

## ORDINANCE NO. 2026-3

**AN ORDINANCE OF THE TOWN OF EATONVILLE, FLORIDA, DISSOLVING THE BOARD OF ADJUSTMENT ESTABLISHED BY CHAPTER 44, ARTICLE III, DIVISION 3 OF THE LAND DEVELOPMENT CODE AND TRANSFERRING POWERS OF THE BOARD OF ADJUSTMENT TO THE PLANNING BOARD BY AMENDING CHAPTER 44, ARTICLE III, DIVISION 2; REMOVING REFERENCES TO BOARD OF ADJUSTMENT IN THE LAND DEVELOPMENT CODE AND REPLACING WITH PLANNING BOARD; PROVIDING FOR CONFLICTS; PROVIDING FOR CODIFICATION; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Town Council finds that the dissolution of the Board of Adjustment and transfer of its power to the Planning Board will enhance and improve the Town's decision making process by providing for more efficient processing of requests and reducing the duplication of efforts regarding decisions; and

**WHEREAS**, transferring powers will create consistency in planning and zoning by implementing a more uniform and consistent application of policies and procedures; and

**WHEREAS**, the Town Council recognizes dissolving the Board of Adjustment will ensure resources are more efficiently managed, including but not limited to reducing expenses; and

**WHEREAS**, the Planning Board considered this Ordinance on March 12, 2026, and recommended that the Town Council adopt this Ordinance; and

**WHEREAS**, the Town Council finds that the adoption of this Ordinance is necessary for the preservation of the public peace, health, safety, and welfare of the citizens of Eatonville, Florida.

**NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF EATONVILLE, FLORIDA, AS FOLLOWS:**

[Words in ~~strike through~~ type are deletions; words in underline type are additions; asterisks (\* \* \* \*) indicate an omission from the existing text which is intended to remain unchanged.]

**SECTION 1. Recitals.** The recitals set forth above are hereby adopted as the legislative findings of the Town Council of the Town of Eatonville, Florida.

**SECTION 2. Repeal.** Chapter 44, "Board of Adjustment," of the Town Code is hereby repealed as follows:

**ARTICLE III. – BOARDS, COMMITTEES, COMMISSIONS**

\* \* \* \*

### **~~DIVISION 3 — BOARD OF ADJUSTMENT~~**

#### **~~Sec. 44-108 — Established.~~**

~~Pursuant to the provisions of the applicable state statutes, as amended, a board of adjustment, hereinafter referred to as the board of adjustment, is hereby established in the town.~~

#### **~~Sec. 44-109 — Appointment.~~**

~~The board of adjustment shall consist of five residents who shall be appointed by the town council. In addition to the regular members of the board of adjustment, the town council shall be authorized to appoint two alternate members. Said alternate members may be called upon to sit upon said board of adjustment in the temporary absence or disability of any regular member, or may act when a member is otherwise disqualified in a particular case, and during such participation, shall have the rights and responsibilities of a regular member. No member or alternate member of the board of adjustment shall be a paid or elected official or employee of the town.~~

#### **~~Sec. 44-110 — Term of Office; removal for cause; vacancies.~~**

- ~~(a) The term of office shall be for three years and shall be staggered so that not more than two terms expire within any one year by applying the procedure for appointing planning board members referenced in division 2 of this article. Alternate members shall be appointed for a term of three years.~~
- ~~(b) Members of the board of adjustment shall be removable for cause after filing of written charges, a public hearing, and a majority vote of the town council.~~
- ~~(c) Appointments to fill vacancies shall be for the unexpired term or term of the member whose term becomes vacant. Such appointments to fill vacancies shall be made in the same manner as the original appointment and shall be made within 30 days after the vacancy occurs.~~

