ARTICLE V APPEALS, VARIANCES, INTERPRETATIONS

Section 1. Appeals

1. An appeal from any final order or decision of the Administrator may be taken to the Board of Appeals by any person aggrieved. An appeal is taken by filing with the Administrator and the Board of Appeals a written notice of appeal specifying the grounds therefor. A notice of appeal shall be considered filed with the administrator and the Board of Appeals when delivered to the planning department, and the date and time of filing shall be entered on the notice by the Zoning Administrator.

2. An appeal must be filed within thirty (30) days after the date of the decision or order appealed from.

3. Whenever an appeal is filed, the administrator shall forthwith transmit to the Board of Appeals all the papers constituting the record relating to the action appealed from.

4. An appeal stays all actions by the Administrator seeking enforcement of or compliance with the order or decision appealed from, unless the Administrator certifies to the Board of Appeals that (because of facts stated in the certificate) a stay would, in his opinion, cause imminent peril to life or property. In that case, proceedings shall not be stayed except by order of the Board of Appeals or a court, issued on application of the party seeking the stay, for due cause shown, after notice to the Administrator.

5. The Board of Appeals may reverse or affirm (wholly or partly) or may modify the order, requirement or decision or determination appealed from and shall make any order, requirement, decision or determination that in its opinion ought to be made in the case before it. To this end, the board shall have all the powers of the officer from whom the appeal is taken.

6. An appeal from any final order or decision of the Planning Commission or Board of Appeals shall be taken to the Circuit Court in the manner provided by law of Maryland and particularly Article 66B, Annotated Code of Maryland. The appeal must be filed within thirty (30) days after the date of the decision or order appealed.

Section 2. Variances

1. An application for a variance shall be submitted to the Board of Appeals by filing a copy of the application with the Administrator in the Town office. Applications shall be handled in the same manner as applications for zoning permits and special exceptions in conformity with the provisions of Article IV, Part 1, Sections 10, 11, and 12.

2. A variance may be granted by the Board of Appeals if it concludes that strict enforcement of the Ordinance would result in practical difficulties or unnecessary hardships for the applicant and that, by granting the variance, the spirit of the Ordinance will be observed, public safety and welfare secured, and substantial justice done. It may reach these conclusions if it finds that:

a. If the applicant complies strictly with the provisions of the Ordinance, he can make no reasonable use of his property,

b. That special conditions or circumstances exist that are unique to the subject property or structure and that a strict enforcement of the provisions of this Ordinance would result in unwarranted hardship which is not generally shared by owners of property in the same land use classification.

(1) The hardship of which the applicant complains is one suffered by the applicant rather than by neighbors or the general public,

(2) The hardship relates to the applicant's land, rather than personal circumstances,

(3) The hardship is unique, or nearly so, rather than one shared by many surrounding properties,

(4) The hardship is not the result of the applicant's own actions, and

(5) That strict enforcement of the provisions of this Ordinance would deprive the property owner of rights commonly shared by other owners of property in the area.

c. That the granting of a variance will not confer upon an applicant any special privilege that would be denied to other owners of like property and/or structures within the Zoning District.

d. That the variance request is not based upon conditions or circumstances which are self-created or self-imposed, nor does the request arise from conditions or circumstances either permitted or non-conforming which are related to adjacent parcels.

e. That greater profitability or lack of knowledge of the restrictions shall not be considered as sufficient cause for a variance.

f. That the proposed variance is consistent with the Town of Elkton Comprehensive Plan.

g. The variance will neither result in the extension of a nonconforming situation in violation of Article VIII nor authorize the initiation of a nonconforming use of land.

3. In addition to the findings in 2. above, a variance may be granted by the Board of Appeals in the Critical Area District provided:

a. That findings are made by the Board of Appeals which demonstrate that special conditions or circumstances exist that are peculiar to the land or structure within the Elkton's Critical Area program, would result in unwarranted hardship;

b. That a literal interpretation of this subtitle or the Elkton Critical Area Program and the Elkton Zoning Ordinances will deprive the applicant of rights commonly enjoyed by other properties in similar areas within the Critical Area;

c. That the granting of a variance will not confer upon an applicant any special privilege that would be denied by this subtitle or the Elkton Critical Area Program to other lands or structures within the Critical Area;

d. That the variance request is not based upon conditions or circumstances which are the result of actions by the applicant, nor does the request arise from any condition conforming, on any neighboring property; and

e. That the granting of a variance will not adversely affect water quality or adversely impact fish, wildlife, or plant habitat within the Critical Area, and that the granting of the variance will be in harmony with the general spirit and intent of the Critical Area Law and the regulations adopted in this subtitle.

