

Town of North Smithfield

Office of the Building and Zoning Official

HEARING BEFORE ZONING BOARD OF REVIEW

BEFORE A HEARING CAN BE SCHEDULED, THE APPLICANT MUST PROVIDE THE FOLLOWING

1. Complete and signed Application for Hearing, and return the application to the Building Inspector's Office with required fee.
2. A. Submit radius maps, drawn to scale (1 inch = 50 feet), indicating all properties within a 200 foot radius of the property in question; as stated in Section 5.6.2.
** (Ten (10) copies of radius maps are required)
- B. Include a current listing of names and mailing addresses of all abutting properties within this 200 foot radius of the property in question.
** (Ten (10) copies of the name list is required)
- C. If the property in question is located on a State road, the Department of Transportation must also be notified.
3. Applicants for APPEALS, VARIANCES, and SPECIAL USE PERMITS must read the following Zoning Ordinance Sections:

5.6, 5.6.1, 5.6.2 and 5.6.3

8.4, 8.5 and 8.6

9.1, 9.2, 9.3 and 9.3.1

9.3.2, 9.3.3, 9.4, and 9.5

10 and 10.1

The above required reading may be obtained from the North Smithfield Building Inspector's Office.

Town of North Smithfield

Office of the Building and Zoning Official

Application No: _____ Zoning District: _____

Location: _____ Plat: _____ Lot: _____

I, the undersigned, hereby acknowledge that I have received all applications, forms, and any other paperwork that is required to appear and be heard by the Zoning Board of Review from the Inspector.

I understand I am responsible for appropriating maps, drawings, and any other materials that may be needed or required by the Zoning Board of Review.

I understand, comprehend, and am aware of the reasons and the Zoning Ordinance Section that will be addressed before said board.

I understand I must pay for additional fees, costs and expenses for hearings in excess of one session as necessitated by the extra hearings.

Signature of Applicant/Agent

Date

DO NOT WRITE BELOW THIS LINE...FOR OFFICIAL USE ONLY

Application Date Rec'd _____

Maps Rec'd: Y / N

Names Rec'd: Y / N

Appeal

SpcUse

UseVar

DimVar

Planning Board review: Y / N
[Required for Special Use Permits]

Reviewed by: _____

Date: _____

Town of North Smithfield

Office of the Building and Zoning Official

APPLICATION FOR HEARING BEFORE ZONING BOARD OF REVIEW

Application: ZC- _____ Fee: \$ _____ Date: _____ Zone: _____

Location: _____ Plat: _____ Lot: _____

Appeal Dimensional Variance Use Variance Special Use Permit

If this is an APPEAL from a decision of the Zoning Inspector, please state the decision that is being APPEALED; together with an explanation of the circumstances leading to the decision. Submit a copy of the APPLICATION FOR CERTIFICATE OF ZONING COMPLIANCE and any other pertinent information.

If this is an application for a DIMENSIONAL VARIANCE, please indicate the section from which this variance is being requested and describe in detail the proposed use or construction of said structure/building.

If this is an application for a USE VARIANCE, please indicate the section from which this variance is being requested, and describe in detail the proposed use or construction of said structure/building.

If this is an application for a SPECIAL USE PERMIT, please indicate the section of the Zoning Ordinance which authorizes such use and describe in detail the proposed use or construction of said structure/building.

X _____
Signature of APPLICANT/AGENT

() _____
Daytime Phone Number

Address of APPLICANT/AGENT

NOTE: The Board may require additional information be submitted by the applicant at the public hearing.

Section 5.6. Special-use permits.

5.6.1. Application procedures for a special-use permit. Except in the case of shopping centers and multi-family dwellings, apartments, which are covered in subsections 5.6.3.6. and 5.6.3.7., respectively, an applicant for a special-use permit shall pay the necessary fee at the time he presents all required exhibits, plans, and other required data to the Inspector. The Inspector shall review the application, pointing out any possible conflicts. If the application is in compliance, the Inspector shall issue duplicate applications for a certificate of zoning compliance. The Inspector shall return one copy of the completed application for a certificate of zoning compliance to the applicant along with all exhibits, plans, and other required data.

Should the Inspector determine that a special-use permit is required, the Inspector shall then deny the applicant building permits or the certificate of zoning compliance and refer the applicant to the Board. The Inspector shall file the duplicate application for the certificate of zoning compliance as a public record.

