTRATIVE HEARING OFFICER Board of Appeals may not impose any condition, or enforce any condition previously imposed, which restricts the applicability or approval of a special exception to a particular applicant, owner or operator.

6. Notice of Decision. The Planning and Zoning Director shall give notice of the decision in accordance with the requirements set forth in Section 21.10.020(E).

21.26.050 - Review criteria and findings.

The decision by the ADMINISTRATIVE HEARING OFFICER Board of Appeals must be based upon written findings

with respect to the following:

- A. The establishment, maintenance or operation of the special exception will not be detrimental to or endanger the public health, safety, morals, convenience or general welfare.
- B. The special exception will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.
- C. The establishment of the special exception will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
- D. Adequate utilities, access roads, drainage and necessary facilities have been or are being provided.
- E. Adequate measures have been or will be taken to provide ingress and egress designed to minimize traffic congestion in the public streets.
- F. The special exception shall, in all other respects, conform to the applicable regulations of the district in which it is located, including any use provisions or standards set forth in Chapter 21.64 and be consistent with the Comprehensive Plan.
- G. In the case of food service establishments, the following additional standards for review apply. The review of the proposed food service operation shall be based upon an analysis of the proposed use's impact in the following areas:
 - 1. Environmental:
 - a. Noise, including the noise of the mechanical equipment and of the patrons while on the premises,
 - b. Odors: control of odors from the cooking process and from the storage of garbage,
 - c. Trash and litter: the type of trash and garbage the food service operation will generate; the precautions to be taken to prevent littering of the streets.
 - 2. Traffic:
 - a. Streets: adequacy of the street system to handle additional traffic,
 - b. Loading/unloading: off-street loading facilities available and adequate to handle the intensity and the type of trucks needed to service the proposed use; if on-street loading facilities are used, whether the use will impede traffic flow,
 - c. Parking: adequate parking available either on-site or within the area for employees and patrons.
 - 3. Neighborhood:
 - a. Hours: the hours of operation are compatible with the surrounding commercial and/or residential neighborhood,
 - b. Loitering: the measures the restaurant will employ to discourage loitering; whether the type of use is compatible with the surrounding commercial and residential neighborhood.
 - 4. Adequacy of public facilities:
 - a. Water and sewer: excess capacity exists and is available,
 - b. Police: police coverage is available,
 - c. Fire: the Fire Department has access to the site; sufficient water pressure for firefighting purposes is available and the building meets life safety standards.
 - 5. Community need: a community need for the use has been established.
- H. An appeal from a decision of the Board of Appeals shall be made to the Circuit Court of Maryland for Anne Arundel County.

21.26.060 - Reapplication after denial.

No application for a special exception, which has been denied wholly or in part by the ADMINISTRATIVE HEARING OFFICER Board of Appeals, shall be resubmitted for a period of one year from the date of the order of denial, except on the grounds of new evidence or proof of change of conditions found to be valid by the ADMINISTRATIVE HEARING OFFICER Board of Appeals.

21.26.070 - Expiration.

A. **Special Exception Not Established.** In any case where a special exception has not been established within one year after the date of granting the special exception, the special exception shall expire. However, the ADMINISTRATIVE HEARING OFFICER Board of Appeals, in its discretion and upon a showing of good cause, may grant up to two successive extensions of the granting of the special exception for periods of not longer than six months each; provided that, a written request for each extension is filed while the prior grant is still valid.

B. **Cessation of Special Exception Use.** A special exception expires if it ceases for more than six months. In the case of a building or structure which is destroyed or damaged by fire or other casualty or act of God, the Planning and Zoning Director may approve the reestablishment of the use provided that restoration is actively and diligently pursued to completion in a timely fashion.

21.26.090 - Appeals.

Appeals from decisions of the ADMINISTRATIVE HEARING OFFICERBoard of Appeals under this chapter shall be made to the BOARD OF APPEALS IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 21.30Circuit Court of Maryland for Anne Arundel County.

CHAPTER 21.28 - VARIANCES

21.28.010 - Purpose and authority.

The ADMINISTRATIVE HEARING OFFICERBoard of Appeals is authorized to determine and vary the regulations of this Zoning Code in harmony with their general purpose and intent, only in the specific instances set forth in this chapter, where the ADMINISTRATIVE HEARING OFFICERBoard of Appeals makes findings of fact in accordance with the standards prescribed in this chapter; and finds that there are practical difficulties or particular hardships in carrying out the regulations of this Zoning Code.

21.28.020 - Procedures.

