

TOWN OF NORTH BEACH
8916 CHESAPEAKE AVENUE
NORTH BEACH, MD 20714

ORDINANCE 19-03

AMENDING THE NORTH BEACH TOWN CODE

CHAPTER 117, “ZONING”, TO ADOPT ARTICLE X, “DEVELOPMENT RIGHTS AND RESPONSIBILITIES”, TO EXERCISE THE AUTHORITY GRANTED BY TITLE 7, SUBTITLE 3 OF THE LAND USE ARTICLE OF THE ANNOTATED CODE OF MARYLAND TO ENTER INTO DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS AND TO ACT AS THE PUBLIC PRINCIPAL.

WHEREAS, pursuant to Md. Code Ann., Local Gov’t. Article, § 5-202, the Town of North Beach (“the Town”) has the authority to adopt such ordinances as it deems necessary to assure the good government of the City; protect and preserve the City’s rights, property, and privileges; and preserve peace and good order; and

WHEREAS, pursuant to the authority of Md. Code Ann., Local Gov’t, Division II, “Municipalities,” and Md. Code Ann., Land Use, Division I, “Single-Jurisdiction Planning and Zoning,” the Town Council adopted the provisions codified in Chapter 117, “Zoning”; and

WHEREAS, pursuant to § 117-25(A)(2) of the Town Code, the Town Council may initiate proposals to amend, supplement, change, modify or repeal the Town’s zoning ordinance; and

WHEREAS, § 117-25(C), the Planning Commission and the Town Council must conduct a public hearing on all proposed ordinances amending Chapter 117; and

WHEREAS, on or about August 2012, the Town of North Beach (“the Town”) approved and passed Ordinance No: 12-09 which adopted the Town of North Beach’s Comprehensive Plan; and

WHEREAS, on September 26, 2019, the North Beach Planning Commission held an advertised public hearing on a proposed amendment to Chapter 117 of the Town Code, to implement the authority granted by Title 7, Subtitle 3 of the Land Use Article of the Annotated Code of Maryland to enter into Development Rights and Responsibilities Agreements with developers of property within the Town and, having received public comment, recommended adoption of the proposed amendment; and

WHEREAS, on October 10, 2019, the Town Council held an advertised public hearing at which time interested persons were afforded an additional opportunity to comment.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Town Council of the Town of North Beach, Maryland, that Chapter 117, “Zoning”, of the Code of the Town of North Beach be and hereby is amended to add Article X. Development Rights and Responsibilities Agreements” as follows:

Chapter 117. Zoning

ARTICLE X. DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENTS

SEC. 117-34. DEFINITIONS.

IN THIS ARTICLE, THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED:

A. AGREEMENT OR “DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT” MEANS AN AGREEMENT BETWEEN THE TOWN AND A PERSON HAVING A LEGAL OR EQUITABLE INTEREST IN REAL PROPERTY TO ESTABLISH CONDITIONS UNDER WHICH DEVELOPMENT MAY PROCEED FOR A SPECIFIED TIME.

B. APPLICANT MEANS ANY INDIVIDUAL, FIRM, CORPORATION, PARTNERSHIP, ASSOCIATION, SOCIETY, SYNDICATION, TRUST, OR OTHER LEGAL ENTITY THAT FILES A PETITION TO ENTER INTO AN AGREEMENT.

C. COMPREHENSIVE PLAN MEANS THE CURRENT TOWN OF NORTH BEACH COMPREHENSIVE PLAN AS ADOPTED BY THE TOWN UNDER THE PROVISIONS OF TITLE 3 OF THE LAND USE ARTICLE OF THE ANNOTATED CODE OF MARYLAND. FOR THE PURPOSES OF THIS DEFINITION, “COMPREHENSIVE PLAN” INCLUDES THE GENERAL PLAN, MASTER PLAN, NEIGHBORHOOD PLANS, AND THE LIKE AS ADOPTED IN ACCORDANCE WITH THE APPLICABLE PROVISIONS OF STATE LAW.

