

EAST NEW MARKET ZONING ORDINANCE

Town Commissioners:

Caroline Cline, Mayor
David Carrier
Mary Dennard-Turner
Cynthia Merrick
David Tolley

Planning Commissioners:

Wayne Tanton, Chairman
Jacob Coleman
Shirley Satterfield
Ray Wilson
Matt Beletsky

Ordinance No. 11-13-12B

PREAMBLE

WHEREAS, the East New Market Planning and Zoning Commission has prepared a Comprehensive Plan pursuant to Article 66B of the Annotated Code of Maryland, as amended, and

WHEREAS, a comprehensive Zoning Ordinance has been prepared based on such Plan, and

WHEREAS, the Town Council of East New Market has held a Public Hearing on the Zoning Ordinance, and

WHEREAS, this ordinance has been prepared in accordance with the Town's Comprehensive Plan and with reasonable consideration, among other things, to the character of the land and its suitability for particular uses and with a view to conserving the value of property and encouraging the orderly development and most appropriate use of land throughout the Town.

SECTION I: NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE TOWN COUNCIL OF EAST NEW MARKET THAT it hereby adopts, enacts and ordains the following East New Market Zoning Ordinance.

SECTION II: BE IT FURTHER ENACTED AND ORDAINED THAT this Ordinance shall have taken effect immediately upon its passage.

THE EAST NEW MARKET TOWN COUNCIL

By: Caroline A. Cline
Caroline Cline, Mayor

David Carrier
David Carrier, Commissioner

Mary Dennard-Turner
Mary Dennard-Turner, Commissioner

Cynthia Merrick
Cynthia Merrick, Commissioner

David Tolley
David Tolley, Vice Mayor

ATTEST:

By: Patricia L. Kiss 11/13/12
Patricia L. Kiss, Clerk

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SECTION 1 - TITLE, INTERPRETATION, PURPOSE AND ENACTMENT

1.01 Title

This ordinance shall be known and may be cited to as the "Zoning Ordinance of East New Market, Maryland".

1.02 Provisions of Ordinance Declared to be Minimum

In their interpretation and application, the provisions of this Ordinance shall be held to be minimum requirements. Whenever the requirements of this Ordinance conflict with the requirement of any other lawfully adopted rules, regulations, ordinances or resolutions, the most restrictive, or that imposing the higher standard shall govern.

1.03 Purpose

- (1) This Zoning Ordinance has been prepared in accordance with the Town's Comprehensive Plan and with reasonable consideration, among other things, to the character of the land and its suitability for particular uses and with a view to conserving the value of property and encouraging the orderly development and most appropriate use of land throughout the Town.
- (2) The purpose of this Ordinance is to promote and protect the health, safety, morals, and general welfare of the community; to prevent congestion in the streets; to secure the public safety; to promote the conservation of natural resources; to prevent environmental pollution; to affect the concentration but avoid the congestion of population; to preserve the Town's cultural heritage; and to facilitate the adequate provision of transportation, water, sewerage, schools, recreation, parks and other public requirements.

1.04 Repeal of Conflicting Ordinance

- (1) All ordinances or parts of ordinances in conflict with the Zoning Ordinance, or inconsistent with the provisions of this Ordinance, are hereby repealed to the extent necessary to give this Ordinance full force and effect.
- (2) This Ordinance shall take effect and be in full force on Nov 13,

SECTION 2 - DEFINITIONS

2.01 Interpretation of Terms or Words

For the purpose of this Ordinance, certain terms or words used herein shall be interpreted as follows:

- (1) The word "person" includes a firm, association, organization, partnership, trust, company, or corporation as well as an individual.
- (2) The present tense includes the future tense, the singular number includes the plural, and the plural number includes the singular.
- (3) The word "shall" is a mandatory requirement, the word "may" is a permissive requirement, and the word "should" is a preferred requirement.
- (4) The words "used" or "occupied" include the words "intended, designed, or arranged".
- (5) The word "lot" includes the words "plot" or "parcel".
- (6) The masculine shall include the feminine and the feminine shall include the masculine.

2.02 Definitions

For the purposes of this Ordinance the following definitions shall apply:

Accessory structure - A structure containing an accessory use which is located on the same lot as the principal structure and is not attached by any common wall or by a common roof to the main structure.

Accessory use - A use which is clearly incidental to and customarily found in connection with the principal use, is subordinate to and serves the principal use, and is located on the same lot as the principal use.

Accessory Apartment - A dwelling unit having its own kitchen, bathroom, and sleeping facilities established within a principle residential structure, or within an accessory structure on the same lot of record of the principal residential structure. Such dwelling shall be subordinate to the principal structure and incidental to the principal structure.

Agriculture - The use of land, building, and structure for forestry, crop growth, horticulture, and floriculture. The raising of livestock and poultry shall not be included.

Apartment - A second dwelling unit within a single-family dwelling that meets the requirements of Section 23.

Awning - Any non-rigid material such as fabric or flexible plastic that is supported by a frame that is attached to an exterior wall.

