

ARTICLE X APPEALS

10-1 Appeal Board

Pursuant to the provisions of Section 45-23-14 of the General Laws, and Article XII, Section 4.2 of the North Smithfield Home Rule Charter, the Zoning Board of Review is hereby constituted as the reviewing authority of decisions by and appeals from the decisions of the Planning Board or the Administrative Officer.

10-2 Right of Appeal

- (A) An appeal from any decision of the Planning Board, or Administrative Officer charged in the regulations with enforcement of any provisions, except as provided herein, may be taken to the Board of Appeal by an aggrieved party. Appeals from a decision granting or denying approval of a final plan shall be limited to elements of such approval or disapproval not contained in the decision reached by the Planning Board at the preliminary stage, providing that a Public Hearing has been held on the plan pursuant to Section 3-8 *Major Land Development and Major Subdivision – Public Hearing and Notice*.
- (B) An appeal from a decision of the Board of Appeal may be taken by an aggrieved party to the Providence Superior Court.

10-3 Process of Appeal

- (A) An appeal to the Board of Appeal from a decision or action of the Planning Board or Administrative Officer may be taken by an aggrieved party to the extent provided in Section 10-2 *Right of Appeal*, above. Such appeal must be taken within twenty (20) days after the decision has been filed and posted in the office of the Town Clerk.
- (B) The appeal shall be in writing and shall state clearly and unambiguously the issue or decision which is being appealed, the reason for the appeal, and the relief sought. The appeal shall either be sent by certified mail, with a return receipt requested, or shall be hand-delivered to the Board of Appeal. The Town Clerk shall accept delivery of an appeal on behalf of the Board of Appeal.
- (C) Upon receipt of an appeal, the Board of Appeal shall require the Planning Board or Administrative Officer to transmit forthwith to the Board of Appeal, all papers, documents and plans, or a certified copy thereof, constituting the record of the action which is being appealed.

10-4 Stay of Proceedings

An appeal shall stay all proceedings in furtherance of the action being appealed.

10-5 Public Hearing

- (A) The Board of Appeal shall hold a public hearing on the appeal within forty-five (45) days of the receipt of the appeal, give public notice thereof, as well as due notice to the parties of interest. At the hearing any party may appear in person, or may be represented by an agent or attorney. The Board shall render a decision within ten (10) days of the close of the public hearing. The cost of any notice required for the hearing shall be borne by the applicant.
- (B) The Board of Appeal shall only hear appeals of the actions of a Planning Board or Administrative Officer at a meeting called especially for the purpose of hearing such appeals and which has been so advertised.
- (C) The hearing, which may be held on the same date and at the same place as a meeting of the Zoning Board of Review, must be held as a separate meeting from any Zoning Board of Review meeting. Separate minutes and records of votes as required by Section 10-6 *Standards of Review*, below, shall be maintained by the Board of Appeal.

10-6 Standards of Review

- (A) As established by these regulations, in instances of a Board of Appeal's review or a Planning Board or Administrative Officer's decision on matters subject to these regulations, the Board of Appeal shall not substitute its own judgment for that of the Planning Board or the Administrative Officer but must consider the issue upon the findings and record of the Planning Board or Administrative Officer. The Board of Appeal shall not reverse a decision of the Planning Board or Administrative Officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record.
- (B) The concurring vote of three (3) of the five (5) members of the Board of Appeal, sitting at a hearing, shall be necessary to reverse any decision of the Planning Board or Administrative Officer.
- (C) In the instance where the Board of Appeal overturns a decision of the Planning Board or Administrative Officer, the proposed project application shall be remanded to the Planning Board or Administrative Officer, at the stage of processing from which the appeal was taken, for further proceedings before the Planning Board or Administrative Officer and/or for the final disposition, which shall be consistent with the Board of Appeal's decision.
- (D) The Board of Appeal shall keep complete records of all proceedings including a record of all votes taken, and shall put all decisions on appeal in writing. The Board shall include in the written record the reasons for each decision.

10-7 Appeals to Superior Court

- (A) An aggrieved party may appeal a decision of the Board of Appeal, to the Providence Superior Court by filing a complaint setting forth the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the Town Clerk. The Board of Appeal shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies thereof, together with such other facts as may be pertinent, with the clerk of the court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, such original applicant or appellant and the members of the Planning Board shall be made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the Court may, in its discretion, grant a stay on appropriate terms and make such other orders as it deems necessary for an equitable disposition of the appeal.
- (B) The review shall be conducted by the Superior Court without a jury. The Court shall consider the record of the hearing before the Planning Board and, if it shall appear to the Court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to such appeal to present such evidence in open court, which evidence, along with the report, shall constitute the record upon which the determination of the Court shall be made.
- (C) The Court shall not substitute its judgment for that of the Planning Board as to the weight of the evidence on questions of fact. The Court may affirm the decision of the Board of Appeal or remand the case for further proceedings, or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions or decisions which are:
 - 1. In violation of constitutional, statutory, ordinance or Planning Board regulations provisions;
 - 2. In excess of the authority granted to the Planning Board by statute or ordinance;
 - 3. Made upon unlawful procedure;
 - 4. Affected by other error of law;
 - 5. Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or,
 - 6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

10-8 Appeals to the Superior Court - Enactment of or Amendment of Local Regulations

- (A) Any appeal of an enactment of or an amendment of local regulations may be taken to the Providence Superior by filing a complaint, as set forth herein, within thirty (30) days after such enactment, or amendment has become effective. The appeal may be taken by any legal resident or landowner of the municipality.

- (B) The appeal shall not stay the enforcement of these regulations, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make such other orders as it deems necessary for an equitable disposition of the appeal.
- (C) The complaint shall set forth with specificity the area or areas in which the enactment or amendment is not consistent with the Comprehensive Planning Act; Chapter 22.2; the Zoning Enabling Act of 1991, Chapter 45-24-27; the North Smithfield Comprehensive Community Plan; or the North Smithfield Zoning Ordinance.
- (D) The review shall be conducted by the Court without a jury.
- (E) The Court shall consider whether the enactment or amendment of the local regulations is consistent with the Comprehensive Planning Act, Chapter 22.2; the Zoning Enabling Act of 1991, Chapter 45-24-27; the North Smithfield Comprehensive Community Plan; or the North Smithfield Zoning Ordinance. If the enactment or amendment is not consistent, then the Court shall invalidate the enactment or the amendment, or those parts of such enactment or amendment, which is not consistent. The Court shall not revise the local regulations to be consistent, but may suggest appropriate language as part of the Court decision.
- (F) The Court may in its discretion, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as set forth herein, including the Town of North Smithfield.

10-9 Appeals to the Superior Court - Priority in Judicial Proceedings

Upon the entry of any case or proceeding brought under the provisions of RIGL Section 45-23-73, including pending appeals and appeals hereinafter taken to the Court, the Court shall, at the request of either party, advance the case, so that the matter shall be afforded precedence on the calendar and shall thereupon be heard and determined with as little delay as possible.