D. ENHANCED PUBLIC BENEFIT MEANS A PUBLIC INFRASTRUCTURE IMPROVEMENT OR OTHER PUBLIC BENEFIT, TO BE PROVIDED AT THE APPLICANT’S EXPENSE, THAT BENEFITS THE PUBLIC AND IS IN EXCESS OF THE PUBLIC INFRASTRUCTURE IMPROVEMENTS AND OTHER PUBLIC BENEFITS THAT AN APPLICANT WOULD OTHERWISE BE REQUIRED TO PROVIDE UNDER THE APPLICABLE LAW DURING THE COURSE OF DEVELOPMENT OF THE PROPERTY. AN ENHANCED PUBLIC BENEFIT INCLUDES, BUT IS NOT LIMITED TO, PROVIDING:

(1) MORE THAN THE REQUIRED AMOUNT OF OPEN SPACE, PARKLAND, OR AFFORESTATION;

(2) MORE THAN THE REQUIRED AMOUNT OF MULTIMODAL TRANSPORTATION FACILITIES;

(3) TRAFFIC SAFETY AND CAPACITY IMPROVEMENTS THAT ALLOW FOR MORE TRAFFIC CAPACITY THAN WHAT IS OTHERWISE PROJECTED AFTER FULL BUILDOUT OF THE DEVELOPMENT;

(4) MORE THAN THE REQUIRED AMOUNT OF STREAM RESTORATION;

(5) MORE THAN THE REQUIRED AMOUNT OF AFFORDABLE HOUSING;

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(6) RECREATIONAL FACILITIES;
(7) PUBLIC SAFETY FACILITIES; AND
(8) OFF-SITE WATER OR SEWER INFRASTRUCTURE IMPROVEMENTS THAT AN APPLICANT IS REQUIRED TO PROVIDE (I) THAT ARE CONSTRUCTED AND OPERATIONAL AT AN EARLIER TIME THAN WOULD OTHERWISE BE REQUIRED OR REASONABLY EXPECTED IN CONSIDERING THE NEXUS OF THE IMPROVEMENT TO THE PROJECT AND THE PROJECT BUILDOUT AND (II) WHICH ALLEVIATES AN OTHERWISE EXISTING DEFICIENCY THAT WOULD PREVENT OTHER DEVELOPMENT FROM BEING APPROVED.

E. PLANNING COMMISSION MEANS THE TOWN OF NORTH BEACH PLANNING COMMISSION.

F. PROPERTY MEANS THE PARCEL OR PARCELS OF REAL PROPERTY TO BE DEVELOPED WHICH ARE THE SUBJECT OF AN AGREEMENT.

SEC. 117-35. PURPOSE.

THE PURPOSE OF THIS CHAPTER IS TO PROVIDE AN ADDITIONAL TECHNIQUE FOR LAND DEVELOPMENT THAT IS CONSISTENT WITH THE COMPREHENSIVE PLAN AND IS AUTHORIZED BY TITLE 7, SUBTITLE 3 OF THE LAND USE ARTICLE OF THE ANNOTATED CODE OF MARYLAND. IT IS A PURPOSE OF THIS CHAPTER TO PROVIDE CERTAINTY AND STABILITY TO DEVELOPERS, WHOSE PROJECTS MAY TAKE MANY YEARS TO COMPLETE, WHILE ALLOWING THE TOWN TO NEGOTIATE ENHANCED PUBLIC BENEFITS. THIS CHAPTER IS INTENDED TO ENHANCE DEVELOPMENT FLEXIBILITY, INNOVATION, AND QUALITY WHILE ENSURING PROTECTION OF THE PUBLIC INTEREST, HEALTH, SAFETY, AND WELFARE.

SEC. 117-36. AUTHORITY; PUBLIC PRINCIPAL.

THE MAYOR AND TOWN COUNCIL OF NORTH BEACH MAY EXERCISE THE AUTHORITY GRANTED BY TITLE 7, SUBTITLE 3 OF THE LAND USE ARTICLE OF THE ANNOTATED CODE OF MARYLAND TO ENTER INTO AGREEMENTS AND SHALL ACT AS THE PUBLIC PRINCIPAL.

