

NEW MARKET BOARD OF APPEALS APPLICANT PROCEDURES

1. Please complete the attached Board of Appeals application for granting of a Variance, Special Exception Use, or Administrative Appeal. There is a \$365.00 application fee due at the time of application (make check payable to: Town of New Market). In addition to the appeals fee, the applicant will also be required to pay for any professional services, such as but not limited to, advertising costs, legal fees, engineering services, and any other appropriate and required services.

The fee listed represents the minimum fee. The Applicant shall reimburse the Town for the reasonable costs incurred by the Town from third parties who invoice the Town for their services rendered to the Town. All billing rates, fees, and out-of-pocket costs of all such third party costs shall be billed at their rates otherwise charged to the Town. Third party costs included, but are not limited to, engineering fees, consulting fees, legal fees, inspection fees, court reporting fees, advertisements costs for publishing and posting of public notices, etc.

The minimum base fee collected will be applied to all outstanding bills and the Applicant will be billed for all fees, costs, and expenses in excess of the minimum base fee. No final action will be taken on any application with an outstanding balance. At any time during the processing of an application that the Applicant is more than thirty (30) days in arrears, all action on the application will cease until the Town's costs are reimbursed in full.

The list of fees set forth herein is not all-inclusive. There may be other fees which are In addition to the fees set forth above and which are included in other ordinances and resolutions of the Town. In addition to the fees and expenses from third parties, the Applicant shall reimburse the Town for the reasonable time spent by Town employees relating to the consideration, analysis and/or evaluation of the issues relating to, and/or the processing of, the application on behalf of the Town. Town employees will log their time spent on the application and the Applicant shall reimburse the Town for this time at the rate of fifty (\$50.00) per hour or portion thereof.

If the base application fee of \$365.00 is not spent in the appeals process, the remainder will be refunded to the Applicant.

2. Applications to the Board of Appeals may be made by any property owner, tenant, government official, department, board or bureau. Such application shall be made to the Administrator in accordance with rules adopted by the Board. The application and accompanying maps, plans or other information shall be transmitted promptly to the secretary of the Board, who shall place the matter on the docket, advertise a public hearing thereon and give written notice of such hearing to the parties in interest. The Administrator shall also transmit a copy of the application to the Planning Commission, which may send a recommendation to the Board or appear as a party at the hearing.
3. Submit a sketch plan or adequate drawing showing distance of structure or use from all property lines, parking, etc. Six (6) copies are required to be submitted at the time of application. A justification statement addressing the general and specific Ordinance requirements of the proposal. Attach this to your application when it is submitted to the office.

4. Names and addresses of ALL persons owning property on ALL sides of the subject property MUST be supplied at the time of filing by the APPLICANT. You must include property owners opposite the subject parcel, across a road, right-of-way, or stream.
5. Send copy of application and supporting documentation to BOA Clerk, PO Box 27, 39 W. Main Street, New Market, MD 21774
6. A meeting date will be coordinated with the Zoning Administrator and Board members. You will be notified of this date. Within three (3) days of being notified of the hearing date, you will need to pick up a placard at the Town Hall. The placard announcing the hearing date must be posted for 30 days prior to the meeting. The placard shall be erected within 10 feet of the boundary line of the property which abuts the most traveled public road. If not on a public road, then facing in such a manner as may be most readily seen by the public. The sign shall be maintained at all times by the applicant until a decision on the application has been made public by the Board of Appeals. It is unlawful to alter or remove this placard until the completion of the BOA hearing. The applicant shall file an affidavit certifying the posting of the required sign.
7. The Board shall make no decision except in a specific case and after a public hearing conducted by the Board. A notice of time and place of such public hearing shall be published in a paper of general circulation in the Town at least once, no more than 30 or less than 10 days prior to the hearing. Such notice shall include the particular address or location of the property which is the subject of the appeal, as well as a brief description of the nature of the appeal, and the relief sought. Notices to the adjacent property owners will also be sent at this time.
8. Applicant or agent for applicant MUST be present at hearing to present case before the Board of Appeals.
9. Applicant will be formally notified in writing of decision by the Board of Appeals. Applicant must apply for zoning certificate or if necessary site plan approval prior to construction or commencement of use. Any person, board, taxpayer, or department of the Town aggrieved by any decision of the Board of Appeals may seek review by the Circuit Court of such decision in the manner provided in Article 66B, §4.08 of the Annotated Code of Maryland, and Title 7, Chapter 200 of the Maryland Rules.