#### **~~Sec. 44-111 — Procedures.~~**

- ~~(a) The board of adjustment shall establish rules and regulations for its own operation consistent with the provisions of applicable state statute and this chapter.~~
- ~~(b) The board of adjustment shall elect a chairperson and vice chairperson. The chairperson shall be the presiding member of the board of adjustment and the vice-chairperson shall be the presiding member in the chairperson's absence or disqualification. The board of adjustment shall appoint a secretary who may be a member of the board of adjustment or an employee of the town. The terms of all officers~~

~~elected and appointed shall be for one year with eligibility for reelection or reappointment.~~

- ~~(c) The board of adjustment shall meet at regular intervals, at the call of the chairperson, at the written request of three or more regular members or within 30 days after receipt of a matter to be acted upon by the board of adjustment. Three members of the board of adjustment shall constitute a quorum.~~
- ~~(d) The chairperson, or in his absence the acting chairperson, may administer oaths and compel the attendance of witnesses.~~
- ~~(e) All meetings of the board of adjustment shall be public. A record of all its resolutions, transactions, findings and determinations shall be made, which shall be a public record on file with the office of the town clerk.~~

#### **Sec. 44-112—Decisions.**

~~The concurring vote of a majority of the members of the board of adjustment shall be necessary to reverse any order, requirement, decision, or determination of the planning director or to decide in favor of the appellant in respect to any matter upon which it is required to pass under the terms of this chapter or to effect any variations of this chapter.~~

#### **Sec. 44-113—Powers and Duties.**

~~The board of adjustment shall have the following powers and duties:~~

- ~~(1) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the planning director in the enforcement of this chapter.~~
- ~~(2) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship.~~

#### **Sec. 44-114—Appeals.**

~~Appeals to the board of adjustment may be taken by any person aggrieved by any officer, board or commission of the town affected by any decision of the administrative official under any provision of this chapter.~~

- ~~(1) *Staying of work on premises.* An appeal to the board of adjustment stays all work on the premises and all proceedings in furtherance of the action appealed, unless the official from whom the appeal was taken shall certify to the board of adjustment, by reason of acts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining~~

~~order which may be granted by the board of adjustment to a court of record on application, on notice of the officer from whom the appeal is taken and on due cause shown.~~

~~(2) Procedure~~

~~a. Any person appealing any decision of an administrative official shall make such appeal within 30 days after rendition of the order. Requirement, decision or determination appealed from in writing to the board of adjustment and file the same, and ten copies thereof, with supporting facts and data with the planning director. This does not, however, restrict the filing of a request for a variance by any person at any time as provided for elsewhere in this article.~~

~~b. Upon receipt of the appeal, the planning director shall forthwith examine such appeal or request application and endorse his recommendation thereon together with all documents, plans, papers or other materials constituting the record upon which the action appealed was taken and transmit same to the board of adjustment. Concurrently, the planning director shall transmit a copy of said appeal together with all documents, plans, papers, or other materials constituting the record to the town attorney for his review and opinion. The town attorney shall present his opinion to the board of adjustment with respect to two items as follows:~~

~~1. As to whether the appeal is, in fact, an appeal and within the province of the board of adjustment.~~

~~2. The merits of the appeal proper if requested by the board of adjustment.~~

~~(3) Hearing of appeal. Before rendering a decision upon an appeal, the board of adjustment shall hold a public hearing. The board of adjustment shall fix a reasonable time of day for the hearing, give public notice thereof, as well as due notice to the parties involved. Upon the hearing, any party may appear in person or by agent or by attorney.~~

~~Sec. 44-115. Variances.~~

~~(a) The board of adjustment shall authorize upon appeal such variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this article, the board of adjustment must and shall find:~~

- ~~(1) That the variance is in fact, a variance as set forth within this article and within the province of the board of adjustment upon the opinion of the town attorney.~~
- ~~(2) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district.~~
- ~~(3) That the special conditions and circumstances do not result from the actions of the applicant.~~
- ~~(4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other lands, buildings, or structures in the same zoning district.~~
- ~~(5) That literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this article and would work unnecessary and undue hardship on the applicant.~~
- ~~(6) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.~~
- ~~(7) That the granting of the variance will be in harmony with the general intent and purpose of this article, and that such variance will not be detrimental to the public welfare.~~