- A. Application Procedures. All applications for variances shall be filed with the Planning and Zoning Director in accordance with the requirements of Section 21.10.010 Common Procedures for Review of Applications.
- B. Review Procedures for Variance Applications. In the review and decision of variance applications, the following procedures shall apply:
1. Staff Review. The Planning and Zoning Director, after having determined that the submission is complete, may distribute copies of the application to appropriate City departments for review.
 2. Staff Report. Following review of any variance application, the Planning and Zoning Director and any other City department reviewing the application will prepare a staff report TO INCLUDE FINDINGS on the application and transmit the staff report AND ANY OTHER STAFF REPORTS FROM OTHER CITY DEPARTMENTS, AND THE APPLICATION to the ADMINISTRATIVE HEARING OFFICERBoard of Appeals prior to the required Board of Appeals public hearing on the application.
 3. Public Hearing. The ADMINISTRATIVE HEARING OFFICERBoard of Appeals shall hold a public hearing on each application [at the time and place established by it]. The hearing shall be advertised, conducted, and a record of the proceedings shall be preserved, in the manner the Board of Appeals, by rule, prescribes from time to time. Notice of the public hearing [meeting] must be given by the applicant in accordance with the notice requirements set forth in Sections 21.10.020(B) and 21.10.020(C).
 4. Action on Application. Within fortyTWENTY days ofAFTER the conclusion of the public hearing, the ADMINISTRATIVE HEARING OFFICERBoard of Appeals shall decide to: (1) approve the application; (2) approve the application subject to specific conditions; or (3) deny the application, AND SHALL ISSUE A WRITTEN OPINION CONTAINING FINDINGS AND CONCLUSIONS. The ADMINISTRATIVE HEARING OFFICERBoard of Appeals may impose such conditions or restrictions upon the premises benefited by a variance as may be necessary to comply with the standards established in this chapter and the purposes of this Zoning Code.
 5. Notice of Decision. The Planning and Zoning Director shall give notice of the decision in accordance with the requirements set forth in Section 21.10.020(E).

21.28.040 - Permitted variances.

Variances from the regulations of this Zoning Code may be granted by the ADMINISTRATIVE HEARING OFFICERBoard of Appeals only in accordance with the standards established in this chapter, and may be granted only for the following:

- A. To permit any yard or setback less than a yard or a setback required by the applicable regulations.
- B. To permit the use of a lot or lots for a use not otherwise allowed solely because of the insufficient area or width of the lot or lots for a building or structure erected prior to August 10, 1970. However, for buildings or structures erected after August 10, 1970, the respective area and width of the lot or lots shall not be less than eighty percent of the required area and width.
- C. To permit an increase of not more than twenty percent in the maximum gross floor area of any use.
- D. To vary the lot coverage restrictions in the R1-A and the R1-B single-family residence districts.
- E. To allow in the case of single-family detached dwellings in any residential zoning district, a building height of three stories, provided that the height does not exceed that of the underlying zoning or height districts.
- F. To increase by not more than twenty percent the maximum distance that required parking spaces are permitted to

be located from the use served.

G. To vary the provisions of the critical area program subject to the requirements and standards of Section 21.54.160.

H. To vary the limitations for signs in the specific instances set forth in Section 21.70.110.

21.28.050 - Review criteria and findings.

The ADMINISTRATIVE HEARING OFFICER Board of Appeals shall not vary the regulations of this Zoning Code unless it makes findings based upon the evidence presented to it in each specific case that:

A. Because of the particular physical surroundings, shape or topographical conditions of the specific property involved, a particular hardship to the owner would result as distinguished from a mere inconvenience if the strict letter of the regulations were to be carried out.

B. The conditions upon which a petition for a variation is based are unique to the property for which the variance is sought, and are not applicable, generally, to other property within the same zoning classification.

C. The purpose of the variance is not based exclusively upon a desire to increase financial gain.

D. The alleged difficulty or hardship has not been created by any present or any previous owners of the property, whether individual or entity, to whom or to which the property has been transferred for fair market value, for other adequate or sufficient consideration, or as a result of inheritance or court order.

E. The granting of the variance will not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located.

F. The variance will not impair an adequate supply of light and air to adjacent property, substantially increase the congestion of the public streets, increase the danger of fire, endanger the public safety, or alter the essential character of the neighborhood or district in which the property is located.

G. Within the intent and purpose of this Zoning Code, the variance, if granted, is the minimum variance necessary to afford relief.

21.28.060 - Expiration.

No order of the ADMINISTRATIVE HEARING OFFICER Board of Appeals granting a variance shall be valid for a period longer than one year from the date of the order, unless the building permit is obtained within that period and the erection or alteration of a building is started or the use is commenced within that period. However, the ADMINISTRATIVE HEARING OFFICER Board of Appeals, in its discretion and upon a showing of good cause, may grant up to two successive extensions of an order granting a variance for periods not longer than six months each, provided that a written application for each extension is filed while the prior order was still valid.

21.28.070 - Appeals.

A. Any person aggrieved by any decision of the Administrative Hearing Office Board of Appeals may appeal that decision to the BOARD OF APPEALS IN CONFORMANCE WITH THE PROVISIONS OF CHAPTER 21.30 Circuit Court of Anne Arundel County.

B. An appeal filed pursuant to this section does not stay the action from which the appeal is taken unless provided by State law or an order entered by a court of competent jurisdiction.

CHAPTER 21.30 - APPEALS

21.30.010 - Purpose and authority.

A. An appeal may be taken to the Board of Appeals by a person aggrieved or by an officer, department, board or bureau of the City aggrieved by a decision of the Planning and Zoning Director other than the issuance of a misdemeanor citation, OR BY A PERSON AGGRIEVED BY A DECISION OF THE ADMINISTRATIVE HEARING OFFICER IF SUCH PERSON WAS A PARTY TO THE PROCEEDINGS BEFORE THE ADMINISTRATIVE HEARING OFFICER.

B. Review Procedures.

1. Notice and Hearing. The Board of Appeals shall select a reasonable time and place for the hearing of the appeal. Notice of the hearing shall be given in accordance with the notice requirements set forth in Sections 21.10.020(B) and 21.10.020(C).