5.6.2. Application requirements. The application for a Special-Use Permit, Variances and Appeals shall be accompanied by the following:

- (1) A letter, including the names and addresses of property owners of record (applicants) specifically indicating the portion of this Ordinance under which the special-use permit, variance and/or appeal is sought and stating the grounds on which it is requested. A list of property owners within two hundred (200) feet of the property in question shall accompany the letter.
- (2) A radius plan of the site and of the surrounding area within two hundred (200) feet of the perimeter of the site drawn at a scale of one inch to fifty (50) feet showing a north arrow; designating existing streets, easements, monuments, stone walls, wooded areas, drainage features and contours; railroad and utility rights-of-way; the location of any sub-divided lands; and the location of any parks, other public open spaces or uses, residences, and other permanent structures. Sites encompassing large areas may use a radius map to a smaller scale than one inch to fifty (50) feet provided the specific area for which the special use or variance is being requested is at a scale of one inch to fifty (50) feet.
- (3) All plans submitted shall be stamped by a registered or licensed land surveyor or civil engineer with similar information showing the proposed development of the site.
- (4) The Board and the Inspector may require any additional information they deem necessary.

5.6.3. Standards for designated special-use permits. To accomplish the general purposes of this ordinance certain of the uses requiring a special-use permit under the provisions of this ordinance need further consideration because they are somewhat unique, highly specialized, or often present difficult zoning administration or enforcement problems. The effects of such uses on the surrounding environment often cannot be foreseen until a specific site has been proposed. It is also characteristic that such uses often require large land areas. The following supplemental regulations and standards have been designed in order to achieve more compatibility between such uses and neighboring development. The Board may also impose additional requirements in the public interest to cover circumstances unique to the selected site.

5.6.3.1. Accessory uses. The location, size and intensity of accessory uses which require special-use permits shall be restricted and determined in relation to the effects of such uses upon the environment, including effect upon traffic. In no such case shall such an accessory use predate the installation and operation of the principle use. When the principle use ceases to operate, the accessory use shall immediately cease.

5.6.3.2. Drive-in theater, summer theater, amphitheater.

- (a) The site shall contain at least five (5) acres.

Section 8.2. Organization.

Once each year the Board shall organize electing from its membership a chairman and vice chairman. The Board may engage the services of a secretary or recorder within the limit of the funds available to it or may appoint one of its membership as secretary.

Section 8.3. Proceedings of the board.

The Board shall adopt and publish rules necessary to the conduct of its affairs, and in keeping with the provisions of the ordinance. Meetings shall be held at the call of the chairman and at such other times as the Board may determine. In conducting hearings and arriving at its decisions, the Board shall consist of only five (5) voting members. The chairman, or in his absence, the vice-chairman, may administer oaths and compel the attendance of witnesses and the submission of evidence. All hearings of the Board shall be open to the public.

The Board shall include in its decision, all findings of fact and conditions, showing the vote of each member participating thereon, and the absence of a member or his or her failure to vote. No member or alternate may vote on any matter before the Board unless they have attended all hearings concerning such matter. Decisions shall be recorded and filed in the office of the Board within thirty (30) days from the date when the decision was rendered, and shall be a public record. The Zoning Board of Review shall keep written minutes of its proceedings, showing the vote of each member, upon each question; or, if absent or failing to vote, indicating such fact, and keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the Board in an expeditious manner upon completion of the proceeding. For any proceeding in which the right of appeal lies to the Superior or Supreme Court, the Zoning Board of Review shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.

Section 8.4. Hearings; appeals; notice.

Appeals to the Board may be taken by any party aggrieved or by any officer, department, board, or bureau affected by any order or decision of the Inspector concerning the provisions of this ordinance. Such appeal shall be taken within a twenty (20) days by filing with the Inspector and with the Board a notice of appeal specifying the grounds for the appeal. The Inspector shall make available to the Board all papers constituting the record upon which the action appealed from was taken. In filing for an appeal, the applicant, in addition to filing any plans and specifications supporting the request, shall accompany the request with a list of property owners within two hundred (200) feet of the property in question and a filing fee payable to the Town.

Participation in a zoning hearing or other proceeding by a party shall not be a cause for civil action or liability except for acts not in good faith, intentional misconduct, knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

Section 8.5. Procedure

A zoning ordinance adopted pursuant to this chapter shall provide that the Zoning Board of Review shall have the following powers and duties:

- (1) To hear and decide appeals in a timely fashion where it is alleged there is error in any order, requirement, decision, or determination made by the Inspector in the enforcement or interpretation of this chapter, or of any ordinance adopted pursuant hereto.