~~(b) In granting any variance, the board of adjustment may prescribe appropriate conditions and safeguards in conformity with this article. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article. The board of adjustment may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. Under no circumstances shall the board of adjustment grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this article on the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning districts shall be considered grounds for the authorization of a variance.~~

**~~Sec. 44-116. Judicial remedy by circuit court.~~**

~~Any person jointly or severally aggrieved by any decision of the board of adjustment or any officer, department, board of commission of the town may apply to the circuit court in the judicial circuit where the board of adjustment is located for judicial relief within 30 days after rendition of the decision by the board of adjustment. The proceedings in the circuit court shall consist either by trial de novo, which shall be governed by the state rules of civil procedure, and~~

~~by petition for writ or certiorari which shall be governed by the state appellate rules. The election of remedies shall lie with the appellant.~~

**SECTION 3. Amendment.** Chapter 44, “Planning Board”, of the Town Code is hereby amended as follows:

### **ARTICLE III. – BOARDS, COMMITTEES, COMMISSIONS**

\* \* \* \*

#### **DIVISION 2 – PLANNING BOARD**

##### **Sec. 44-81. – Duties.**

\* \* \* \*

(7) To hear and decide appeals where it is alleged there is an error in any order, requirement, decision or determination made by the planning director in the enforcement of this chapter.

(8) To authorize upon appeal in specific cases such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter will result in unnecessary hardship.

~~(7)~~ (9) To perform such other duties as may from time to time be assigned to the planning board by the town council. Those duties and responsibilities shall be performed in the same manner and with the same procedures except where changed herein or in future acts of the town council.

##### **Sec. 44-83. - Appeals.**

Appeals to the planning board may be taken by any person aggrieved by any officer, board or commission of the town affected by any decision of the administrative official under any provision of this chapter.

(1) Staying of work on premises. An appeal to the planning board stays all work on the premises and all proceedings in furtherance of the action appealed, unless the official from whom the appeal was taken shall certify to the planning board, by reason of acts stated in the certificate, a stay would cause imminent peril to life or property. In such case, proceedings or work shall not be stayed except by a restraining order which may be granted by the planning board to a court of record on application, on notice of the officer from whom the appeal is taken and on due cause shown.

(2) Procedure

a. Any person appealing any decision of an administrative official shall make such appeal within 30 days after rendition of the order. Requirement, decision or

determination appealed from in writing to the planning board and file the same, and ten copies thereof, with supporting facts and data with the planning director. This does not, however, restrict the filing of a request for a variance by any person at any time as provided for elsewhere in this article.

b. Upon receipt of the appeal, the planning director shall forthwith examine such appeal or request application and endorse his recommendation thereon together with all documents, plans, papers or other materials constituting the record upon which the action appealed was taken and transmit same to the planning board. Concurrently, the planning director shall transmit a copy of said appeal together with all documents, plans, papers, or other materials constituting the record to the town attorney for his review and opinion. The town attorney shall present his opinion to the planning board with respect to two items as follows:

1. As to whether the appeal is, in fact, an appeal and within the province of the planning board.

2. The merits of the appeal proper if requested by the planning board.

(3) Hearing of appeal. Before rendering a decision upon an appeal, the planning board shall hold a public hearing. The planning board shall fix a reasonable time of day for the hearing, give public notice thereof, as well as due notice to the parties involved. Upon the hearing, any party may appear in person or by agent or by attorney.

#### **Sec. 44-84. – Variances.**

(a) The planning board shall authorize upon appeal such variance from the terms of this article as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this article would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this article, the planning board must and shall find:

(1) That the variance is in fact, a variance as set forth within this article and within the province of the planning board upon the opinion of the town attorney.