2. Standing. If the appellant is not the applicant, the applicant shall have party status and be permitted to participate in the appeal in the manner described in Subparagraph 4.

3. Burden of Proof. The hearing before the Board of Appeals shall be on the record. The appellant shall have the burden of proof.
4. Decision. The Board of Appeals shall reach its decision within forty days from the date of the hearing. The Board may affirm or reverse, wholly or in part, or may modify the order, requirement, decision or determination as ought to be made or the Board may issue a new order, requirement, decision or determination. To that end, the Board has all the powers of the Planning and Zoning Director.
5. Notice of Decision. The Planning and Zoning Director shall give notice of the decision of the Board of Appeals in accordance with the requirements of Section 21.10.020.E.
6. Record of Decisions. The Planning and Zoning Director shall maintain records of all actions of the Board of Appeals relative to appeals taken pursuant to this section.

CHAPTER 21.54 - CRITICAL AREA OVERLAY

21.54.080 - Development requirements-Intensely developed areas.

- A. All efforts shall be made to direct intense development outside the critical area. If intense development is proposed in the critical area, it shall be directed toward the intensely developed areas.
- B. Development and redevelopment shall be subject to the Habitat Protection Area requirements prescribed in this chapter and as further described in [Sections]SECTIONS 21.54.105, 21.54.106 and 21.54.120.
- C. Stormwater Management. All development and redevelopment activities shall include stormwater management technologies that reduce pollutant loadings by at least ten percent below the level of pollution on the site prior to development or redevelopment as provided in Critical Area 10% Rule Guidance Manual - Fall 2003 and as may be subsequently amended, or in accordance with Chapter 17.10, as applicable.
- D. Lot coverage. Lot coverage in the IDA of the Critical Area shall be limited to the following maximum percentages of the development site:

REVISOR'S NOTE: In this section, no change is made to the Lot Coverage Table.

- E. Erosion and Sediment Control. Erosion and sediment control measures shall be required in accordance with City Code, Chapter 17.08.
- F. Cluster Development. Cluster development is encouraged, to the extent practicable, to reduce impervious surfaces and maximize areas of natural vegetation.
- G. Trees. Cutting and clearing of trees shall occur in accordance with Section 17.09.070 of the Annapolis City Code and with planting guidelines determined by the Department of Planning and Zoning.
- H. Steep Slopes and Their Buffers. Development is not permitted on slopes greater than or equal to twenty-five percent, including a twenty-five-foot buffer on sites larger than or equal to forty thousand square feet and a five-foot buffer on sites smaller than forty thousand square feet, unless it can be shown that such development is the only effective way to maintain or improve the stability of the slope.
- I. Development Requirements on Lots Larger Than Forty Thousand Square Feet.
 1. Wildlife Corridors.
 - a. If a development site contains a natural area, which might be used as a wildlife corridor or is designated as a greenway by a City or County plan, and there are such areas adjacent, then a development proposal shall incorporate the wildlife corridor and greenway into the site design.
 - b. The wildlife corridor incorporated into the site should connect the largest undeveloped or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with off-site habitats.
 - c. The developer shall grant a conservation easement to the City or establish a landscape maintenance agreement to ensure that the wildlife corridor is maintained.
 2. Forests and Developed Woodlands.
 - a. Forests and developed woodlands are to be maintained in accordance with Section 17.09.070 and within planting guidelines as determined by the Department.
 - b. Tree replacement and fees in lieu of tree replacement shall be allowed in accordance with the provisions of Section 17.09.070.
 - c. All forests designated on development plans shall be maintained to the maximum extent practicable, through conservation easements, restrictive covenants, or other protective instruments.
 - d. The afforested area shall be maintained as forest cover through easements, restrictive covenants, or other protective instruments.
 - e. An applicant may not clear more than thirty percent of a forest or developed woodlands on a lot or parcel, unless the ADMINISTRATIVE HEARING OFFICER Board of Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of three times the areal extent of the forest or developed woodlands cleared.

21.54.090 - Development requirements-Limited development areas.