SEC. 117-37. PETITION.

A. ANY PERSON HAVING A LEGAL OR EQUITABLE INTEREST IN REAL PROPERTY IN THE TOWN OF NORTH BEACH MAY PETITION THE MAYOR AND TOWN COUNCIL TO ENTER INTO AN AGREEMENT.

B. THE PETITION MUST BE FILED WITH THE TOWN CLERK ON FORMS PROVIDED BY THE TOWN AND MUST BE ACCOMPANIED BY A FEE AS DETERMINED BY RESOLUTION OF THE TOWN COUNCIL.

C. THE PETITION MUST INCLUDE A COPY OF THE PROPOSED AGREEMENT.

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D. ALL PERSONS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, ALL OWNERS, CONTRACT PURCHASERS, AND LIENHOLDERS, MUST AUTHORIZE THE PETITION.

SEC. 117-38. CONTENTS OF DEVELOPMENT RIGHTS AND RESPONSIBILITIES AGREEMENT.

A. AT A MINIMUM, AN AGREEMENT MUST CONTAIN THE FOLLOWING:

(1) A LAWYER'S CERTIFICATION THAT THE APPLICANT HAS EITHER A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY;

(2) THE NAMES OF ALL PERSONS HAVING A LEGAL OR EQUITABLE INTEREST IN THE PROPERTY, INCLUDING, BUT NOT LIMITED TO, OWNERS, CONTRACT PURCHASERS, AND LIEN HOLDERS;

(3) A LEGAL DESCRIPTION OF THE PROPERTY THAT IS SUBJECT TO THE AGREEMENT;

(4) THE DURATION OF THE AGREEMENT;

(5) THE PERMISSIBLE USES OF THE PROPERTY;

(6) THE DENSITY OR INTENSITY OF USE OF THE PROPERTY;

(7) THE MAXIMUM HEIGHT AND SIZE OF STRUCTURES TO BE LOCATED ON THE PROPERTY;

(8) A DESCRIPTION OF PERMITS REQUIRED OR ALREADY APPROVED FOR THE DEVELOPMENT OF THE PROPERTY;

(9) A STATEMENT THAT THE PROPOSED DEVELOPMENT PLAN IS CONSISTENT WITH THE COMPREHENSIVE PLAN AND ALL APPLICABLE TOWN DEVELOPMENT REGULATIONS;

(10) A DESCRIPTION OF THE CONDITIONS, TERMS, RESTRICTIONS, OR OTHER REQUIREMENTS DETERMINED BY THE TOWN TO BE NECESSARY TO ENSURE THE PUBLIC HEALTH, SAFETY, OR WELFARE;

(11) TO THE EXTENT APPLICABLE, PROVISIONS FOR THE:

A. DEDICATION OF A PORTION OF THE PROPERTY FOR PUBLIC USE;

B. PROTECTION OF SENSITIVE AREAS;

C. PRESERVATION AND RESTORATION OF HISTORIC STRUCTURES; AND

D. CONSTRUCTION OR FINANCING OF PUBLIC FACILITIES.

(12) A REQUIREMENT THAT THE APPLICANT WILL BE RESPONSIBLE FOR ATTORNEY'S FEES, COSTS, AND EXPENSES INCURRED BY THE TOWN IN THE EVENT AN AGREEMENT IS ABANDONED OR BREACHED BY THE APPLICANT; AND

(13) A PROVISION THAT AN AGREEMENT IS NOT INTENDED TO CREATE THIRD-PARTY BENEFICIARY STATUS IN THE PUBLIC OR ANY OTHER PERSON NOT A PARTY TO THE AGREEMENT.

B. AN AGREEMENT MAY:

(1) CONTAIN SUCH OTHER TERMS, PROVISIONS, REQUIREMENTS, AND AGREEMENTS CONCERNING THE PROPERTY TO WHICH THE MAYOR AND TOWN COUNCIL AND THE APPLICANT MAY AGREE.

