

**ORDINANCE NO. 2021-02**

Town of Rising Sun  
Cecil County, Maryland

AN ORDINANCE OF THE TOWN OF RISING SUN, ("TOWN") CECIL COUNTY, MARYLAND, AMENDING AND ADDING LANGUAGE TO CHAPTER 2, TITLED ADMINISTRATION & GOVERNMENT OF THE CODE OF ORDINANCES OF THE TOWN OF RISING SUN, IN ORDER TO AMEND THE REQUIREMENTS TO SERVE ON THE PLANNING COMMISSION AND BOARD OF ZONING APPEALS; COMPOSITION OF MEMBERSHIP, PREFERRED EDUCATION REQUIREMENTS, AND COMPENSATION OF MEMBERS; AND TO REPEAL ANY AND ALL OTHER ORDINANCES AND PARTS OF THE ORDINANCES IN CONFLICT THEREWITH.

**WHEREAS** the Town, located in Cecil County, Maryland is a municipality organized under the provisions of the Maryland Constitution and governed under the provisions of the Local Government Article of the Annotated Code of Maryland; and

**WHEREAS** the Town is proclaimed as a perpetual entity with the right to pass laws; and

**WHEREAS**, the Code of Ordinances of the Town, contains Chapters 2, titled ADMINISTRATION & GOVERNMENT which establishes the general guidelines associated with the proper administration of affairs and business for the Town of Rising Sun, Maryland, in accordance with the Town Charter and other applicable Federal and State Laws; and

**WHEREAS**, this Chapter, contains Article 2, titled ORGANIZATION OF GOVERNMENT, which establishes the various departments and positions that handle the day-to-day administration of the Town Government under the auspices of the Mayor and Commissioners; and

**WHEREAS**, this Article, contains Section 2-209, titled CREATION AND ADMINISTRATION OF A PLANNING COMMISSION AND BOARD OF ZONING APPEALS, which establishes the creation of a Planning Commission, and Board of Zoning Appeals, the composition of membership, process of appointment, designation of a chairman, length of terms, removal, and vacancies; and

**WHEREAS** the Town of Rising Sun is emerging from a decades old water and sewer moratorium that prohibited the construction of any new development in the Town of Rising Sun; and

**WHEREAS** the Town is now viewed as an attractive place to invest in new commercial and residential development, which by its nature will require planning oversight and at times the issuance of variances, special exceptions, and special conditions to ensure that any new developments are in the best interest of the Town of Rising Sun; and

**WHEREAS** the Mayor and Commissioners recognize where our residents live, where they work and play, how they travel, and the quality of these experiences, depends in large part upon proper land use planning; and

**WHEREAS** land use planning and the zoning appeals process is a prelude to the dynamic rise of new buildings, triumphant rebirth of towns, property upgrades and expansion, and the inconspicuous but meaningful task of protecting property values; and

**WHEREAS** the Mayor and Commissioners recognize the importance of positively shaping the Town's future by appointing qualified and committed individuals to serve on the Planning Commission and Board of Zoning Appeals and to assist property owners and businesses to articulate and achieve a vision for how the Town of Rising Sun should look and function in the future.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED** by the Town Commissioners of the Town of Rising Sun, Cecil County, Maryland, and it is hereby enacted and ordained by its authority that section 2-209 of Chapters 2 of the Town Code shall be modified as follows:

## **SECTION 1**

The Code of Ordinances for the Town of Rising Sun contains Chapter 2 titled Administration & Government, Article 2 titled Organization of Government, section 2-209 titled Creation and Administration of a Planning Commission and Board of Zoning Appeals, sub note A titled Planning Commission. This section encompasses the composition of membership, preferred education and experience and compensation of the Planning Commission members.

The following deletions, modifications and amendments will be added to this section.

**Amendment 1:** The State of Maryland has since made changes to the Annotated Code of Maryland to include the code references that enables the Town to create and establish the Planning Commission and to assign the duties and scope of their authority.

Note (A) titled Planning Commission currently reads as:

Planning Commission. In accordance to section § 3.01. titled Grant of power, of article 66B titled Land Use, of the Annotated Code of Maryland, the Town of Rising Sun hereby creates a Planning Commission, who shall have the powers and duties as now or hereafter provided in Article 66B, Annotated Code of Maryland, as amended from time to time, and the Ordinances of the Town of Rising Sun.