- A. Proposed low-intensity and moderate-intensity development may be permitted in the limited development areas, but shall be subject to strict regulation to prevent adverse impacts on habitat or water quality.
1. A developer shall identify and protect any habitat protection area in accordance with [Sections]SECTIONS 21.54.105, 21.54.106 and 21.54.120.
- B. Wildlife Corridors.
1. If a development site contains a natural area, which might be used as a wildlife corridor, and there are such areas adjacent, then a development proposal shall incorporate the wildlife corridor into the site design.
2. The wildlife corridor incorporated into the site should connect the largest undeveloped, or most vegetative tracts of land within and adjacent to the site in order to provide continuity of existing wildlife and plant habitats with off-site habitats.
3. The developer shall grant a conservation easement to the City to ensure that the wildlife corridor is maintained.
- C. Forests and Developed Woodlands.
1. Forests and developed woodlands are to be maintained in accordance with Section 17.09.070 and within planting guidelines as determined by the Department of Planning and Zoning.
2. Tree replacement and fees in lieu of tree replacement shall be allowed in accordance with the provisions of Section 17.09.070.
3. All forests designated on development plans shall be maintained to the extent practicable, through conservation easements, restrictive covenants, or other protective instruments.
4. The afforested area shall be maintained as forest cover through easements, restrictive covenants, or other protective instruments.
5. An applicant may not clear more than thirty percent of a forest or developed woodlands on a lot or parcel, unless the ADMINISTRATIVE HEARING OFFICER/Board of Appeals grants a variance and the applicant replaces forest or developed woodlands at a rate of three times the areal extent of the forest or developed woodlands cleared.
- D. Steep Slopes and Their Buffers. Development is not permitted on slopes greater than or equal to fifteen percent, including a twenty-five-foot buffer on sites larger than or equal to forty thousand square feet and a five-foot buffer on sites smaller than forty thousand square feet, unless it can be shown that such development is the only effective way to maintain or improve the stability of the slope.
- E. Soils with Development Constraints. Development is discouraged on soils with development constraints. Development may be allowed by the Department of Public Works if adequate mitigation measures are implemented to address the identified constraints and if the development will not adversely affect water quality or plant, fish and wildlife habitat.
- F. Stormwater Management. Stormwater management technologies shall be required to minimize adverse water quality impacts caused by stormwater run-off in accordance with Chapter 17.10.
- G. Except as otherwise provided in Section 21.54.150, for stormwater runoff, lot coverage is limited to fifteen percent of a parcel or lot.
- H. Erosion and Sediment Control. Erosion and sediment control measures shall be required in accordance with Chapter 17.08.
- I. Cluster Development. Cluster development is encouraged, to the extent practicable, to reduce impervious surfaces and maximize areas of natural vegetation.
- J. Streams and Their Buffers.
1. If any project involves development activities which would cross or affect streams (perennial or intermittent), the developer shall identify any such stream and its buffer or expanded buffer in the project area, including those off-site, which might be affected by the project. On sites forty thousand square feet or greater, ephemeral channels located on-site shall also be identified.
2. The developer shall show, as part of the site plan review requirements, that the development will:
- Not cause increases in the frequency and severity of floods;
 - Retain existing tree canopy within the stream buffers;
 - Provide for the retention of the natural substrate for streambeds; and
 - Minimize adverse impacts to water quality and stormwater runoff.

21.54.160 - Variances.

- A. Variances to the provisions of this City of Annapolis critical area program shall be considered due to special features of a site or other circumstances or where a literal enforcement of provisions within the critical area program would result in unwarranted hardship to an applicant.
- B. Applications for variances and administrative variances shall be made in writing to the Planning and Zoning

Director with a copy to the Environmental Commission for sites forty thousand square feet or greater in accordance with the procedures in Section 21.28.020 and 21.28.030 of this Zoning Code and for administrative variances, the procedures in Section 21.18.020 of this Zoning Code. A copy of all variances and administrative variances shall be provided to the Critical Area Commission in accordance with COMAR 27.03.01.04.D as may be amended.

C. In accordance with Natural Resources Article 8-1808(d)(3)(ii) as may be amended, a variance to the critical area program requirements may not be granted unless based on written findings, that the applicant has overcome the presumption that the specific development activity for which the variance is required does not conform with this chapter and the applicant has satisfied each of the following standards. The written findings may be based on evidence introduced and testimony presented by the applicant, any City agency or another government agency, or a person deemed appropriate by the Planning Director or ADMINISTRATIVE HEARING OFFICER Board of Appeals.

1. Due to special features of the site or special conditions or circumstances peculiar to the land or structure involved, a literal enforcement of provisions and requirements of this Critical Area chapter would result in unwarranted hardship;
2. A literal interpretation of the provisions of this chapter shall deprive the applicant of the use of land or a structure permitted to others in accordance with the provisions of this Critical Area chapter;
3. The granting of a variance shall not confer upon an applicant any special privilege that would be denied by this Critical Area chapter to other lands or structures within the Critical Area;
4. The variance request is not based upon conditions or circumstances which are the result of actions by the applicant, including the commencement of development activity before an application for a variance has been filed;
5. The request does not arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property; and
6. The granting of a variance shall not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area; and
7. The granting of the variance shall be in harmony with the general spirit and intent of the State Critical Area Law and this Critical Area chapter.

D. After-the-Fact Requests.

1. The Director of Planning and Zoning may not accept an application of a variance to legalize a violation of this subtitle, including an unpermitted structure or other development activity until the Director of Planning and Zoning:
 - a. Issues a notice of violation; and
 - b. Assesses an administrative or civil penalty for the violation.
2. The ADMINISTRATIVE HEARING OFFICER Board of Appeals may 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)(l)(iii)14-15 and (2)(i), Annotated Code of Maryland, AS MAY BE AMENDED;
 - b. Prepared a restoration or mitigation plan, approved by the Director of Planning and Zoning, 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 the local Critical Area program.
3. If the ADMINISTRATIVE HEARING OFFICER Board of Appeals denies the requested after-the-fact variance, then the Director of Planning and Zoning shall:
 - a. Order removal or relocation of any structure; and
 - b. Order restoration of the affected resources.
- E. Conditions and Mitigation. The ADMINISTRATIVE HEARING OFFICER Board of Appeals shall impose conditions on the use or development of a property which is granted a variance as it may find reasonable to ensure that the spirit and intent of this chapter is 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 Director of Planning and Zoning, 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 the greatest possible distance from mean high water, the landward edge of tidal wetlands, tributary streams, nontidal wetlands, or steep slopes.
 3. An applicant who cannot comply with the above mitigation requirements is required to pay into the fee-in-lieu program established under Chapter 17.09 as established by the City Council.
 4. Any required reforestation/mitigation/offset areas shall be protected from future development by a conservation easement granted to the City or a landscape maintenance agreement as approved by the Director of Planning and Zoning.