(2) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district.

(3) That the special conditions and circumstances do not result from the actions of the applicant.

- (4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this article to other lands, buildings, or structures in the same zoning district.
  - (5) That literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this article and would work unnecessary and undue hardship on the applicant.
  - (6) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
  - (7) That the granting of the variance will be in harmony with the general intent and purpose of this article, and that such variance will not be detrimental to the public welfare.
- (b) In granting any variance, the planning board may prescribe appropriate conditions and safeguards in conformity with this article. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this article. The planning board may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. Under no circumstances shall the planning board grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this article on the zoning district. No nonconforming use of neighboring lands, structures or buildings in the same zoning districts shall be considered grounds for the authorization of a variance.

**Sec. 44-85. – Judicial remedy by circuit court.**

Any person jointly or severally aggrieved by any decision of the planning board or any officer, department, board of commission of the town may apply to the circuit court in the judicial circuit where the planning board is located for judicial relief within 30 days after rendition of the decision by the planning board. The proceedings in the circuit court shall consist either by trial de novo, which shall be governed by the state rules of civil procedure, and by petition for writ or certiorari which shall be governed by the state appellate rules. The election of remedies shall lie with the appellant.

**SECTION 4. Other References in Land Development Code to Board of Adjustment.**  
Other references in the Land Development Code to the Board of Adjustment shall be amended as follows:

**Sec. 42-4. – Definitions.**

\* \* \* \*

~~Board of adjustment means a body of the town created in section 44-108, authorized to hear and decide administrative appeals, and requests for variances from the strict application of this Land Development Code as herein provided for within this chapter.~~

\* \* \* \*

*Variance* means a relaxation granted by the ~~board of adjustment~~ planning board as provided for herein of the area or dimensional requirements or other provisions of this Land Development Code, but not including use regulations where such variance will not be contrary to the public interest and where, owing to conditions peculiar to the property and not the result of the actions of the applicant, a literal enforcement of this Land Development Code would result in unnecessary and undue hardship.

\* \* \* \*

#### **Sec. 44-149. – Voting.**

(a) This is not a decision making body. It is an advisory group to the planning board, ~~board of adjustment~~ and town council. Each member will make written recommendations based solely on their area of expertise with this Land Development Code, town ordinances and resolutions, operating departmental policies, federal, state, county, and water management district rules and regulations and other written rules and regulations that may be applicable to a project. Action will be recommended based on consensus that all applicable town regulations are satisfied by the application for development approval.

\* \* \* \*

#### **Sec. 44-177. – ~~Board of Adjustment~~ Planning Board to authorize; procedure.**

(a) The ~~board of adjustment~~ planning board shall authorize upon appeal such variance from the terms of this chapter as will not be contrary to the public interest where, owing to special conditions, a literal enforcement of the provisions of this chapter would result in unnecessary and undue hardship. In order to authorize any variance from the terms of this chapter the ~~board of adjustment~~ planning board must and shall find:

- (1) That the variance is, in fact, a variance as set forth within this chapter and within the province of the ~~board of adjustment~~ planning board upon the opinion of the town attorney.
- (2) That special conditions and circumstances exist which are peculiar to the land, structure, or building involved, and which are not applicable to other lands, structures or buildings in the same zoning district.
- (3) That the special conditions and circumstances do not result from the actions of the applicant.
- (4) That granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, buildings, or structures in the same zoning district.

- (5) That literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same zoning district under the terms of this chapter and would work unnecessary and undue hardship on the applicant.
- (6) That the variance granted is the minimum variance that will make possible the reasonable use of the land, building, or structure.
- (7) That the grant of the variance will be in harmony with the general intent and purpose of this chapter, and that such variance will not be detrimental to the public welfare.