NOTE: ALL REQUIRED INFORMATION MUST BE SUBMITTED TO TOWN HALL BEFORE THE CASE IS OFFICIALLY ACCEPTED. CASE WILL NOT BE SCHEDULED FOR PUBLIC HEARING UNTIL ALL INFORMATION IS SUBMITTED.

1. If you are pursuing a **special exception**, you should prepare a statement to address the following general criteria (excerpted from ARTICLE III, Section 7.4, Ord. 09-01, Land Development Ordinance of the Town of New Market, Maryland) at the time of filing and at the hearing:

7.4.1 No Special Exception shall be authorized unless the Board finds that the establishment, maintenance, or operation of the Special Exception meets the standards set forth in this Article. The burden of proof is on the applicant to bring forth the evidence and the burden of persuasion on all questions of fact which are determined by the Board. The Board shall give consideration to the following, where appropriate:

- a. The nature of the proposed use, the site, including its size and shape, and the proposed size, shape, and arrangement of proposed structures;*
- b. Traffic impact;*
- c. Nature of the surrounding area;*
- d. Proximity of dwellings, churches, schools, public structures, and other places of public gathering;*
- e. Availability of public services;*
- f. Preservation of cultural or historic landmarks and significant natural features and trees.*
- g. Probable effect of noise, vibration, smoke, and particulate matter, toxic matter, odor, fire or explosion hazards, or glare upon surrounding properties;*
- h. Conservation of property values;*
- i. The purpose and intent of this Ordinance;*
- j. Consistency with the Town's Master Plan;*
- k. The recommendation of the Historic District Commission when the application concerns property located within the Historic District.*

2. If you are pursuing a **variance**, you should prepare a statement to address the following general criteria (excerpted from ARTICLE III, Section 7.5, Variations of Ord. 09-01, Land Development Ordinance of the Town of New Market, Maryland) with your filing and at the hearing:

7.5.3 No such variance in the provisions or requirements of this Ordinance shall be authorized by the Board unless it finds that all the following facts and conditions exist:

- a. That there are exceptional or extraordinary circumstances or conditions applicable to the property in question or to the intended use of the property that do not apply generally to other properties or classes of uses in the same zoning district;*
- b. That such variance is necessary for the preservation and enjoyment of substantial property rights possessed by other properties in the same zoning district and in the same vicinity; and*
- c. That the authorizing of such variance will not be of substantial detriment to adjacent property and will not materially impair the purposes of this Ordinance or the public interest.*

3. Appeals Alleging Administrative Error (ARTICLE III, Section 7.6, Appeals Alleging Administrative Error of Ord. 09-01, Land Development Ordinance of the Town of New Market, Maryland)

7.6.1 An appeal to the Board of Appeals may be filed by (1) any person aggrieved by any decision of the administrative officer; or (2) any officer, department, board, or bureau of the jurisdiction affected by any decision of the administrative officer. The question of standing to appear before the Board is to be decided on a case-by-case basis. A person may properly be a party before the Board of Appeals, but may not have standing in court to challenge an adverse decision of the Board.

- a. All appeals to the Board of Appeals shall be taken within thirty (30) days of the date of the written decision from which the appeal is taken.*
- b. An appeal shall be taken by filing a form designated as a Notice of Appeal. The Notice of Appeal shall specify the grounds upon which the administrative decision is challenged. The Notice of Appeal shall be filed with the zoning official or officials from whom the appeal is taken, and a copy of the Notice of Appeal shall be filed with the Board of Appeals.*
- c. Upon receiving the Notice of Appeal, the zoning official from whose decision the appeal is taken shall transmit to the Board of Appeals, without delay, all of the papers, exhibits and other documents which constitute the record upon which the decision was made. Upon receipt of the record, the Board shall schedule a hearing for the appeal. The hearing shall be scheduled within forty-five (45) days of the date on which the notice of appeal was received by the Board of Appeals. The Board of Appeals shall notify the parties and shall give public notice of the date, time and place of the hearing. At the hearing, any party may appear in person or may be represented by an agent or an attorney.*
- d. An appeal stays the order or decision from which the appeal is taken; however, an appeal shall not stay the order if the zoning official from whom the appeal is taken certifies to the Board that a stay would, in such official's opinion, cause imminent peril to life, health, safety or property. In any such certification, the zoning official shall state the facts upon which the certification is based. In that event, the order appealed from shall not be stayed.*

You are free to consult an attorney of your choice for advice on any of the above proposals.