F. Critical Area Commission Notification. Within ten working days after a written decision regarding a variance application is issued, a copy of the decision shall be sent to the Critical Area Commission. The Director of Planning and Zoning may not issue a permit for the activity that was the subject of the application until the applicable thirty-day appeal period has elapsed.

G. In accordance with Natural Resources Article, 8-1808(d)(2), Annotated Code of Maryland, as may be amended, if

a person meets the threshold standing requirements under federal law, the person shall have standing to participate as a party in a variance or administrative variance.

21.54.170 - Administrative variances.

A. The purpose of this section is to authorize delegation of ADMINISTRATIVE HEARING OFFICER Board of Appeals approval authority to the Planning and Zoning Director to apply the standards as specified in Section 21.54.160 to the following type of Critical Area variance requests.

In the case of residential structures currently located within the designated one hundred-foot Critical Area buffer, an expansion of these structures; provided, that the expansion occurs parallel to the shoreline and does not further encroach into the waterway yard.

B. Administrative variances are subject to the following conditions:

1. This section applies to new development or redevelopment within the critical area buffer.
2. This section only applies to single-family lots of record at the time of program approval, December 1, 1985.
3. Development may not impact any habitat protection areas other than the Critical Area buffer.
4. The applicant shall be required to maintain existing natural vegetation in the Critical Area buffer to the extent possible.
5. The disturbance to the Critical Area buffer shall be the least intrusion necessary.
6. Any development in the Critical Area buffer shall require mitigation/enhancement/or offsets, as follows:
 - a. The extent of the lot or parcel shoreward of the new development or redevelopment shall be required to remain, or shall be established and maintained, in natural vegetation; and
 - b. Natural vegetation of an area three times the extent of the lot coverage shall be created in a Critical Area buffer offset area or other location as may be determined by the City.
7. An applicant who cannot comply with the above planting or offset requirements is required to pay into the fee-in-lieu program established under Chapter 17.09 as established by the City Council.

Any fees-in-lieu collected under these provisions shall be placed in an account that shall assure their use only for projects within the critical area for the benefit of wildlife habitat, water quality improvements or environmental education. The status of these funds shall be reported at the time of comprehensive review. If it is not possible to carry out offsets or other mitigation within the critical area, any plantings or other habitat/water quality improvement should occur within the affected watershed.

8. Any required reforestation/mitigation/offset areas. shall be protected from future development by a conservation easement granted to the City or a landscape maintenance agreement as approved by the Director of Planning and Zoning.

9. A copy of all administrative variances shall be provided to the Critical Area Commission in accordance with COMAR 27.03.01.04.D as may be amended.

10. Within ten working days after a written decision regarding an administrative variance application is issued, a copy of the decision shall be sent to the Critical Area Commission. The Director of Planning and Zoning may not issue a permit for the activity that was the subject of the application until the applicable thirty-day appeal period has elapsed.

11. The request for an administrative variance and all supporting documentation shall be reviewed by the Director of Planning and Zoning per the standards set forth in Section 21.54.160. The Director of Planning and Zoning shall, within days, issue a decision with regard to the proposed variance as to whether the variance shall be granted, denied or granted subject to specified terms and conditions.

12. The Critical Area Commission may appeal an administrative variance granted by the Planning and Zoning Director to the Board of Appeals in conformance with the provisions of Chapter 21.30.

C. Administrative variances shall follow the procedures in Section 21.18.020 of this Zoning Code, except that the proposed variance is subject to the standards in Section 21.54.160.

21.54.190 - Appeals.

An appeal may be made to the Board of Appeals, in accordance with Chapter 21.30, by a person, firm or corporation aggrieved or affected by a decision of THE ADMINISTRATIVE HEARING OFFICER OR OF the Planning and Zoning Director in accordance with this chapter.

CHAPTER 21.68 - NONCONFORMING USES AND STRUCTURES

21.68.040 - Nonconforming structures.

No nonconforming structure may be repaired, maintained, moved, altered or expanded, except in the manner provided in this section or unless required by law.

- A. Repair, Maintenance, Alterations, and Expansion. Any nonconforming structure may be repaired, maintained, altered, or enlarged; provided, however, that no such repair, maintenance, alteration, or expansion shall either create any new nonconformity or increase the degree of the existing nonconformity of all or any part of such structure.
- B. Moving a Nonconforming Structure.
1. Except as provided in this subsection, a nonconforming structure shall not be moved in whole or in part for any distance whatsoever, to any other location on the same or any other lot unless the entire structure shall thereafter conform to the regulations of the zoning district in which it is located after being moved.
 2. Subject to the approval of the ADMINISTRATIVE HEARING OFFICER Board of Appeals under the procedures established in Section 21.26.030, which also apply to special exceptions, a building or structure in which a lawful nonconforming use has been established, may be reconstructed and relocated, consolidated with another structure or structures and relocated, or relocated within the lot on which the building or structure is located, provided:
 - a. The bulk of the building or structure is not increased;
 - b. The area of the lot occupied by the building or structure is not increased;
 - c. The manner and extent of the nonconforming use is not expanded;
 - d. The building or structure conforms to all applicable building codes;
 - e. The location of the building or structure conforms to all setback requirements; and
 - f. The building or structure conforms to all other requirements applicable under the law.
 3. For purposes of Subsection (B)(2) of this section, "reconstructed" and "reconstruction" shall mean the demolition of an entire building or structure and the construction of a substantially similar building or structure at a new location on the same lot. The terms shall also mean the repair, alteration or structural change of a building or structure in connection with the relocation of the entire building or structure to a new location on the same lot.
- C. Restoration of Damaged Nonconforming Structure.
1. A nonconforming structure that has been damaged by fire, explosion, or other natural causes, may be restored provided that such restoration is started within one year of the date of the damage and is diligently pursued until completion.
 2. If the restoration is not started within one year of the calamity and diligently prosecuted to completion, the building or structure shall be removed and the area cleared.