(b) In granting any variance, the ~~board of adjustment~~ planning board may prescribe appropriate conditions and safeguards in conformity with this chapter. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of this chapter. The ~~board of adjustment~~ planning board may prescribe a reasonable time limit within which the action for which the variance is required shall be begun or completed or both. Under no circumstances shall the ~~board of adjustment~~ planning board grant a variance to permit a use not generally or by special exception permitted in the zoning district involved or any use expressly or by implication prohibited by the terms of this chapter on this zoning district. No nonconforming use of neighboring lands, structures, or buildings in the same zoning district and no permitted use of lands, structures or buildings in the same zoning districts shall be considered grounds for the authorization of a variance.

**Sec. 44-178. – Judicial remedy by circuit court.**

Any person jointly or severally, aggrieved by any decision of the ~~board of adjustment~~ planning board or any officer, department, board or commission of the town may apply to the circuit court in the judicial circuit where the ~~board of adjustment~~ planning board is located for judicial relief within 30 days after rendition of the decision by the ~~board of adjustment~~ planning board. The proceedings in the circuit court shall consist either by trial de novo, which shall be governed by the state rules of civil procedure, and by petition for writ or certiorari, which shall be governed by the state appellate rules. The election of remedies shall lie with the appellant.

\* \* \* \*

**Sec. 44-252. – General sequence of steps.**

All persons desiring to undertake any new construction, structural alteration, or changes in the use of a building or lot shall apply with the planning director for a building permit and certificate of occupancy or statement of zoning compliance by filling out the appropriate form and by submitting the required fee. The planning director will then either issue or refuse the building permit or refer the application form to the ~~planning board or board of adjustment~~. After the building permit has been received by the applicant, he may proceed to undertake the action permitted in the building permit. If the planning director finds that the action of the applicant has been taken in accordance with the building permit, he will then issue a certificate of occupancy or a statement of zoning compliance allowing the premises to be occupied and/or utilized.

\* \* \* \*

**Sec. 44-283. – Required.**

No building or structure shall be erected and no existing building shall be removed, altered, added to, or enlarged until a permit has been issued by the planning director. Except, upon a written order of the ~~board of adjustment~~ planning board, no building permit, certificate of occupancy or statement of zoning compliance shall be issued for any structure where the construction, addition, alteration or use would be in violation of any of the provisions of this Land Development Code.

**Sec. 44-284. – Classes of permits.**

Under the provisions of this chapter, the following classes of building permits exist and may be issued:

- (1) *Permitted use.* A building permit for a permitted use may be issued by the planning director on his own authority as provided by this chapter.
- (2) *Permitted uses with site plan review.* A building permit for a permitted use or approved special exception use requiring site plan review may be issued by the planning director upon the order of the planning board after their review in accordance with the provisions of this chapter. Said site plan, upon approval, shall become a part of the construction plans submitted for issuance of a building permit.
- (3) *Special exception uses.* A building permit for a special exception use may be issued by the planning director upon the order of the town council after the applicable procedures and provisions of this chapter are complied with.
- (4) *Building permit after an appeal or a request for a variance.* A building permit may be issued by the planning director upon the order of the ~~board of adjustment~~ planning board after the applicable procedures and provisions of this chapter have been complied with.

\* \* \* \*

**Sec. 46-41. – General.**

The ~~board of adjustment~~ planning board shall hear and decide on requests for appeals and requests for variances from the strict application of this chapter. Pursuant to F.S. § 553.73(5), the ~~board of adjustment~~ planning board shall hear and decide on requests for appeals and requests for variances from the strict application of the flood resistant construction requirements of the Florida Building Code.

**Sec. 46-42. – Appeals.**

The ~~board of adjustment~~ planning board shall hear and decide appeals when it is alleged there is an error in any requirement, decision, or determination made by the floodplain administrator in the administration and enforcement of this chapter. Any person aggrieved by the decision may appeal such decision to the circuit court, as provided by Florida Statutes.