- (2) To hear and decide appeals from a party aggrieved by a decision of an historic district commission, pursuant to R.I.G.L. 45-24.1-7.1 and 45-24.1-7.2.
- (3) To hear and decide appeals where the Zoning Board of Review is appointed as the Board of Appeals for airport zoning regulations pursuant to Section 1- 3-19.
- (4) To authorize upon application, in specific cases of hardship, variances in the application of the terms of the zoning ordinance, pursuant to R.I.G.L. 45-24-41 of this chapter.
- (5) To authorize upon application, in specific cases special-use permits, pursuant to subsection (A) of R.I.G.L. 45-24-42 of this chapter, where the Zoning Board of Review is designated as a permit authority for special-use permits.
- (6) To refer matters to the Planning Board, or to other boards of the Town as the Zoning Board of Review may deem appropriate, for findings and recommendations.
- (7) To provide for issuance of conditional zoning approvals where a proposed application would otherwise be approved except that one (1) or more state or federal agency approvals which are necessary are pending. A conditional zoning approval shall be revoked in the instance where any necessary state or federal agency approvals are not received within a specified time period.
- (8) To hear and decide such other matters, according to the terms of the Ordinance or other statutes, and upon which such board may be authorized to pass under such ordinance or other statutes.

Section 8.6. Stay of proceedings.

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the zoning enforcement officer or agency from whom the appeal is taken certifies to the Zoning Board of Review, after an appeal shall have been duly filed, that by reason of facts stated in the certificate a stay would in the officer's or agency's opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court of competent jurisdiction on application thereof and upon notice to the officer or agency from whom the appeal is taken on due cause shown.

Section 8.7. Vested rights.

A petition before the Zoning Board for a building permit, Special-Use Permit, Variance or Appeal shall be considered substantially complete when all required documents, including plans, together with required fees are received by the official designated therein to receive such applications. The Zoning Ordinance of 1973 (as amended to date) will apply, even if at some later date, but prior to the project receiving complete or final approval, the zoning ordinance and/or zoning map is changed.

SECTION 9. ZONING BOARD OF REVIEW; POWERS AND DUTIES

The Zoning Board of Review shall have the following powers and duties:

Section 9.1. Board has powers of Inspector on appeals; reversing decision of Inspector.

The Board shall hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by the Inspector in the enforcement of this

ordinance. In exercising the above-mentioned powers, the Board may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly or may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision, or determination as ought to be made, and to that end shall have the powers of the Inspector from whom the appeal is taken. The concurring vote of three (3) members shall be necessary to reverse any order, requirement, decision, or determination of the Inspector.

The Board shall fix a reasonable time for the hearing of such appeal. It shall publish notice of the hearing at least once each week for two (2) successive weeks prior to the date of such hearing in a newspaper of general circulation in the Town, the date of the first notice shall be at a minimum fourteen (14) days prior to the date of the hearing, shall give due notice to the applicant, abutting owners, and other parties in interest; and shall hear and decide the appeal within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney.

Section 9.2. Special-use permits; conditions governing applications; procedures.

To hear and decide only such special-use permits as the Board is specifically authorized to pass on by the terms of this ordinance; to decide such questions as are involved in determining whether special-use permits should be granted; and to grant special-use permits with such conditions and safeguards as are appropriate under this ordinance, or to deny special-use permits when not in harmony with the purpose and intent of this ordinance. The Board, immediately upon receipt of an application for special-use permit, shall request that the Planning Board and staff report its findings and recommendations, including the statement on the general consistency of the application with the goals and purposes of the comprehensive plan for the Town. The findings and recommendations, in writing, shall be forwarded to the Zoning Board of Review within thirty (30) days of receipt of the application from said Board.

The Board shall fix a reasonable time for the hearing of a special-use permit. It shall publish notice of the hearing at least once each week for two (2) successive weeks immediately prior to the date of such hearing in a newspaper of general circulation in the Town, the date of the first notice shall be at a minimum fourteen (14) days prior to the date of the hearing. Notice of hearing shall be sent by certified mail return receipt requested to the applicant, and to all those who would require notice under Section 45-24-33 of the Rhode Island General Laws. Said notice shall also include the street address of the subject property. The cost of such notification shall be borne by the applicant. The Board shall hear and decide on the application within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney.