(2) SET THE TIME FRAME AND TERMS FOR DEVELOPMENT AND CONSTRUCTION ON THE PROPERTY, WHICH MAY INCLUDE, BUT NOT BE LIMITED TO, THE PHASING OF THE DEVELOPMENT AND THE TIMING OF PUBLIC IMPROVEMENTS AND PUBLIC BENEFITS BEING PROVIDED.

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(3) PROVIDE FOR OTHER MATTERS CONSISTENT WITH THE NORTH BEACH TOWN CODE.

C. SUBJECT TO THE REQUIREMENTS OF SUBSECTION (A), THE MAYOR MAY NEGOTIATE AND THE TOWN COUNCIL MAY APPROVE THE FINAL TERMS OF AN AGREEMENT WITH THE APPLICANT.

SEC. 117-39. APPLICABLE LAWS, RULES, REGULATIONS AND POLICIES

A. EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE LAWS, RULES, REGULATIONS AND POLICIES GOVERNING THE USE, DENSITY, OR INTENSITY OF THE REAL PROPERTY SUBJECT TO AN AGREEMENT SHALL BE THE TOWN'S LAWS, RULES, REGULATIONS AND POLICIES IN FORCE AT THE TIME THE PARTIES EXECUTE THE AGREEMENT.

B. IF THE TOWN DETERMINES THAT COMPLIANCE WITH ITS LAWS, RULES, REGULATIONS AND POLICIES ENACTED OR ADOPTED AFTER THE EFFECTIVE DATE OF AN AGREEMENT IS ESSENTIAL TO ENSURE THE PUBLIC HEALTH, SAFETY, OR WELFARE, AND AGREEMENT MAY NOT PREVENT THE TOWN FROM REQUIRING A PERSON TO COMPLY WITH THOSE LOCAL LAWS, RULES, REGULATIONS AND POLICIES.

SEC. 117-40. REFERRAL TO PLANNING COMMISSION.

UPON RECEIPT OF A PETITION, THE TOWN COUNCIL SHALL REFER THE PETITION TO THE PLANNING COMMISSION FOR A DETERMINATION ON WHETHER THE PROPOSED AGREEMENT IS CONSISTENT WITH THE COMPREHENSIVE PLAN. THE TOWN COUNCIL MAY NOT ENTER INTO AN AGREEMENT UNTIL THE PLANNING COMMISSION DETERMINES WHETHER THE PROPOSED AGREEMENT IS CONSISTENT WITH THE COMPREHENSIVE PLAN.

SEC. 117-41. PUBLIC HEARING; APPROVAL OF AGREEMENT.

A. BEFORE AN AGREEMENT MAY BE EXECUTED, THE TOWN COUNCIL MUST CONDUCT A PUBLIC HEARING ON THE PROPOSED AGREEMENT. NOTICE OF THE HEARING MUST BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE TOWN ONCE EACH WEEK FOR TWO (2) CONSECUTIVE WEEKS, WITH THE FIRST SUCH PUBLICATION OF NOTICE APPEARING AT LEAST FOURTEEN (14) DAYS PRIOR TO THE HEARING.

B. AFTER THE PUBLIC HEARING, THE TOWN COUNCIL MAY (I) ENTER INTO THE PROPOSED AGREEMENT AS SUBMITTED; (II) ENTER INTO THE PROPOSED AGREEMENT WITH AMENDMENTS; OR (III) DECLINE TO ENTER INTO AN AGREEMENT. IF THE TOWN COUNCIL CHOOSES TO ENTER INTO AN AGREEMENT, THE TOWN COUNCIL MUST ADOPT A RESOLUTION THAT APPROVES THE AGREEMENT AND AUTHORIZES THE MAYOR TO EXECUTE THE AGREEMENT ON BEHALF OF THE MAYOR AND TOWN COUNCIL.

SEC. 117-42. AMENDMENT OF AGREEMENT.