21.68.070 - Expansion of nonconforming uses.

No nonconforming use may be expanded except in the manner provided in this section.

- A. Applications for Expansion.
1. Applications for expansion of nonconforming uses shall be subject to the procedures established in Section 21.26.030 (special exceptions).
 2. Upon approval by the ADMINISTRATIVE HEARING OFFICER Board of Appeals, a nonconforming use of a structure may be expanded throughout the same structure to occupy a part of a structure that it did not occupy on the effective date of this Zoning Code.
- B. Application Requirements. All applications for expansion of nonconforming uses shall be accompanied by plans and on any forms prescribed by the Planning and Zoning Director and shall at a minimum include the following:
1. A statement in writing by the applicant and adequate evidence showing that the expanded nonconforming use will conform to the standards set forth in this chapter.
 2. Applicants shall provide the names and addresses of all persons having a financial or vested interest in the project and in the case of firms, partnerships and corporations, the names and addresses of all principals of the firm, partnership or corporation, who have a financial or vested interest in the project for which the application is made.
- C. Review Criteria and Findings. The decision by the ADMINISTRATIVE HEARING OFFICER Board of Appeals must be based upon written findings with respect to the following:
1. Compared with the existing nonconforming use, the expanded use will not be substantially more detrimental to the public health, safety, or general welfare.
 2. The expanded use will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, or substantially diminish and impair property values within the neighborhood.
 3. The expanded use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.
 4. Adequate utilities, road access, drainage and necessary facilities have been or are being provided.
 5. Adequate measures have been or will be taken to minimize traffic congestion in the public streets.

D. Expiration of Approval. No approvals of expansion of a nonconforming use shall be valid for a period longer than one year from the date of the approval, unless the building permit is obtained within that period and the expansion of the use is commenced within that period. However, the Planning and Zoning Director, upon a showing of good cause, may grant up to two successive extensions of the approval for periods not longer than six months each, provided that a written application for each extension is filed while the prior approval is still valid.

E. Appeals. Appeals from decisions of the ADMINISTRATIVE HEARING OFFICER Board of Appeals under this section shall be made to the Circuit Court of Maryland for Anne Arundel County.

CHAPTER 21.70 - SIGN REGULATIONS

21.70.110 - Variances.

A. Pursuant to the authority and procedures set forth in Chapter 21.28, the ADMINISTRATIVE HEARING OFFICER Board of Appeals may grant variances to the limitations set forth in this chapter with respect to the following:

1. An adjustment of up to twenty percent to the limitations set forth in this chapter with respect to the following dimensional criteria:
 - a. Sign area,
 - b. Height,
 - c. Distance of permitted projection,
 - d. Setback,
 - e. Distance from other zoning lots,
 - f. Height of lettering.
2. An increase of one sign in addition to the maximum number of signs permitted per lot, building, or street frontage.
3. The dimensional criteria set forth above in Subsection A of this section.
4. The number of signs allowed per lot, building, or street frontage.

B. In addition to the review criteria and findings set forth in Chapter 21.28 for variances, the ADMINISTRATIVE HEARING OFFICER Board of Appeals shall only approve an application if the entire signage on the lot will meet the design provisions set forth in Section 21.70.050(E).

CHAPTER 21.71 - FOREST CONSERVATION

21.71.070 - Forest conservation plan.

A. General Provisions.

1. A preliminary forest conservation plan cannot be appealed. A final forest conservation plan is appealable as part of the appeal of a final administrative decision[, Planning Commission decision or Board of Appeals decision] specified in Chapter 21.08. A stay pending appeal shall be imposed during the time allowed to file an appeal, and if an appeal has been filed, for sixty days thereafter.

2. With regard to (1) a plan of subdivision or a grading or sediment control plan that was administratively approved, or (2) a planned development that has obtained final planned development approval, prior to September 26, 2016, the disposition of which remain governed by former Section 17.09.025.B. of the city Code, any person aggrieved by a decision of the director to approve or disapprove the Forest Conservation Plan associated with such applications shall be entitled to note an appeal to the building board of appeals. Any party to the proceeding before the Building Board of Appeals aggrieved of the decision of the Building Board of Appeals shall be entitled to file a petition for judicial review of the decision of the Building Board of Appeals in the Circuit Court for Anne Arundel County.

3. The City shall use best efforts to provide weekly electronic mail updates to interested and registered users, if applicable, of newly filed or updated FCA documents and notices that are required under this chapter.