Bed and Breakfast Guest Home (Inn) - A private home where, for a fee, the owner shall provide lodging, bath facilities (private or shared) and breakfast to out-of-town visitors.

Board - The Board of Appeals of East New Market, Maryland.

Building - Any structure which is designed, built, or occupied as a shelter for persons, animals, or property. The term "building" shall include houses, mobile homes, sheds, garages, stores, and offices, and shall also include any part thereof.

Commissioners - Mayor and Commissioners of East New Market, Maryland.

Comprehensive Plan - The East New Market Comprehensive Plan adopted by the Mayor and Commissioners on October 12, 2010.

Conforming lot - A parcel which has at least the minimum requirements of the district in which it is contained.

Conforming structure - A structure which meets the requirements of the district in which it is contained.

Conforming use - A use which is allowed in the district in which it is contained. Uses existing at the effective date of this ordinance which are allowed as special exceptions shall be considered as conforming uses without further action.

Cornice - Any horizontal member, structural or nonstructural, of any building, projecting outward from the exterior walls at the roof line, including eaves and other roof overhang. (Typically, where the top of the wall meets the roof.)

District - A geographic area which is identified on the Official Zoning Map in which certain structures, uses, and lot requirements are allowed.

Drainage structure - A structure or feature composed of natural or man-made materials which are designed to improve drainage or reduce potential damages due to flooding. Due to the nature of drainage works, such structures shall not be required to meet any yard setback requirements.

Duplex - Two single-family dwellings units designed and built connected together.

Dwelling unit - All or a portion of a dwelling occupied by an individual housekeeping unit and having its own kitchen, bathroom, and sleeping facilities. A dwelling unit shall

be located in a structure containing a minimum gross floor area of not less than 1,000 square feet.

Dwelling, multi-family - A residential building designed for or occupied by three or more families.

Dwelling, single-family - A detached residential building designed for and occupied by only one family including modular homes, but excluding mobile homes.

Dwelling, two-family - A detached residential building containing two dwelling units, designed for and occupied by not more than two families.

Essential Services - Facilities such as wires, lines, cables, or pipes located in public ways or easements on a customer's premises which are necessary for the furnishing of adequate water, sewer, gas, electric, telecommunication, or similar services on a particular site or adjacent customers. Not included are cross county electric transmission lines, telephone trunk lines, including microwave or transmission pipelines. Essential services shall be exempt from this Ordinance and requirements for permits under this Ordinance.

Home Occupation - Any occupation or business use conducted entirely within a dwelling or an accessory structure or both by a resident of the property, and which is clearly incidental to the residential use of the building, in accordance with Section 21, herein.

Lot - A plot or parcel of land having defined boundaries described by metes and bounds and which is recorded in the land records of Dorchester County, or which was created by a road bisecting a recorded parcel.

Lot, Corner - A lot located at the intersection of two or more public roads and/or private roads, or combination thereof.

Lot, Front of - The side or sides of a lot which abut a private or public road, or combination thereof.

Lot Line, Front of - The property line running along the front of the lot separating it from the public or private road, or combination thereof.

Lot Line, Side - Any line other than a front or rear lot line.

Mobile Home - A detached residential dwelling unit designed for transportation in one or more sections on the highway on its own wheels, or on a flatbed truck or other trailer, and arriving at the site where it is to be occupied as a dwelling complete and ready for occupancy except for minor and incidental unpacking and assembly operations, location on blocks, or other foundations, connections to utilities, and the like. Recreational trailers and vehicles are not considered as mobile homes.

Modular Home – A detached residential dwelling unit, designed for delivery to the site by transportation on the highway to a permanent location on a permanent foundation.

Non-conforming lot -- A parcel existing at the effective date of this Ordinance and does not meet the district requirements for structures and or uses.

Non-conforming structure A structure which exists at the effective date of this ordinance and does not meet the district requirements for structures and or uses.

Non-conforming use An activity conducted within a building or structure or the land, or on the combination of all three, which does not comply with the uses allowed in the district, and which existed at the effective date of this Ordinance.

Open space -- Land intended for recreation or conservation of natural resource purposes and free of residential, business, or industrial structures and uses.

Off-street parking -- Space adequate for parking an automobile(s) and which is located in such a way that no parking or maneuvering incidental to parking shall be on any public street, road, sidewalk, or alley; and so that any automobile may be parked or unparked without moving another.

Permitted principal uses and structures – Uses and structures for uses which are allowed in the districts on lots of record without prior approval of the Board. Such uses and structures must comply with the regulations within the appropriate district.

Planning and Zoning Commission --The Planning and Zoning Commission of East New Market, Maryland.

Principal building or structure – A building or structure in which the principal use of the lot is conducted.

Principal use The primary activity or structure for which a site is used. A principal use may be either a permitted principal use or a special exception.

Principal façade – The face of a building that contains the primary entrance to the establishment.

Private – Any use or structure not owned and operated by a governmental or quasi-public organization.

Public – Any use or structure owned and operated by a governmental jurisdiction or agency.