Proposed change: This paragraph will be deleted in its entirety and amended to reflect the new Annotated Code language and to clearly define the role of the Board of Commissioners in creating this board and identifying the roles and responsibilities of its members. The new language shall read as follows:

Planning Commission. In accordance with Division I, titled Single-Jurisdiction Planning

*and Zoning, Title 2 titled Planning Commission, section § 2-101. titled Authority to Establish, of the Land Use Article of the Annotated Code of Maryland, the Town of Rising Sun hereby creates a Planning Commission, who shall have the powers and duties as now or hereafter provided in Title 2, titled Planning Commission, of the Land Use Article, and as amended from time to time by state legislature or the Board of Commissioners of the Town of Rising Sun.*

## **Amendment 2**

Note (A)(1) titled Membership currently reads as:

Membership. The Planning Commission shall consist of seven (7) members, who shall be bona fide residents of the Town of Rising Sun and shall serve at the discretion of the Mayor and Commissioners. The Mayor shall select a commissioner from the Board of Town Commissioners to serve as an ex officio member, who shall have the power to vote on all matters before the Planning Commission. The remaining six (6) members shall be appointed by the Mayor to serve the set terms of office as established below. All appointments to the Planning Commission must be approved by the Board of Commissioners of Rising Sun.

Proposed change: This paragraph will be deleted in its entirety and amended to define the preferred education and experience of each member, define the role of the ex-officio member and to allow for 1 member to be a non-resident member of the board. The new language shall read as follows:

*Membership. The Planning Commission shall consist of seven (7) members recommended by the Mayor or by a motion put forth and carried by the Board of Commissioners; with such appointments being recorded by resolution of the Board of Commissioners. The Planning Commission shall include one member from the Board of Town Commissioners to serve as an ex officio member, who shall have the power to vote on all matters before the Planning Commission. The remaining six (6) members shall be appointed based upon their ability to comply with the minimum state training requirements and their respective background and experiences as described in section (D) below. Five (5) of the remaining members shall be bona fide residents of the Town of Rising Sun, with one (1) remaining member permitted to be a non-resident if they are the owner (landlord) of an occupied dwelling or commercial property located in the incorporated limits for at least five (5) years prior to their appointment to the board. Town employees shall be prohibited from serving on the board.*

## **Amendment 3**

Note (A)(2) titled Terms of Office currently reads as:

Term of Office. The ex officio member shall serve for the term of their elective office unless replaced by the Mayor and approved by the Board of Commissioners. All other members shall serve for a period of five (5) years or until his successor takes office. The terms of the members of a planning commission, not to include the ex officio, shall be staggered and shall run until June 30<sup>th</sup> of the final year of the term. Each appointed member is eligible for reappointment. Members of the Planning

Commission shall serve without compensation.

Proposed change: This paragraph will be amended by deleting the last sentence of the paragraph and replacing it with language that will allow the Planning Commission members to be compensated in accordance with the Town Code. The new language shall read as:

*Members of the Planning Commission may be compensated in accordance with Chapter 9 of the Town Code, titled Finance, Taxation, Business and Trade, Article 10, titled Compensation of the Elected Body, Planning Commission, Board of Zoning Appeals or any other board appointments as created by the Board of Commissioners.*

#### **Amendment 4**

Note (A)(3) titled Removal currently reads as:

Removal. The Planning Commission by majority vote; and or the Mayor by recommendation to the Board of Commissioners, may seek removal of any member of the Planning Commission for inefficiency, neglect of duty, malfeasance in office, or lack of meeting attendance if such member misses 3 consecutive meetings or 33% or more of the meetings held in one calendar year without just cause. Removal from the Board will be by majority vote of the Board of Commissioners of Rising Sun at a public hearing. A written statement from the Mayor and Commissioners, stating the reasons for the removal of any member of the Planning Commission shall be filed with the Town Clerk.

Proposed change: The first sentence ending with the words “*in one calendar year without just cause.*”, shall be deleted in its entirety and replaced with the following language.

*Removal. The Planning Commission by majority vote; and or the Mayor by recommendation to the Board of Commissioners, may seek removal of any member of the Planning Commission for violations of the Planning Commission’s Code of Conduct, failure to secure the required state certificate of training as detailed in section (D) below, and for inefficiency, neglect of duty, malfeasance in office, conviction of a crime in accordance with § 8-502 of the State Government Article of the Annotated Code of Maryland, or for lack of meeting attendance if such member misses 3 consecutive meetings or 33% or more of the official board meetings held in one calendar year without just cause.*

The remaining sentence in this paragraph, starting with the words “*Removal from the Board*” shall remain.