4. In developing a forest conservation plan, the applicant shall give priority to techniques for retaining existing forest on the site. There is a rebuttable presumption that priority retention areas shall be retained. The presumption can only be rebutted under the criteria specified in Section 21.71.080.B. of this Act.

5. If existing forest on the site subject to a forest conservation plan cannot be retained, the applicant shall demonstrate to the satisfaction of the Department:

- i. How techniques for forest retention have been exhausted;
- ii. Why the priority forests and priority areas specified in Natural Resources Article, ? 5-1607(c)(1), Annotated Code of Maryland, AS MAY BE AMENDED, cannot be left in an undisturbed condition:
 - a. If priority forests and priority areas cannot be left undisturbed, how the sequence for afforestation or reforestation will be followed in compliance with Natural Resources Article, ? 5-1607, Annotated Code of Maryland;
 - b. Where on the site in priority areas afforestation or reforestation will occur in compliance with Natural Resources

Article, ? 5-1607, Annotated Code of Maryland; and

iii. How the disturbance to the priority forests and priority areas specified in Natural Resources Article, ? 5-1607(c) (2), Annotated Code of Maryland, AS MAY BE AMENDED, qualifies for a variance.

6. The applicant shall demonstrate to the satisfaction of the Department that the requirements for afforestation or reforestation onsite or offsite cannot be reasonably accomplished if the applicant proposes to make a payment into the forest conservation fund or to purchase credits from a forest mitigation bank.

7. Nontidal Wetlands. A regulated activity within the net tract area that occurs wholly or partly in areas regulated as nontidal wetlands under Environment Article, Title 9, Annotated Code of Maryland, is subject to both the nontidal wetlands regulatory requirements and the requirements of this chapter, subject to the following:

i. Any area of forest in the net tract area, including forest in nontidal wetlands that is retained, shall be counted towards forest conservation requirements under this chapter;

ii. For the purpose of calculating reforestation mitigation under this section, a forested nontidal wetland permitted to be cut or cleared and required to be mitigated under Environment Article, Title 9, Annotated Code of Maryland, shall be shown on the forest conservation plan and subtracted on an acre-for-acre basis from the total amount of forest to be cut or cleared as part of a regulated activity;

iii. Nontidal wetlands shall be considered to be priority areas for retention and replacement;

iv. Forested nontidal wetland identification and delineation should be included at the earliest stage of planning to assist the applicant in avoidance and reduction of impacts to the nontidal wetlands and to avoid delay in the approval process.

8. An approved forest conservation plan is valid for five years.

B. Preliminary Forest Conservation Plan.

1. A preliminary forest conservation plan shall be prepared by a licensed Forester, a licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.

2. The preliminary forest conservation plan shall:

i. Be submitted with the proposed development plan;

ii. Include the approved forest stand delineation for the site;

iii. Include a table that lists the proposed values of the following, in square feet:

a. Net tract area,

b. Area of forest conservation required, and

c. Area of forest conservation that the applicant proposes to provide, including both onsite and offsite area;

iv. Include a clear graphic indication of the forest conservation provided on the site drawn to the same scale as the project plan scale, showing areas where retention of existing forest or afforestation or reforestation is proposed;

v. Include an explanation of how the provisions of Subsection A. of this section have been met;

vi. In the case of afforestation or reforestation, include a proposed afforestation or reforestation plan;

vii. Include a proposed construction timetable showing the sequence of forest conservation procedures;

viii. Show the proposed limits of disturbance;

ix. Show proposed stockpile areas;

x. Incorporate a proposed five-year maintenance agreement that shows how areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment; and

xi. Other information the Department determines is necessary to implement this chapter.

3. The review of the preliminary forest conservation plan shall be concurrent with the review of the preliminary site plan.

4. The Department shall post the preliminary forest conservation plan on their website for at least fifteen calendar days and provide directions as to how the public may send or deliver written comments, testimony, or documentation pertaining to the preliminary forest conservation plan.

5. The Department shall hold a public meeting at which the Department shall describe the approval process and the applicant shall make a presentation indicating the contents of the proposed preliminary forest conservation plan and the proposed site design plan. The general public may participate in the discussion of the application. The meeting shall be recorded and the recording shall be retained until such time as the appellate period tolls and made publicly available. In the event there are significant modifications to the preliminary forest conservation plan, the Department may require an additional public meeting if it determines such a meeting would serve the public interest.

6. During different stages of the review process, the preliminary forest conservation plan may be modified, provided the department approves of the changes. All significant modifications must be posted for public review and comment.

7. All correspondence material to an application shall be posted on the Department website. Comments received shall be made part of the application record.

C. Final Forest Conservation Plan.

1. A final forest conservation plan shall be prepared by a licensed Forester, a licensed Landscape Architect, or a qualified professional who meets the requirements stated in COMAR 08.19.06.01A.