Public way Any road, highway, or thoroughfare used or available for use by the general public whether dedicated or not and whether or not such way has been accepted for

public maintenance. For the purpose of this Ordinance, all public and private roads and all navigable waters of Dorchester County shall be considered public ways.

Quasi-public – Owned and operated by a civic or non-profit organization for use or benefit of the general public.

Reclassification – The changing of the zoning classification which applies to a particular area of land.

Recreational Vehicle – A vehicle initially designed as temporary living quarters for recreational camping or travel use which either has its own mode of power or is mounted on or drawn by another vehicle. "Recreational vehicles" include:

(1) *TRAVEL TRAILER* – A licensed vehicle, mounted on wheels, of such size or weight as not to require special highway movement permits when drawn by a motorized vehicle, initially designed and constructed to provide temporary living quarters for recreational, camping or travel use. This definition does not preclude telescoping additions, as long as a unit meets roadway requirements.

(2) *TRUCK CAMPER* – A portable enclosure, designed to be loaded onto or affixed to the bed or chassis of a truck which is a licensed vehicle, initially designed and constructed to provide temporary living quarters for recreational, camping or travel use.

(3) *CAMPER TRAILER* – A licensed vehicle mounted on wheels, constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the campsite and initially designed and constructed to provide temporary living quarters for recreational camping or travel use.

(4) *MOTOR HOME* – A licensed vehicle which has its own mode of power and which is designed and constructed as temporary living quarters for recreational, camping or travel use.

Recreational Equipment – A boat, boat trailer, horse trailer or any other trailer.

Restaurant – A commercial establishment for the sale of prepared food.

Retail Sales Establishment – A commercial enterprise that provides goods and/or services directly to the consumer, where such goods are available for immediate purchase and removal from the premises by the purchaser. Retail sales establishments include, but are not limited to hardware, grocery, drug, flower, clothing, dry goods, variety, crafts, antiques, gifts, furniture, and appliances.

Road, Private – A privately owned right-of-way which provides the public a means of access to abutting property. The terms shall include street, avenue, drive, circle, highway, lane, or similar term.

Road, Public – A publicly owned right-of-way which provides the public a means of access to abutting property. The term shall include street, avenue, drive, circle, highway, lane, or similar term.

Road, State – Any public road or portion thereof assigned a federal or state route number designation.

Road, County – Any public road maintained by Dorchester County.

Setback Line, Front – A line parallel to the front lot line which establishes the minimum horizontal distance between the front lot line and a basic structure (exclusive of overhangs, steps, and other appurtenances) for a permitted principal use and/or special exception. The distance shall be established by the minimum front yard depth described in the district regulations.

Setback Line, Rear – A line parallel to the rear lot line which establishes the minimum horizontal distance between the rear lot line and a basic structure (exclusive of overhangs, steps, and other appurtenances) for a permitted principal use and/or special exception. The distance shall be established by the minimum rear yard depth described in the district regulation.

Setback Line, Side – A line parallel to the side lot line which establishes the minimum horizontal distance between the side lot line and a basic structure (exclusive of overhangs, steps, and other appurtenances) for a permitted principal use and/or special exception. The distance shall be established by the minimum side yard depth described in the district regulation.

Shopping Center Plaza – A group of five (5) or more commercial establishments of similar architectural characteristics and design, planned, developed and owned or managed as a unit, with on-site parking.

Sign – Any material, structure or device, or part thereof, composed of lettered or pictorial matter which is located out-of-doors, or on the exterior of any building, or indoors as a window sign, displaying an advertisement, announcement, notice or name, when such is in view of the general public. This definition includes anything designed to attract attention to the site where the sign is located, including but not limited to pennants, streamers, and balloons. This definition does not include flags and insignia of any government or of any political, civic, military, professional or religious organization.

Sign, A-Frame – An A-frame easel or sandwich-board-style sign.

Sign, Area – Includes all faces of a sign measured as follows:

- When any sign is framed or outlined, all of the area of the frame or outline shall be included;
- Sign measurement shall be based upon the entire area of the sign with a single continuous perimeter enclosing the extreme limits of the actual sign surface, not including structural supports if they are not used for advertising purposes;
- The area of a sign consisting of an insignia or other device, but without background, shall be calculated as the smallest polygon or circle possible enclosing all of the letters and symbols;
- The area of a window sign consisting only of letters and symbols affixed or painted on glass shall be calculated as the smallest polygon or circle possible enclosing all of the letters and symbols.

Sign, Awning - Any visual message on an awning.

Sign, Backlit - A sign consisting of opaque lettering with the light source hidden behind the letters, creating a glow or halo effect around the letters.

Sign, Banner - Any temporary sign made from fabric or any non-rigid material and supported at two or more points.

Sign, Directional - Any on-premise sign providing directions or instructions for the convenience of the general public, identifying public parking areas, fire zones, entrances, exits and other similar signs.

Sign, Externally Illuminated - A sign lighted by external light, preferably down-lit from above.