**Sec. 46-43. – Limitations on authority to grant variances.**

The ~~board of adjustment~~ planning board shall base its decisions on variances on technical justifications submitted by applicants, the considerations for issuance in section 46-47 of this chapter, the conditions of issuance set forth in section 46-48 of this chapter, and the comments and recommendations of the floodplain administrator and the building official. The ~~board of adjustment~~ planning board has the right to attach such conditions as it deems necessary to further the purposes and objectives of this chapter.

\* \* \* \*

**Sec. 46-47. – Considerations for issuance of variances.**

In reviewing requests for variances, the ~~board of adjustment~~ planning board shall consider all technical evaluations, all relevant factors, all other applicable provisions of the Florida Building Code, this chapter, and the following:

- (1) The danger that materials and debris may be swept onto other lands resulting in further injury or damage;
- (2) The danger to life and property due to flooding or erosion damage;
- (3) The susceptibility of the proposed development, including contents, to flood damage and the effect of such damage on current and future owners;
- (4) The importance of the services provided by the proposed development to the community;
- (5) The availability of alternate locations for the proposed development that are subject to lower risk of flooding or erosion;
- (6) The compatibility of the proposed development with existing and anticipated development;
- (7) The relationship of the proposed development to the comprehensive plan and floodplain management program for the area;
- (8) The safety of access to the property in times of flooding for ordinary and emergency vehicles;
- (9) The expected heights, velocity, duration, rate of rise and debris and transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and
- (10) The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, streets and bridges.

**Sec. 46-48. – Conditions for issuance of variances.**

Variances shall be issued only upon:

- (1) Submission by the applicant, of a showing of good and sufficient cause that the unique characteristics of the size, configuration, or topography of the

site limit compliance with any provision of this chapter or the required elevation standards;

- (2) Determination by the ~~board of adjustment~~ planning board that:
  - a. Failure to grant the variance would result in exceptional hardship due to the physical characteristics of the land that render the lot undevelopable; increased costs to satisfy the requirements or inconvenience do not constitute hardship;

\* \* \* \*

**Sec. 50-44. – Right of appeal; hearings.**

(a) Any person affected by any notice which has been issued in connection with the enforcement of any provision of this Land Development Code or of any rule or regulation adopted pursuant thereto may request and shall be granted a hearing on the matter before the ~~board of adjustment~~ planning board. Such appeal must be filed in writing with the building official within 30 days from the date of service and must contain at least the following information:

- (1) Identification of the building or structure concerned by street address or legal description;
- (2) A statement identifying the legal interest of each appellant;
- (3) A statement identifying the specific order or section being appealed;
- (4) A statement detailing the issues on which the appellant desires to be heard; and
- (5) The legal signature of all appellants and their official mailing addresses.

(b) Upon receipt of an appeal, the ~~board of adjustment~~ planning board shall as soon as practicable fix a date, time and location for the hearing. The hearing date shall not be more than 30 days from the date the appeal was filed with the building official. Written notice of the time and location of the hearing shall be delivered personally or mailed to each appellant at the address on the appeal by certified mail, postage, prepaid and receipt requested. Failure of any person to appear at the hearing set in accordance with the provisions of this chapter shall constitute a waiver of his right to an administrative hearing on the notice. Except for a vacation order issued in accordance with section 303, Standard Housing Code, enforcement of any notice issued by the building official under the provisions of this Land Development Code shall be held in abeyance during the course of an appeal. A code enforcement hearing officer hearing, however, may be scheduled and noticed during this time period.