#### **Amendment 5**

Note (A)(4) titled Vacancy currently reads as:

Vacancy. A vacancy occurring otherwise than by expiration of term shall be filled by appointment by the Mayor, and approved by the Commissioners of Rising Sun for the unexpired term.

Proposed change: This paragraph will be deleted in its entirety and replaced to read as:

*Vacancy.* A vacancy occurring prior to the expiration of the term, shall be filled for the remainder of the unexpired term, by resolution of the Board of Commissioners, upon recommendation by the Mayor or by motion and second by the Board of Commissioners.

## **Amendment 6**

Note (A)(5) titled Organization, Chairperson & Meetings, sub note (c) currently reads as:

Rules and records. The planning commission shall adopt rules for transacting business and shall keep records of its resolutions, transactions, findings, and determinations, which record shall be a public record.

Proposed change: This paragraph will be deleted in its entirety and replaced to read as:

*Code of Conduct, Rules for Transacting Business and Records.* The Planning Commission shall adopt a code of conduct, rules for transacting business and shall keep records of its resolutions, transactions, findings, and determinations, which record shall be a public record.

## **SECTION 2.**

This section encompasses the composition of membership, preferred education and experience and compensation of the Board of Zoning Appeals members.

The following deletions, modifications and amendments will be added to this section.

**Amendment 7:** The State of Maryland has since made changes to the Annotated Code of Maryland to include the code references that enables the Town to create and establish the Board of Zoning Appeals and to assign the duties and scope of their authority.

Note (B) titled Board of Zoning Appeals currently reads as:

Board of Zoning Appeals. In accordance to section § 4.07. titled Board of Zoning Appeals, of article 66B titled Land Use, of the Annotated Code of Maryland, the Town of Rising Sun hereby creates a Board of Zoning Appeals, who shall have the powers and duties as now or hereafter provided in Article 66B, Annotated Code of Maryland, as amended from time to time, and the Ordinances of the Town of Rising Sun.

Proposed change: This paragraph will be deleted in its entirety and amended to reflect the new Annotated Code language and to clearly define the role of the Board of Commissioners in creating this board and identifying the roles and responsibilities of its members. The new language shall read as follows:

*In accordance with Division I, titled Single-Jurisdiction Planning and Zoning, Title 4*

titled Zoning, section § 4-301. titled Required, of the Land Use Article of the Annotated Code of Maryland, the Town of Rising Sun hereby creates a Board of Zoning Appeals, who shall have the powers and duties as now or hereafter provided in section § 4-304, titled Miscellaneous Duties, and section § 4-305, titled Powers - - Appeals; special exceptions; variances, of the Land Use Article, and as amended from time to time by state legislature or the Board of Commissioners of the Town of Rising Sun.

## **Amendment 8**

Note (B)(1) titled Membership currently reads as:

Membership. Effective February 28, 2012 The Board of Zoning Appeals shall be increased from three (3) members to five (5) members, who shall be bona fide residents of the Town of Rising Sun, and shall serve at the discretion of the Mayor and Commissioners. All members shall be appointed by the Mayor and approved by the Board of Commissioners of Rising Sun.

Proposed change: This paragraph will be deleted in its entirety and modified to read as follows:

Membership. The Board of Zoning Appeals shall consist of five (5) members recommended by the Mayor or by a motion put forth and carried by the Board of Commissioners; with such appointments being recorded by resolution of the Board of Commissioners. Board of Appeals members shall be appointed based upon their ability to comply with the minimum state training requirements and their respective background and experiences as described in section (D) below. Town employees shall be prohibited from serving on the board.

## **Amendment 9**

Note (B)(2) titled Phase in Term of Office currently reads as:

In order to achieve staggered terms of office, all members of the Board of Appeals will be appointed on February 28, 2012, and shall serve in accordance to the following table:

2 members appointed with terms set to expire June 30, 2015

2 members appointed with terms set to expire June 30, 2014

1 member appointed with terms set to expire June 30, 2013

Proposed change: This section is no longer needed and will be deleted in its entirety. The remaining sections will be renumbered accordingly.