Sign Freestanding - Any sign not attached to or part of any building but separate and permanently affixed by any other means, in or upon the ground. Included are monument signs, pole signs, and post-and-arm signs.

Sign, Height - The height of a freestanding sign shall be measured vertically from the established average grade directly below the sign to the highest point of the sign, including support structures.

Sign, Monument - A freestanding sign with a base affixed to the ground.

Sign, Post and Arm - A freestanding sign comprised of a vertical post to which a perpendicular arm is attached and from which the sign hangs.

Sign, Primary - An establishment's principal sign, i.e. the sign which identifies the business to passersby.

Sign. Projecting – A sign attached to a building wall or structure that projects horizontally or at a right angle more than three feet from the face of the building. [prohibited with exceptions]

Sign. Secondary – A sign which communicates accessory information such as hours of operation, “open/closed”, etc.

Sign. Temporary – Any sign that is displayed only for a specified period of time as per §25-06 and is not permanently mounted.

Sign. Wall – A sign which is painted on or attached to the outside wall of a building, with the face of the sign in the plane parallel to such wall so that only one side is visible to the public, and not extending more than nine (9) inches from the face of such wall.

Sign. Window – A sign visible from a sidewalk, street, or other public place, affixed or painted on glass or other window material, or located inside within three feet of the window and directed at outside passersby.

Special Exceptions – Uses and structures for uses which are allowed in districts on lots of record if approved by the Board of Appeals. Such uses may be permitted as special exceptions if applicable provisions for such use are made in the applicable district regulation.

Structural Alteration – A change or modification in the ground area covered by a structure or building, the modification of a nonliving space to a habitable area, or the increase in the height, depth, or width of a structure. The conversion of an attic, porch, or basement for the personal use of the occupant is specifically exempt.

Structure – Anything constructed, erected, or placed on the ground with the intent of keeping it on a fixed location. Included are buildings, fences, porches, decks, signs, and swimming pools.

Swimming pool – A structure intended for bathing or swimming purposes located either indoors or outdoors, above ground or in the ground, and provided with controlled recirculation pumps, the water being drawn from the pool and clarified by filtration and is disinfected.

Use – Any purpose for which any structure or tract of land may be used, occupied or maintained; also, any activity, occupation, business or operation carried on or intended to be carried on in a structure or on a tract of land.

Variance – Permission by the Board of Appeals to construct, alter, or use a particular building, structure or tract of land in a way which is not in conformance with a provision or provisions of this Ordinance, as a form of relief from its literal interpretation.

Vehicle – Equipment for transportation of people, goods or material and equipment ordinarily used for recreational purposes. Included shall be, by way of example and not limitation, automobiles, trucks, pick-up trucks, trailers, marine crafts, all-terrain vehicles, motor homes, campers, buses and camping trailers.

Yard, Front – Front yard shall be bounded by the front yard setback line, the front lot line and the side lot lines.

Yard, Rear – Rear yard shall be bounded by the rear lot line, the rear setback line and the side lot lines.

Yard, Side – Side yard shall be bounded by the front setback line, the rear setback line, the side lot line and the side setback line.

Zoning Inspector – Person or persons, company, association, entity, agency or government, or a representative of any of these, appointed by the Town Commissioners from time to time, to cover the herein described duties of the Zoning Ordinance, even though their official title or office is not called “Zoning Inspector”. (The Town, at some point, may get assistance from a governmental or non-profit agency and use them as a Town Manager but the Town Manager may perform Zoning Inspector duties, or the Town Engineer may, etc.)

SECTION 3 - OFFICIAL ZONING MAP

3.01 Official Zoning Map

The incorporated areas of the Town are hereby divided into zones, as shown on the Official Zoning Map, which together with all explanatory matter thereon, is hereby adopted by reference and declared to be part of this Ordinance.

The Official Zoning Map(s) shall be identified by the signatures of the Mayor and Commissioners attested by the Town Clerk and shall bear the seal of the Town on each separate map under the following words, "This is to certify that this is the Official Zoning Map referred to in Section 3 of the Zoning Ordinance of the Town of East New Market, Maryland," together with the date of the adoption of this Ordinance.

If, in accordance with the provisions of this Ordinance and Article 66B, Revised, Annotated Code of Maryland, changes are made in zone boundaries or other matter portrayed on the Official Zoning Map, such changes shall be made or noted by ordinance number on the Official Zoning Map promptly after the amendment has been approved by the Mayor and the Commissioners or otherwise enacted. The amending ordinance shall provide that such changes or amendments shall not become effective until they have been duly entered or noted upon the Official Zoning Map. No amendment to this Ordinance which involves matter portrayed on the Official Zoning Map shall become effective until after such change and entry has been noted on said map.

No changes of any nature shall be made on the Official Zoning Map or matter shown thereon except in conformity with the procedures set forth in this Ordinance. Any unauthorized change of whatever kind by any person or persons shall be considered a violation of this Ordinance and punishable as provided under Section 9 of this Ordinance.

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the office of the Town Clerk, shall be the final authority as the current zoning status of land and water areas, buildings, and other structures in the Town.