4. In granting variances, the Board of Appeals may impose such reasonable conditions as will ensure that the use of the property to which the variance applies will be as compatible as practicable with the surrounding properties.

5. A variance may be issued for an indefinite duration or for a specified duration only.

6. The nature of the variance and any conditions attached to it shall be entered on the face of the zoning permit, or the zoning permit may simply note the issuance of the variance and refer to the written record of the variance for further information. All such conditions are enforceable in the same manner as any other applicable requirement of this Ordinance.

Section 3. Interpretations

1. The Board of Appeals is authorized to interpret the zoning map and to pass upon disputed questions of lot or district boundary lines and similar questions. If such questions arise in the context of an appeal from a decision of the Zoning Administrator, they shall be handled as provided in Section 1 of this Article.

2. An application for a map interpretation shall be submitted to the Board of Appeals by filing a copy of the application with the Administrator in the Town office. The application shall contain sufficient information to enable the Board to make the necessary interpretation.

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

a. Boundaries indicated as approximately following the centerline of alleys, streets, highways, streams, or railroads shall be construed to follow such centerline,

b. Boundaries indicated as approximately following lot lines, and Town boundary lines shall be construed as following such lines, limits or boundaries,

c. Boundaries indicated as following shorelines shall be construed to follow such shorelines, and in the event of change in the shoreline shall be construed as following such shorelines,

d. Where a district boundary divides a lot or where distances are not specifically indicated on the Official Zoning Map, the boundary shall be determined by measurement, using the scale of the Official Zoning Map.

e. Where any street or alley is hereafter officially vacated or abandoned, the regulations applicable to each parcel of abutting property shall apply to that portion of such street or alley added thereto by virtue of such vacation or abandonment.

4. Interpretations of the location of floodway and floodplain boundary lines may be made by the Administrator as provided in applicable regulations.

Section 4. Requests To Be Heard Expeditiously

The Board of Appeals shall hear and decide all appeals, variance requests, and requests for interpretations as expeditiously as possible, consistent with the need to follow regularly established agenda procedures, provide notice in accordance with Article VI, and obtain the necessary information to make sound decisions.

Section 5. Burden of Proof in Appeals and Variances

1. When an appeal is taken to the Board of Appeals in accordance with Section 1 of this Article, the Administrator shall have the initial burden of presenting to the Board sufficient evidence and argument to justify the order or decision appealed from. The burden of presenting evidence and argument to the contrary then shifts to the appellant, who shall also have the burden of persuasion.

2. The burden of presenting evidence sufficient to allow the Board of Appeals to reach the conclusions set forth in Section 2.2. of this Article, as well as the burden of persuasion on those issues, remains with the applicant seeking the variance.

Section 6. Board Action on Appeals and Variances

1. With respect to appeals, a motion to reverse, affirm, or modify the order, requirement, decision, or determination appealed from shall include, insofar as practicable, a statement of the specific reasons or findings of facts that support the motion. If a motion to reverse or modify is not made or fails to receive the majority vote necessary for adoption, then a motion to uphold the decision appealed from shall be in order. This motion is adopted as the Board's decision if supported by a majority of the board's membership (excluding vacant seats).

2. A motion to deny a variance may be made on the basis that any one or more of the seven criteria set forth in Section 2.2. of this Article, are not satisfied or that the application is incomplete. Insofar as practicable, such a motion shall include a statement of the specific reasons or findings of fact that support it. This motion is adopted as the board's decision if supported by a majority of the Board's membership (excluding vacant seats).

3. Postponement of hearings shall be as follows:

a. Requests for postponement shall be filed in writing with the Zoning Administrator not less than ten (10) days prior to the date of the hearing, and shall be

accompanied by a sum of money sufficient to pay the cost of advertising the postponement and the rescheduled hearing. The granting of such requests shall be at the discretion of the Chairman of the Board.

b. Requests for postponement filed later than ten (10) days prior to the date of a scheduled hearing, shall, in addition to the other requirements set forth in subsection a. above, be supported by an affidavit of the party making the request or some other creditable person. The granting of such request shall be at the discretion of the Board in cases of extreme hardship or upon good cause shown.

c. The Board may, upon its own initiative, postpone a scheduled hearing at any time.

4. The Board may continue a hearing at another time and/or date once such hearing has been started; however, the Board shall announce the date and hour of continuance of such hearing while in session.

Section 7. Reserved

Section 8. Reserved