

## **SECTION 9.**

### **ZONING BOARD OF REVIEW; POWERS AND DUTIES**

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

#### **Sec. 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 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 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 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.

#### **Sec. 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 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 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 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 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 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)

*9.2.1 Dimensional variance in conjunction with special use permit.* An applicant may apply for, and be issued, a dimensional variance in conjunction with a Special Use Permit. If the Special Use Permit could not exist without the dimensional variance, the Zoning Board of Review shall consider the Special Use Permit and the dimensional variance together to determine if granting the Special Use Permit is appropriate based on the special use criteria set forth herein and the dimensional variance evidentiary standards set forth

herein.

### **Sec. 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 this ordinance. There shall be only two categories of variance, a use variance or a dimensional variance.

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 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 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 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. Nonconforming 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) The Board shall make written findings certifying that the application requirements have been met and;

(b) The concurring vote of four 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.

#### **Sec. 9.4. Expiration of special-use permits, variances.**

A special-use permit or a variance from the provisions of this ordinance shall expire 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.

#### **Sec. 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 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.