2. A final forest conservation plan shall:

- i. Be submitted by the applicant consistent with requirements established by the Department and the law with the following:
 - a. A final subdivision plan,
 - b. A final project plan,
 - c. An application for a grading permit, or
 - d. An application for a sediment control permit;
 - ii. Show proposed locations and types of protective devices to be used during construction activities to protect trees and forests designated for conservation;
 - iii. In the case of afforestation or reforestation, include an afforestation or reforestation plan, with a timetable and description of needed site and soil preparation, species, size, and spacing to be used;
 - iv. Incorporate justification for any proposed disturbance of priority retention areas, including reasons why such priority retention areas cannot be retained and how the applicant shall replace proposed disturbed priority retention areas through afforestation and reforestation, in compliance with the requirements of this chapter.
 - v. Incorporate a binding five-year maintenance agreement specified in COMAR 08.19.05.01 that details how the areas designated for afforestation or reforestation will be maintained to ensure protection and satisfactory establishment, including:
 - a. Watering, and
 - b. A reinforcement planting provision if survival rates fall below required standards, as provided in the Forest Conservation Technical Manual;
 - vi. Incorporate a long-term binding protective agreement as specified in COMAR 08.19.05.02 that:
 - a. Provides protection for areas of forest conservation, including areas of afforestation, reforestation, and retention; and
 - b. Limits uses in areas of forest conservation to those uses that are designated and consistent with forest conservation, including recreational activities and forest management practices that are used to preserve forest;
 - vii. Include a statement of how the project will impact the City's tree canopy goals;
 - viii. Include the substantive elements required under Subsection B.2.ii.-v., vii.-ix., and xi. of this section, as finalized elements of the forest conservation plan; and
 - ix. Include other information the Department determines is necessary to implement this chapter.
3. Time for Notification.
- i. Within forty-five calendar days after incorporation of the prospective final forest conservation plan into a complete plan or permit application associated with a regulated activity, the decision making authority for such plans shall notify the applicant in writing whether the forest conservation plan is complete and acceptable.
 - ii. If the decision making authority fails to notify the applicant within forty-five calendar days, the plan shall be treated as complete and approved.
 - iii. The decision making authority may require further information or extend the deadline for an additional fifteen calendar days under extenuating circumstances in its own discretion.
 - iv. At the request of the applicant, the decision making authority may extend the deadline under extenuating circumstances.
 - v. The Department shall post the notifications described in this section and the final forest conservation plan on their website.
4. The Department's review of a final forest conservation plan shall be concurrent with the review of the final subdivision or project plan, grading permit application, or sediment control application associated with the project.
5. The Department may revoke an approved forest conservation plan if it finds that:
- i. A provision of the plan has been violated;
 - ii. Approval of the plan was obtained through fraud, misrepresentation, a false or misleading statement, omission of a relevant or material factor;
 - iii. Changes in the development or in the condition of the site necessitate preparation of a new or amended plan; or
 - iv. The project plan approval is terminated due to the applicant's inaction as specified in Title 17 of the City Code.
6. The Department may issue a stop work order against a person who violates a provision of this chapter or a regulation, order, approved forest conservation plan, or maintenance agreement.
7. Before revoking approval of a forest conservation plan, the Department shall notify the violator in writing and provide an opportunity for a hearing before the Department Director or designee.
8. Upon approval of the final forest conservation plan the Department shall post the plan on the Department's website within three business days.

21.71.170 - Variances.

- A. An applicant may request a variance from this chapter or the requirements of Natural Resources Article, ?? 5-1601-5-1612, Annotated Code of Maryland, if the applicant demonstrates that enforcement would result in unwarranted

hardship to the applicant.

- B. An applicant for a variance shall:
 - 1. Describe the special conditions peculiar to the property which would cause the unwarranted hardship;
 - 2. Describe how enforcement of these rules will deprive the applicant of rights commonly enjoyed by others in similar areas;
 - 3. Verify that the granting of the variance will not confer on the applicant a special privilege that would be denied to other applicants;
 - 4. Verify that the variance request is not based on conditions or circumstances which are the result of actions by the applicant or by any previous owner of the property;
 - 5. Verify that the request does not arise from a condition relating to land or building use, either permitted or nonconforming, on a neighboring property; and
 - 6. Verify that the granting of a variance will not adversely affect water quality.
- C. The Department shall make written findings that the applicant has met the requirements in Subsections A. and B. of this section before the Department may grant a variance.
- D. Notice of a request for a variance shall be given to the Department of Natural Resources within fifteen days of receipt of a request for a variance.
- E. There is established by this chapter the right and authority of the Department of Natural Resources to initiate or intervene in an administrative, judicial, or other original proceeding or appeal in the State concerning an approval of a variance under Natural Resources Article, ?? 5-1601-5-1612, Annotated Code of Maryland, AS MAY BE AMENDED, or this chapter.
- F. Any variance must be submitted to the Planning Commission or the Zoning Board of Appeals, whichever the case may be, with the project or development plan application for final determination BY THE ADMINISTRATIVE HEARING OFFICER. If the variance is sought in connection with a site design plan application not requiring ADMINISTRATIVE HEARING OFFICER Planning Commission or Zoning Board of Appeals approval, the Department shall issue a final determination on the variance application.
- G. Variance can only be appealed as part of the final administrative decision or approval of the application.

SECTION II: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that the catchlines contained in this ordinance are not law and may not be considered to have been enacted as part of this ordinance.

SECTION III: AND BE IT FURTHER ESTABLISHED AND ORDAINED BY THE ANNAPOLIS CITY COUNCIL that this Ordinance shall take effect from the date of its passage.

EXPLANATION

UPPERCASE indicates matter added to existing law.

Strikethrough indicates matter stricken from existing law.

Underlining indicates amendments.

O-__-21 [2.25.2021 draft] Page 10

O-22-21

Page 2

O-__-21 [2.25.2021 draft] Page 10