The concurring vote of four (4) members shall be required to decide in favor of an applicant on any matter concerning a special-use permit upon which it is required to pass under this ordinance. In granting a special-use permit, the Board may impose such additional safeguards and conditions on the proposed use as are deemed necessary in order to conform to these requirements. The Board shall make a written decision, including findings of fact, certifying compliance with the rules governing that special-use permit, and that satisfactory provision and arrangement has been made, where applicable concerning the following:

- (1) ingress and egress to property and proposed structures thereon with particular reference to of fire or catastrophe;
- (2) off-street parking and loading areas where required, with particular attention to the items in (1) above and the economic, noise, glare, or odor effects of the special-use permit on adjoining properties and properties generally in the district;
- (3) refuse and service areas, with particular reference to the items in (1) and (2) previous;
- (4) utilities, with reference to locations, availability, and compatibility;

- (5) screening and buffering with reference to type, dimensions, and character;
- (6) signs, if any, and proposed exterior lighting with reference to glare, traffic safety, economic effect, and compatibility and harmony with properties in the district;
- (7) required yards and other open space;
- (8) general compatibility with adjacent properties and other property in the district;

All zone and area regulations of the district in which the special-use permit is sought shall apply to such uses, except where specifically exempted or amended by the conditions under which the special-use permit is granted by the Board. The disregarding of any such condition or safeguard shall be considered as a violation.

All stipulations imposed by the Board in granting a special-use permit shall be recorded in Town Land Evidence Records. A copy of such shall be filed in the Inspector's office.

Following establishment of this Ordinance, any use permitted as a special-use permit under the terms of this ordinance shall be considered as a permitted use. (See Section 4.7)

Section 9.3. Variances, conditions governing applications; procedures.

An application for relief from the literal requirements of a zoning ordinance because of hardship may be made by any person, group, agency or corporation by filing with the Inspector an application describing the request and supported by such data and evidence as may be required by the Zoning Board of Review or by the terms of the Ordinance. There shall be only two (2) categories of variance, a use variance or a dimensional variance.

(a) Use variance. Permission to depart from the use requirements of a zoning ordinance where the applicant for the requested variance has shown, by evidence upon the record, that the subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the zoning ordinance.

(b) Dimensional variance. Permission to depart from the dimensional requirements of a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the record, that there is no other reasonable alternative way to enjoy a legally-permitted beneficial use of the subject property unless granted the requested relief from the dimensional regulations. However, the fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.

The Inspector shall immediately transmit each such application once all required information has been received to the Zoning Board of Review and shall transmit a copy of each application to the Planning Board.

The Zoning Board of Review, immediately upon receipt of an application for a variance in the application of the literal terms of the Zoning Ordinance, may request that the Planning Board and/or staff shall report its findings and recommendations, including a statement on the general consistency of the application with the goals and purposes of the comprehensive plan for the Town, in writing to said Zoning Board of Review within thirty (30) days of receipt of the application from said Board. The Zoning Board shall hold a public hearing on any application for variance in an expeditious manner, after receipt, in proper form, of an application. The Zoning Board of Review shall publish notice of the hearing at least once each week for two (2) successive weeks immediately prior to the date of such hearing in a newspaper of general circulation in the Town, the date of the first notice shall be at a minimum fourteen (14) days prior to the date of the hearing. Notice of hearing shall be sent by certified mail with return receipt requested to the applicant, and to at least all those who would require notice under Section 45-

24-53 of the Rhode Island General Laws. Said notice shall also include the street address of the subject property. The cost of such notification shall be borne by the applicant.

9.3.1. In granting a variance, the Zoning Board of Review shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:

- (a) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant;
- (b) That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
- (c) That the granting of the requested variance will not alter the general character of the surrounding area or impair the intent or purpose of this zoning ordinance or the comprehensive plan upon which this ordinance is based;
- (d) That the relief to be granted is the least relief necessary.
- (e) That granting the variance requested will not confer on the applicant any special privilege that is denied by this ordinance to other lands, structures, or buildings in the same district.

9.3.2 The Zoning Board of Review shall, in addition to the standards in 9.3.1., require that evidence be entered into the record of the proceedings showing that:

(a) In granting a use variance, the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Non-conforming use of neighboring land or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and

(b) in granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. The fact that use may be more profitable or that a structure may be valuable after the relief is granted shall not be grounds for relief.

9.3.3. A variance from the terms of this ordinance shall not be granted by the Board unless and until:

- (a) Notice of a public hearing shall be given. The Board shall fix a reasonable time for the hearing on a variance. It shall publish notice of the hearing at least once each week for two(2) successive weeks prior to the date of such hearing in a newspaper of general circulation in the Town; the date of the first notice shall be at a minimum of fourteen (14) days prior to the date of the hearing, shall give due notice to the applicant, abutting owners, and other parties in interest; and shall hear and decide the appeal within a reasonable time. Any party may appear at the hearing in person, by agent, or by attorney;
- (b) The Board shall make written findings certifying that the application requirements have been met;

The concurring vote of four (4) members shall be required to decide in favor of an applicant on any matter concerning a variance, upon which it is required to pass under this ordinance. In granting any variance, the Board may prescribe appropriate conditions and safeguards in conformity with this ordinance. Violation of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation.