\* \* \* \*

**Sec. 60-19. – Power of ~~board of adjustment~~ planning board.**

The ~~board of adjustment~~ planning board may authorize upon appeal in specific cases any variance from the terms of this chapter that will not be contrary to the public interest where, owing to specific conditions, a literal enforcement of the provisions of this chapter would result in

unnecessary hardship. A variance from the terms of this chapter shall not be granted by the ~~board of adjustment~~ planning board unless and until the following requirements are met:

- (1) A written application for a variance is submitted demonstrating the following:
  - a. Special conditions and circumstances exist which are peculiar to the land, structure, or building involved and which are not applicable to other lands, structures or buildings in the same district.
  - b. Literal interpretation of the provisions of this chapter would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this chapter.
  - c. The special conditions and circumstances do not result from the actions of the applicant.
  - d. Granting the variance requested will not confer on the applicant any special privilege that is denied by this chapter to other lands, structures or buildings in the same district. No nonconforming use of neighboring land, structures or buildings in other districts shall be considered grounds for the issuance of a variance.
- (2) Notice of public hearing shall be given to the public by publishing a notice thereof in a newspaper of general circulation in the town at least 15 but not more than 30 days prior to the hearing.
- (3) The public hearing shall be held. Any party may appear in person, or by agent or attorney at the hearing.
- (4) The ~~board of adjustment~~ planning board shall make factual findings that the requirements of this chapter have been met by the applicant for a variance.
- (5) The ~~board of adjustment~~ planning board shall further make a finding that the reasons set forth in the application justify the granting of the variance and that the variance and that the variance is the minimum variance that will make possible the reasonable use of the land, building or structure.

\* \* \* \*

#### **Sec. 60-85. – Nonconforming fences.**

Any fence which existed and is maintained at the same time this chapter becomes effective may be continued, although such fence does not conform to all the provisions contained herein. However, all such nonconforming fences shall be completely removed from the premises or brought into conformance no later than January 1, 1997 ~~except by review by the board of adjustment~~. No nonconforming fence shall be altered, repaired, or extended unless brought into conformance with the requirements of this chapter. No fence shall be considered to be a conforming fence if it was erected without the approval of the planning department and without a building permit having been obtained, or if the fence was constructed contrary to the provision of a building permit. Any such fence shall be considered unlawful and shall be a subject to removal.

\* \* \* \*

**Sec. 60-465. – Review of communication towers.**

(a) *Site plan review.* All communication towers shall comply with the site plan review requirements of this Land Development Code. Any request to deviate from any of the requirements of this section shall require a variance approval from the ~~board of adjustment~~ planning board. In addition to the submittal requirements contained therein, the following information shall be required:

\* \* \* \*

**Sec. 60-617. – Administrative actions, town council decisions.**

Appeals of administrative actions shall be directed to the ~~board of adjustment~~ planning board pursuant to chapter 44, pertaining to administration. Decisions of the town council shall be appealed to the circuit court. Review of a development order or permit application for property containing or abutting wetlands shall not commence until conclusion of the appeal process.

\* \* \* \*

**SECTION 5. Codification.** It is the intent of the Town Council that the provisions of this Ordinance shall be codified. The codifier is granted broad and liberal authority in codifying the provisions of this Ordinance.

**SECTION 6. Conflicts.** All Town ordinances or parts thereof in conflict with this Ordinance are, to the extent of such conflict, repealed.

**SECTION 7. Severability.** If any section, sentence, phrase, word, or portion of this Ordinance is determined to be invalid, unenforceable, unlawful, or unconstitutional by a court of competent jurisdiction, then all remaining provisions of this Ordinance shall remain in full force and effect.

**SECTION 8. Effective Date.** This Ordinance shall become effective upon its adoption.

**Upon motion duly made and carried,** the foregoing Ordinance was approved upon its first reading on \_\_\_\_\_, 2026.

**Upon motion duly made and carried,** the foregoing Ordinance was approved upon its second reading on \_\_\_\_\_, 2026.

**TOWN OF EATONVILLE**

Attest:

\_\_\_\_\_  
Angie Gardner, Mayor

\_\_\_\_\_  
Veronica King, Town Clerk

Approved as to form:

\_\_\_\_\_  
Clifford B. Shepard, Town Attorney