3.02 Replacement of Official Zoning Map

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Mayor and Commissioners may by resolution adopt a new Official Zoning Map which shall supersede the prior Official Zoning Map. The Official Zoning Map should be recorded in the land records of the Dorchester County Courthouse, a copy of which shall be maintained by the Dorchester County Planning Office and maintained by the Town at the Town Hall.

SECTION 4 - INTERPRETATION OF DISTRICT BOUNDARIES

4.01 Official Zoning Map Interpretation

Where uncertainty exists as to the boundaries of zones as shown on the Official Zoning Map, the following rules shall apply:

- (1) Where district boundaries are indicated as approximately following the center lines of highways, street lines, or highway right-of-way lines shall be construed to be such boundaries.
- (2) Where district boundaries are so indicated that they approximately follow the lot lines, such lot lines shall be construed to be said boundaries.
- (3) Where district boundaries are so indicated that they are approximately parallel to the center lines or street lines of streets, or the center lines or right-of-way lines of highways such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the Official Zoning Map.
- (4) Where district boundaries are so indicated that they are approximately following town limits, such boundaries shall be construed as following town limits.
- (5) Boundaries indicated as parallel to or extensions of features indicated in subsections 1 through 4 above shall be so construed. Distances not specifically indicated on the Official Zoning Map shall be determined by the scale of the map.
- (6) Where physical or cultural features existing on the ground are at variance with those shown on the Official Zoning Map or in other circumstances not covered by subsections 1 through 5 above, the Board of Appeals shall interpret the zone boundaries.

4.02 Official Zoning Map Certification

The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original zoning district or ordinance or any subsequent amendment thereof. The Planning and Zoning Commission shall certify as to the accuracy of the new Official Zoning Map prior to its adoption by the Mayor and Commissioners. The new Official Zoning Map shall be identified by the signatures of the Mayor and Commissioners, attested by the Town Clerk, and bearing the seal of the Town under the following words: "This is to certify that this Official Zoning Map supersedes and replaces the Official Zoning Map adopted (date of adoption of map being replaced) as part of the Zoning Ordinance of East New Market, Maryland."

SECTION 5 - SCHEDULE OF FEES, CHARGES AND EXPENSES

5.01 Establishment

The Mayor and Commissioners shall establish a schedule of fees, charges, and expenses along with a collection procedure, for building permits, zoning occupancy permits, appeals, variances, special exceptions, ordinance amendments, and other matters pertaining to this Ordinance. The schedule of fees shall be posted in the Town offices and may be altered or amended only by the Commissioners, upon recommendation of the Planning and Zoning Commission.

5.02 Issuance of Permits

No certificate, permit, special exception, or variance shall be issued unless or until such costs, charges, fees, or expenses have been paid in full, nor shall any action be taken on proceedings before the Board of Appeals unless or until preliminary charges and fees have been paid in full.

SECTION 6 - SEPARABILITY CLAUSE

Should any Section or provision of this Ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the Ordinance as a whole or any part thereof other than the part so declared to be unconstitutional or invalid.

SECTION 7 - NONCONFORMITIES

7.01 Intention

It is the intent of this Section to address the issue of lot sizes, uses, and structures which were in existence prior to the adoption of this Ordinance and which do not meet the minimum standards set forth within. Such nonconformities shall be allowed to continue until they are removed, but their survival shall not be encouraged. It is further the intent of this Ordinance that nonconformities shall not be enlarged upon, expanded, or extended, except as provided herein.

7.02 Retention of Vested Rights

To avoid undue hardship, nothing in this Ordinance shall be deemed to require a change in the plans, construction, or designated use of any building in which actual construction was lawfully begun or building permit actually obtained from the Town Clerk prior to the effective date of adoption of this Ordinance.

7.03 Nonconforming Lots of Record

In any district in which a use is permitted, that use and any customary accessory uses and/or buildings may be erected on any single lot of record. All other provisions which apply must be met.

No nonconforming lot shall be further reduced in area unless the lot is divided for the purpose of enlarging adjoining lots and all parts are attached to the adjoining properties, so that no portion of the nonconforming lot remains as a separate parcel. In such case, the nonconforming lot shall not afterwards be re-established.

Nonconforming lots may be combined with adjoining parcels in their entirety, but shall not afterwards be re-established as separate lots.

7.04 Nonconforming Structures

No structure may be enlarged or altered in a way which increases its nonconformity, but any structure or portion thereof may be altered to decrease its nonconformity. A structure which is nonconforming due to yard setbacks may be expanded, enlarged, or structurally modified on any portion where the existing yard requirements can be met. Where the existing or previously approved non-conforming yard requirements cannot be met, expansions, enlargements, and structural modifications shall not extend further into the required yard setback.

Nonconforming structures which are damaged or destroyed by any means to an extent less than or equal to 50% of its replacement cost at the time of destruction may be reconstructed or restored to the same degree of nonconformity, but shall not be restored to a greater degree.