All stipulations imposed by the Board in granting a variance permit shall be recorded in Town Land Evidence Records. A copy of such shall be filed in the Inspector's office.

Section 9.4. Expiration of special-use permits, variances.

A special-use permit or a variance from the provisions of this ordinance shall expire eighteen (18) months from the date granted by the Zoning Board of Review unless the applicant exercises the permission granted or receives a building permit to do so and commences construction and diligently prosecutes the construction until completed. No re-application for a special-use permit or variance shall be granted without a hearing.

Section 9.5. Repetitive petitions.

Where the Zoning Board of Review denies a request for a special-use permit, variance or otherwise rules against the applicant on other than procedural grounds, the Zoning Board of Review may not consider another application requesting any or all the same changes, except:

- (a) where ordered to do so by a court order;
- (b) or where, after six (6) months of the date of such denial or withdrawal, the application is accompanied by an affidavit setting forth facts, to the satisfaction of said Board, showing a substantial change of circumstances justifying a rehearing.

SECTION 10. APPEALS FROM THE BOARD

Section 10.1. Procedure

An aggrieved party may appeal a decision of the Zoning Board of Review to the Superior Court for the county in which the Town is situated by filing a complaint setting forth the reasons of appeal within twenty (20) days after such decision has been recorded and posted in the office of the Town Clerk. The decision shall be posted in a location visible to the public in the Town Hall for a period of twenty (20) days following the recording of the decision. The Zoning Board of Review 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 Zoning Board shall be made parties to such 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.

If, before the date set for hearing in the Superior Court, application is made to the Court for leave to present additional evidence before the Zoning Board of Review and it is shown to the satisfaction of the Court that the additional evidence is material and that there were good reasons for the failure to present it at the hearing before the Zoning Board of Review, the Court may order that the additional evidence be taken before the Zoning Board of Review upon conditions determined by the Court. The Zoning Board of Review may modify its findings and decision by reason of such additional evidence and shall file that evidence and any new findings or decisions with the Superior Court.

The review shall be conducted by the Superior Court without a jury. The Court shall consider the record of the hearing before the Zoning Board of Review and if it shall appear to the Court that additional evidence is necessary for the proper disposition of the matter, it may allow any part to such appeal to present such evidence in open court, which evidence along with the said report shall constitute the record upon which the determination of the Court shall be made.

The Court shall not substitute its judgment for that of the Zoning Board of Review as to the weight of the evidence on questions of fact. The Court may affirm the decision of the Zoning

Board of Review 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 or ordinance provisions;
- (2) in excess of the authority granted to the Zoning Board of Review 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.

SECTION 11 RESERVED FOR FUTURE USE

SECTION 12. SCHEDULE OF FEES, CHARGES AND EXPENSES

Section 12.1. Establishing payment.

All applicants and appellants shall pay for reasonable fees, in an amount not to exceed actual costs incurred, for the adequate review and hearing of applications, issuance of zoning certificates and the recording of the decisions thereon. The schedule of fees (Appendix A) shall be posted in the office of the Inspector and may be altered or amended only by the Town Council.

SECTION 13. AMENDMENTS

Section 13.1. Procedure for amendments

The regulations set forth in this ordinance may from time to time be amended or repealed by the Town Council; provided, however, that no such action may be taken until reported on by the North Smithfield Planning Board, which said report shall be made to the Town Council within forty-five (45) days from the date the petition is filed with the Town Planner or shall otherwise be deemed to be waived and after a public hearing before the Town Council; at which time, parties in interest and citizens shall have an opportunity to be heard.

Petitioners are also subject to review procedures as well as fees established under Section 17 Site Plan Review Ordinance and Section 18 Soil Erosion and Sediment Control Ordinance, as applicable. Any person, group of persons or corporation may initiate such proceedings by paying the filing fee (see Appendix A) and filing the following with the Town Planner for a presubmission conference:

- (1) Six (6) copies of a written application to the Town Council indicating the provisions of the ordinance under which an amendment is being sought and stating the grounds on which it is requested;
- (2) Six (6) copies of a site plan to include the following:
 - (a) Name and address of owner(s), name and address of engineer or surveyor, date, north point and scale.