## **Amendment 10**

Note (B)(3) titled Terms of Office currently reads as:

Term of Office. After the initial phase in of additional board members, each member shall serve for a period of three (3) years or until his successor takes office. The

terms of the members of a Board of Zoning Appeals shall be staggered and shall run until June 30<sup>th</sup> of the final year of the term. Each appointed member is eligible for reappointment. Members of the Board of Zoning Appeals shall serve without compensation.

Proposed change: This paragraph will be amended by deleting the last sentence of the paragraph and replacing it with language that will allow the Board of Zoning Appeals members to be compensated in accordance with the Town Code. The new language shall read as:

*Members of the Board of Zoning Appeals may be compensated in accordance with Chapter 9 of the Town Code, titled Finance, Taxation, Business and Trade, Article 10, titled Compensation of the Elected Body, Planning Commission, Board of Zoning Appeals or any other board appointments as created by the Board of Commissioners.*

## **Amendment 11**

Note (B)(4) titled Removal currently reads as:

Removal. The Planning Commission by majority vote; and or the Mayor by recommendation to the Board of Commissioners, may seek removal of any member of the Planning Commission for inefficiency, neglect of duty, malfeasance in office, or lack of meeting attendance if such member misses 3 consecutive meetings or 33% or more of the meetings held in one calendar year without just cause. Removal from the Board will be by majority vote of the Board of Commissioners of Rising Sun at a public hearing. A written statement from the Mayor and Commissioners, stating the reasons for the removal of any member of the Planning Commission shall be filed with the Town Clerk.

Proposed change: The first sentence ending with the words “*in one calendar year without just cause.*”, shall be deleted in its entirety and replaced with the following language.

*Removal.* The Board of Zoning Appeals by majority vote; and or the Mayor by recommendation to the Board of Commissioners, may seek removal of any member of the Board of Zoning Appeals for violations of the Board of Zoning Appeal’s Code of Conduct, failure to secure the required state certificate of training as detailed in section (D) below, and for inefficiency, neglect of duty, malfeasance in office, conviction of a crime in accordance with § 8-502 of the State Government Article of the Annotated Code of Maryland, or for lack of meeting attendance if such member misses 3 consecutive meetings or 33% or more of the official board meetings held in one calendar year without just cause.

The remaining sentence in this paragraph, starting with the words “*Removal from the Board*” shall remain.

## **Amendment 12**

Note (B)(5) titled Vacancy currently reads as:

Vacancy. A vacancy occurring otherwise than by expiration of term shall be filled by appointment by the Mayor, and approved by the Commissioners of Rising Sun for

the unexpired term.

Proposed change: This paragraph will be deleted in its entirety and replaced to read as:

*Vacancy. A vacancy occurring prior to the expiration of the term, shall be filled for the remainder of the unexpired term, by resolution of the Board of Commissioners, upon recommendation by the Mayor or by motion and second by the Board of Commissioners.*

### **Amendment 13**

Note (B)(6) titled Organization, Chairperson & Meetings, sub note (c) currently reads as:

Rules and records. The Board of Zoning Appeals shall adopt rules for transacting business and shall keep records of its resolutions, transactions, findings, and determinations, which record shall be a public record.

Proposed change: This paragraph will be deleted in its entirety and replaced to read as:

*Code of Conduct, Rules for Transacting Business and Records. The Board of Zoning Appeals shall adopt a code of conduct, rules for transacting business and shall keep records of its resolutions, transactions, findings, and determinations, which record shall be a public record.*

## **SECTION 3**

This section defines the minimum education and training requirements set forth by the State of Maryland and also provides the Mayor and Commissioners with a general outline of preferred education and experiences for the ideal candidate wishing to serve on the Town's Planning Commission or Board of Zoning Appeals.

The following deletions, modifications and amendments will be added to this section.

**Amendment 14:** The State of Maryland has since made changes to the Annotated Code of Maryland to include the code references that enables the Town to create and establish the Board of Zoning Appeals and to assign the duties and scope of their authority.

Note (D) titled Education and Minimum Training, sub note (a) currently reads as:

- (a) Per article 66B titled Land Use, of the Annotated Code of Maryland, a member of the Planning Commission and Board of Zoning Appeals, within 6 months of appointment, shall complete an education course that includes education on:
  - (i) The role of the comprehensive plan;
  - (ii) If applicable, proper standards for special exceptions and variances; and
  - (iii) The jurisdiction's zoning ordinances and regulations, planned



development ordinances and regulations, subdivision ordinances and regulations, and other land use ordinances and regulations.