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A. SUBJECT TO SUBSECTION (B) OF THIS SECTION AND AFTER A PUBLIC HEARING, THE PARTIES TO AN AGREEMENT MAY AMEND THE AGREEMENT BY MUTUAL CONSENT.

B. THE PARTIES MAY NOT AMEND AN AGREEMENT UNLESS THE PLANNING COMMISSION DETERMINES WHETHER THE PROPOSED AMENDMENT IS CONSISTENT WITH THE COMPREHENSIVE PLAN.

SEC. 117-43. TERMINATION OF AGREEMENT; SUSPENSION.

A. THE PARTIES TO AN AGREEMENT MAY TERMINATE THE AGREEMENT BY MUTUAL CONSENT.

B. IF THE TOWN COUNCIL DETERMINES THAT SUSPENSION OR TERMINATION OF AN AGREEMENT IS ESSENTIAL TO ENSURE THE PUBLIC HEALTH, SAFETY, OR WELFARE, THE TOWN COUNCIL MAY UNILATERALLY SUSPEND OR TERMINATE AN AGREEMENT AFTER A PUBLIC HEARING.

SEC. 117-44. APPLICABLE LAWS, REGULATIONS, AND POLICIES.

A. EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE LOCAL LAWS, RULES, REGULATIONS, AND POLICIES GOVERNING THE USE, DENSITY, OR INTENSITY OF THE PROPERTY SUBJECT TO THE AGREEMENT WILL BE THE LOCAL LAWS, RULES, REGULATIONS, AND POLICIES IN FORCE AT THE TIME THE TOWN AND THE APPLICANT EXECUTE THE AGREEMENT.

B. AN AGREEMENT MAY NOT PREVENT COMPLIANCE WITH THE LOCAL LAWS, RULES, REGULATIONS, AND POLICIES ENACTED AFTER THE DATE OF THE AGREEMENT IF THE TOWN DETERMINES THAT COMPLIANCE WITH SUCH LOCAL LAWS, RULES, REGULATIONS, AND POLICIES IS ESSENTIAL TO ENSURE THE PUBLIC HEALTH, SAFETY, OR WELFARE.

SEC. 117-45. RECORDING.

A. AN AGREEMENT NOT RECORDED IN THE LAND RECORDS OF CALVERT COUNTY WITHIN TWENTY (20) DAYS AFTER THE DAY ON WHICH THE PARTIES EXECUTE THE AGREEMENT IS VOID. EITHER THE APPLICANT OR THE TOWN MAY RECORD THE AGREEMENT.

B. THE TOWN AND THE APPLICANT, AND THEIR SUCCESSORS IN INTEREST, ARE BOUND TO THE AGREEMENT AFTER THE AGREEMENT IS RECORDED.

SEC. 117-46. ENFORCEMENT.

UNLESS AN AGREEMENT IS SUSPENDED OR TERMINATED PURSUANT TO SECTION 117-9, ONLY THE PARTIES OR THEIR SUCCESSORS IN INTEREST MAY ENFORCE THE AGREEMENT. NEITHER THIS CHAPTER NOR ANY AGREEMENT IS INTENDED TO CREATE THIRD-PARTY BENEFICIARY STATUS IN THE PUBLIC OR ANY OTHER PERSON NOT A PARTY TO AN AGREEMENT.

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SEC. 117-47. DURATION OF AGREEMENTS.

AN AGREEMENT IS VOID FIVE (5) YEARS AFTER THE DAY ON WHICH THE PARTIES EXECUTE THE AGREEMENT UNLESS THE AGREEMENT SPECIFIES A DIFFERENT DURATION OR UNLESS EXTENDED BY AN AMENDMENT UNDER SECTION 117-42.

AND, BE IT FURTHER ORDAINED that this Ordinance shall become effective on the ____ day of _____, 2019 after having been read at two successive Town Council meetings pursuant to 19-311 of the Town Charter.

By order of the Mayor and Council

Mike Benton, Mayor

ATTEST:

Stacy Milor, Town Clerk

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