Any structure damaged or destroyed to an extent greater than 50% shall not be reconstructed or restored unless it conforms to the district regulations or unless the Board of Appeals authorizes the reconstruction or restoration as a variance. Should any nonconforming structure be moved for any reason for any distance whatever, it shall thereafter conform to the regulations for the zone in which it is located after it is moved.

7.05 Nonconforming Uses

Any legally conducted use which exists at the effective date of this Ordinance and which is a special exception in the district where it is located shall without further action be considered as a conforming special exception. Any structure associated with such use(s) which are destroyed or damaged by any means may be restored or reconstructed to the same degree prior to such damage. However, expansion or enlargements to such uses shall be subject to the provisions for special exceptions.

Any legally conducted use which exists at the effective date of this Ordinance and which is neither a permitted use nor a special exception in the district where it is located shall without further action be considered as nonconformity. Any structure associated with such use(s) which are destroyed or damaged by any means shall be treated as a nonconforming structure.

A nonconforming use shall not be expanded into a new building or addition, unless authorized by the Board of Appeals as a variance. In such case the Board may allow the area for the use to be expanded up to 50% beyond the area used after the enactment of the Ordinance.

Any nonconforming use which is discontinued for 12 consecutive months shall not be re-established, unless the discontinuance is caused by a governmental action impeding the use. In such case the Board of Appeals must determine as a variance that the use could not continue due to governmental action before the nonconforming use is reestablished.

SECTION 8 - THE OFFICE OF ZONING INSPECTOR

8.01 Creation

There is hereby established the Office of Zoning Inspector for East New Market, Maryland. The Zoning Inspector shall be appointed by the Mayor and Commissioners. If the Inspector is not an employee of the Town of East New Market, then a written agreement shall be prepared between the Inspector and the Mayor and Commissioners which indicates the relationship between the two parties and compensation, if any, for the services of the Zoning Inspector. The Zoning Inspector may be removed from office by the Mayor and Commissioners by written notice thirty (30) days prior to the date of removal from this office. Removal shall be based on inefficiency, neglect of duty, malfeasance, or nonfeasance in office. The Zoning Inspector has the right to a public hearing prior to being removed by the Commissioners. The Mayor and Commissioners shall consult with the Planning and Zoning Commission and receive written comments on the possible removal before sending the notification to the Zoning Inspector.

8.02 Duties and Responsibilities of the Zoning Inspector

- (1) Perform inspections to ensure that the minimum provisions of this Ordinance are met.
- (2) Receive complaints on possible violations of the Ordinance and follow up on such complaints within a reasonable period of time. He shall notify the property owner(s) for such violations by certified mail that the individual must take steps toward correcting such violation within 15 days of the receipt of the notification. If not, the Zoning Inspector shall take legal action to correct such violation.
- (3) Sign the building permit application if the minimum requirements of this Ordinance are met.
- (4) Process applications to the Board of Appeals, including notification of adjoining property owners and notices of public hearings in the newspaper.
- (5) Attend Board of Appeals hearings to present findings of inspections.
- (6) Collect fees for Board of Appeals applications.
- (7) Issuance of Stop Work Orders.
- (8) Issuance of Occupancy Permits.

SECTION 9 - PENALTIES, COMPLAINTS AND REMEDIES

9.01 Penalty

- (1) Violations of the provisions of this Ordinance or failure to comply with any of its requirements shall constitute a misdemeanor. Any person who violates this Ordinance or fails to comply with any of its requirements shall, upon conviction, be fined not more than \$1,000. Each and every day such violation occurs shall be considered a separate offense. The Town Commissioners are hereby given the authority to seek injunctive relief from any violation.
- (2) The owner, tenant, or agent of any owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person, who commits, participates in, assist in or maintains such violation may each be found guilty of a separate offense.
- (3) To the maximum extent reasonable, the Courts shall order the violation removed or corrected and shall issue such additional order as may be necessary and/or appropriate to safeguard against future violation of this Ordinance.
- (4) Nothing contained in this Section shall be construed to prevent the revocation of a permit, special exception, or variance previously granted by the Zoning Inspector or Board of Appeals, as appropriate, or the determination of violation of this Ordinance.

9.02 Complaints

Whenever a violation of this Ordinance occurs, or is alleged to have occurred, any person may report the violation, either verbally or in writing to the Zoning Inspector. The Zoning Inspector should make a record of the complaint, investigate the alleged violation within seven (7) days, and take necessary action. The complainant's name may remain anonymous, if he/she so requests.

SECTION 10 - BUILDING PERMITS

10.01 Building Permits

Building permits are required prior to the location or beginning of construction, reconstruction, extension, conversion, or structural alteration of any building or structure. Failure to do so shall constitute a violation of this Ordinance and the violator shall be subject to any penalties deemed appropriate by the Town Commissioner, in accordance with Local Public Laws, or as provided for in this Ordinance, whichever carries or has the highest penalty, however the citation, letter or other notice of violation shall clearly state the Ordinance and the maximum penalty.