Proposed change: This paragraph will be deleted in its entirety and amended to reflect the new Annotated Code language. In addition, for consistency throughout the document, sub note (a) will be redefined as (1). The new language shall read as follows:

(1) *In accordance with Division I, titled Single-Jurisdiction Planning and Zoning, Title 1 titled Definitions: General Provisions, Subtitle 2 titled General Provisions, section § 1-206. titled Required Education, of the Land Use Article of the Annotated Code of Maryland, a member of the Planning Commission and Board of Zoning Appeals, within 6 months of appointment, shall complete an education course that includes education on:*

- (i) *The role of the comprehensive plan;*
- (ii) *If applicable, proper standards for special exceptions and variances; and*
- (iii) *The local jurisdiction's local laws and regulation relating to zoning, planned development, subdivision, and other land use matters*

*\*\*Special Note: Members of the Planning Commission and Board of Zoning Appeals must also comply with any other applicable state requirements set forth by statute in the Land Use Article.*

#### **Amendment 15**

The language in note (D)(b) shall remain the same for consistency throughout the document, sub note (b) will be redefined as (2).

#### **Amendment 16**

A new (D)(3) shall be created and shall read as follows:

(3) *Preferred Background and Experience. Candidates wishing to serve on the Planning Commission or Board of Zoning Appeals should provide documentation of their professional background and Experience that is applicable to the duties and responsibilities of a Planning Commission or Board of Appeals members. The following but not limited list of preferred background and experience is provided for reference:*

1. *Engineering, Architectural or Land Scape Design*
2. *Contractor in the Construction Industry/Non-Land Developer*
3. *Property Management/Non-Land Developer*
4. *Facility Maintenance*
5. *Licensed Property or Construction Trades Inspector*
6. *Attorney, Paralegal or other type of legal background.*

7. *Real Estate Broker/Realtor*
8. *A previous elected official, planning or zoning member or review board member of the Town of Rising Sun or another local or state government agency.*
9. *Any other profession or experience deemed by the Mayor and Board of Commissioners as relevant and beneficial for service on the board.*

#### **SECTION 4**

All ordinances or parts thereof inconsistent herewith are repealed, rescinded, canceled and annulled.

#### **SECTION 5.**

Should any provision, section, paragraph or subparagraph of this Ordinance, including any code or text adopted hereby, be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable for a court having jurisdiction, the same shall not affect the validity, legality, or enforceability of any other provision, section, paragraph or subparagraph hereof, including any code text adopted hereby. The Town of Rising Sun hereby declares that it would have passed this ordinance, and each section, subsection, clause or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared null and void, illegal, unconstitutional, or otherwise determined to be unenforceable. Each such provision, section, paragraph or subparagraph is expressly declared to be and is deemed severable.

#### **SECTION 6.**

That nothing in this ordinance hereby adopted shall be construed to affect any suit or proceeding impending in any court, or any rights acquired, or liability incurred, or any cause or causes of action acquired or existing, under any act or ordinance hereby repealed as cited in Section 2 of this ordinance; nor shall any just or legal right or remedy of any character be lost, impaired or affected by this ordinance.

#### **SECTION 7.**

If passed and adopted, the Rising Sun Town Clerk is hereby ordered and directed to cause this ordinance to be published in a newspaper in general circulation.

#### **SECTION 8.**

**NOW THEREFORE BE IT FURTHER RESOLVED** that this ordinance was introduced on this 13<sup>th</sup> Day of July 2021

**SECTION 9.**

**NOW THEREFORE BE IT FURTHER RESOLVED** that the Mayor and Commissioners of the Town of Rising Sun passed, approved and adopted this ordinance on this \_\_\_\_ day of July 2021.

**AYES:**

**NAYES:**

**ABSTAIN:**

**THE MAYOR AND COMMISSIONERS OF  
THE TOWN OF RISING SUN**

**BY: \_\_\_\_\_**  
**Travis Marion, Mayor**

**ATTEST:**

\_\_\_\_\_  
**Judy C Melton**  
**Town Clerk**

**APPROVED AS TO FORM AND LEGAL SUFFICIENCY  
THIS 12<sup>th</sup> DAY OF JULY 2021**

**BY: \_\_\_\_\_**  
**Jack A. Gullo, Jr., - Town Attorney**