10.02 Procedure for Obtaining a Building Permit

- (1) The applicant appears before the Town Commissioners to request the permit application. If the applicant is not the owner of the property, the owner must also sign the permit application.
- (2) The Town Clerk is responsible for taking appropriate information from applicant. All applications for building permits shall be accompanied by site plans drawn to scale, showing the actual dimensions and shape of the lot to be built upon; the locations on the lot of the buildings already existing, if any; and the location and dimensions of the proposed building or alteration. Any other information deemed necessary by the Town Clerk shall also be supplied by the applicant. The fee for such application must be paid at this time, unless this requirement is specifically waived by the Commissioners.
- (3) For those properties lying within the Town's Historic District, if the application involves exterior alterations which are not governed by this Ordinance, then the building permit application shall go directly to the Historic District Commission for their review. All applications which do proposed construction, reconstruction or relocation as governed by this Ordinance shall be forwarded to the Zoning Inspector for his review.
- (4) If the Zoning Inspector determines that the minimum requirements of this Ordinance are met, he shall notify any other relevant agencies of the pending application, if applicable, within seven (7) days after the receipt of the permit application. Applications involving water or sewerage improvements shall be signed by a representative of the Town to certify that the improvements are in compliance with the Town's water and sewer requirements.
- (5) For those properties lying within the Town's Historic District, the Historic District Commission shall then review the application. If approved, the application shall be forwarded back to the Town Commissioners.

- (6) The Mayor or his official proxy shall approve the application with his name and date. A copy of the approved application will be returned to the applicant.
- (7) Applications requiring variances or special exceptions will not be approved by the Zoning Inspector until the Board of Appeals approves the variance or special exception. For properties which lie within the Town's Historic District, such variances or special exceptions must be reviewed by the Historic District Commission prior to review by the Board of Appeals. If the application is disapproved by any agency or the Zoning Inspector, the applicant shall be notified of the disapproval and the reason why.
- (8) The property owner is responsible for notifying the Zoning Inspector when all inspection points, as required by the Town's duly adopted Building Code, have been met, to insure that construction does not progress prior to any required inspection by the Zoning Inspector.
- (9) If the work described in any building permit has not begun within 12 months from the date of issuance thereof said building permit shall expire. If work has not been completed within two (2) years from the date of issuance, the permit expires unless an extension is granted by the Zoning Inspector for good cause shown.

SECTION 11 - ZONING OCCUPANCY PERMIT

11.01 Zoning Occupancy Permit

A zoning occupancy permit must be obtained from the Zoning Inspector before any structure or premises may be used, occupied or permitted to be used or occupied. Failure to obtain a zoning occupancy permit as required by this Section shall be punishable under Section 9 of this Ordinance.

11.02 Zoning Occupancy Permit Issuance

If a building permit is required and has been issued by the inspector, a separate application for the zoning occupancy permit is not required. When construction or alteration has been completed, the applicant for the building permit shall notify the Zoning Inspector. Upon inspection of the completed construction, or alteration, and approval by the Zoning Inspector, the Zoning Inspector shall issue a zoning occupancy permit at no further cost to the applicant.

SECTION 12 - BOARD OF APPEALS

12.01 Creation and Removal

The Mayor, with concurrence from the Town Commissioners, shall appoint the Board of Appeals. The Board shall consist of three (3) members and one (1) alternate. All members must be residents of the Town of East New Market, Maryland. The terms of the office of the members of the Board are three (3) years with the exception that the initial appointments shall be staggered such that no two terms of the three members shall expire at the same time. Vacancies shall be filled by appointment of the Mayor and Commissioners for the unexpired term.

- (1) After a public hearing, members may be removed by the local legislative body for inefficiency, neglect of duty, malfeasance, or nonfeasance in office. The Town Commissioners shall file a written statement of reasons for the removal. Vacancies occurring otherwise than through the expiration of terms shall be filled for the unexpired term by the Town Commissioners.

12.02 Proceedings

The Board of Appeals shall adopt rules necessary to the conduct of its affairs, and in keeping with the provisions of this Ordinance. Meetings shall be held at the call of the Chairman and at such other times as the Board may determine. The Chairman, or in his absence, the Acting Chairman, may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public, except when the Board adjourns to a closed session in accordance with the State Open Meetings Act. The Board of Appeals shall keep minutes of its proceedings showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations and other official actions, all of which shall be a public record and be immediately filed in the office of the Board. Where specific findings are required or criteria apply, separate written findings shall be made on each of the criteria or findings.

12.03 Powers and Limitations

The Board is hereby granted the powers and duties as specified under Article 66B Annotated Code of Maryland, and as such is limited to the following:

- (1) Administrative Review -- To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Zoning Inspector, administrative official, or the Planning and Zoning Commission in the enforcement of this Ordinance, including determination of the precise location of any district boundary.
- (2) Special Exceptions -- The board shall hear and decide such special exceptions as it is specifically authorized to pass on by the terms of this Ordinance. Such action

on applications for special exceptions shall not be taken until the following conditions are met:

- (a) That the granting of the special exception will not adversely affect the public health, safety, morals, general welfare or character of adjoining uses.
- (b) That no undue traffic, nuisance, or unreasonable hazard will result.
- (c) That the proposed use and/or structure is in conformance with the East New Market Comprehensive Plan.
- (d) That the proposed use and/or structure will not interfere with the adequate and orderly provision of public facilities necessary to service the area or the proposed use.
- (e) That there are no valid objections from abutting property owners based on demonstrable fact.

The applicant for a special exception shall have the burden of proof which shall include the burden of going forward with the evidence and the burden of persuasion on all questions of fact which are to be determined by the Board.

In granting approval of a special exception, the Board may attach reasonable and necessary conditions to assure that the uses of surrounding properties are adequately protected and the intent of this Ordinance is maintained.

Unless otherwise designated by the Board, any special exception shall be implemented within twelve months from its approval. If it has not been so implemented, it shall be considered abandoned and shall terminate.

In the event that any special exception which has been implemented is abandoned or ceased for a period of twelve consecutive months, it shall be considered abandoned and shall terminate.

- (3) Variances – The Board may authorize upon appeal variances from the terms of this Ordinance as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of the Ordinance would result in unreasonable hardship. Economic circumstance shall not be considered by the Board in consideration of unreasonable hardship. No variance shall be granted by the Board unless it finds:

- (a) That there are special circumstances or conditions, applying to such land or buildings subject to the request, and that said circumstances or conditions are such that strict application of the provisions of this

Ordinance would deprive the applicant of the reasonable use of such land or buildings.

- (b) That the granting of the variance is necessary for the reasonable use of the land or building and that the variance as granted by the Board is the minimum variance that will accomplish this purpose.
- (c) That the granting of the variance will be in harmony with the general purpose and intent of this Ordinance, and will not be injurious to the neighborhood or otherwise detrimental to the public welfare.
- (d) 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, nor does the request arise from any condition relating to land or building use, either permitted or non-conforming on any neighboring property.
- (e) The condition or circumstance is not one that could be reasonably provided for under legislation of general applicability within the zoning district and shall be granted only on account of the uniqueness of the situation of the land or structure.

In granting of a variance, the Board may attach reasonable and necessary conditions that it deems necessary or desirable to minimize any adverse impacts which may result from such relief.

Under no circumstances shall the Board of Appeals grant a variance which would allow a use not compatible with permitted uses in the district or allow a use not specified in the district.

A variance shall only be granted which modifies the setback, area, or lot width provisions of this Title and the Board shall be without authority to grant a variance which would allow a use not otherwise permitted under the terms of this Title in the district involved. The Board may not grant a variance to a definition.

Variances may be granted only for individual lots pursuant to specific applications. No "blanket" variance is permitted.

For situations in which a Board member is to hear a case which could directly benefit that member financially, such member shall abstain from participating in the hearing of that case. An alternate may be called in this instance.

- (4) Non-conforming Use - The Board may grant the expansion of the area of nonconforming uses and structures upon a single lot in accordance with the provisions of Section 7 hereof.

12.04 Public Hearings

All cases involving administrative review, special exceptions, or variances shall be heard in a public hearing. For properties which lie within the Town's Historic District, such Public Hearings shall not be heard by the Board of Appeals prior to review of the request by the Historic District Commission. All required notice shall be given by the Zoning Inspector at least fifteen (15) days prior to the hearing. At least fifteen (15) days notice of the time, place, and nature of such hearing shall be published in a paper of general circulation in the community. The applicant or his/her designated agent as well as adjoining property owners shall be notified by mail. The property for which the hearing is held shall be posted with a sign in a conspicuous place, stating the general nature of the case, the date, time, and place of the hearing. Notice shall also be posted in the Town Hall.

12.05 Application for Appeals

- (1) Applications for a hearing before the Board of Appeals may be made by any person aggrieved or by any officer, department, board, or bureau of the Town affected by any decisions of the Zoning Inspector involving the enforcement of this Ordinance. This includes cases involving administrative review, special exceptions, or variances.
- (2) Applications must be filed on forms required by the Zoning Inspector. If the applicant is not the owner of the property in question, then the owner must co-sign the application. If more than one person owns the property then all owners or a legal representative authorized to sign for all owners, must sign the application. Before the application is processed, all necessary information must be provided and all fees for the case must be paid.
- (3) Within sixty (60) days of the receipt of the completed application, the Board shall hold the hearing unless both the Board and applicant mutually agree to extend this time limit.

12.06 Decision of the Board of Appeals

- (1) The concurring vote of the majority of the members of the Board shall be necessary to render any decision required by the Board. Before rendering a decision, the Board shall consider any recommendations which the Planning and Zoning Commission may present.
- (2) If any application or request is disapproved by the Board, the Board shall not accept application for substantially the same proposal until after one (1) year from the date of such disapproval.

12.07 Appeal to the Courts

Any person or persons, jointly or severally, aggrieved by any decision of the Board of Appeals may appeal to the Circuit Court of Dorchester County, Maryland.