

**SECTION 13.**  
**AMENDMENTS**

**Sec. 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The regulations set forth in this ordinance may from time to time be amended or repealed by the Town Council; provided, however, that no such action may be taken until reported on by the North Smithfield Planning Board, which said report shall be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 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 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 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.
  - (b) Boundary of entire tract and any adjacent or contiguous parcels in the same ownership.
  - (c) Any existing watercourses, railroad and street rights-of-way, utility lines and easements.
  - (d) All building setback lines, easements and rights-of-way. Location and use of all existing and proposed buildings and structures in the development.
  - (e) Detail of adjacent properties (abutters) and public ways as will relate to the subject premises, to the neighborhood and to the street pattern.
  - (f) Existing and proposed contours at intervals no greater than five feet.
  - (g) Building dimensions, indicating exterior of building design and proposed landscaping.
  - (h) Present and proposed locations and designs for ingress, egress, parking, road system and pedestrian circulation.

- (3) Where municipal water and/or municipal sanitary sewers are required by the Zoning Ordinance, written permission for connection into each system shall be submitted from the water and/or sewer commissions upon submission of the application for a zoning amendment.
- (4) The petitioner will incur all expenses related to advertising and public hearings which are in excess of the filing fee.

The Town Planner shall review the proposal and forward comments to the Inspector and forward comments to the Planning Board as well as other reviewing parties. The Planning Board shall then review the proposed amendment and its implications in Town, and forward its comments and recommendations to the Town Council within 45 days from the date the petition is filed with the Town Planner.

Immediately upon receipt of the Board's written comment and ten copies of the required information set forth in this section, the Town Clerk shall forward a single copy to the members of the Town Council. A filing fee fixed by the Town Council under the provisions of section 12 of this ordinance shall accompany all applications to the Council except those initiated by a person representing the Town or one of its official bodies.

The Town Council may, upon motion for passage of a zoning amendment, stipulate that a particular request revert back to the original zone if certain conditions are not met, provided however that a hearing, duly noticed, shall be required.

### **Sec. 13.2. General amendment.**

(a) No Zoning Ordinance shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the town council. The town council shall first give notice of such public hearing by publication of notice in a newspaper of general circulation within such town at least once each week for three successive weeks prior to the date of such hearing, which may include the week in which the hearing is to be held, at which hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed ordinance. Written notice, which may be a copy of said newspaper notice, shall be mailed to the associate director of the division of planning of the Rhode Island Department of Administration, and, where applicable, to the parties specified in subsections (b), (c), (d) and (e) of this section, at least two weeks prior to the hearing. Such newspaper notice shall be published as a display advertisement, using a type size at least as large as the normal type size used by the newspaper in its news articles, and shall:

- (1) Specify the place of said hearing and the date and time of its commencement;
- (2) Indicate that adoption, amendment or repeal of a Zoning Ordinance is under consideration;
- (3) Contain a statement of the proposed amendments to the ordinance that may be printed once in its entirety, or summarize or describe the matter under consideration;

- (4) Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and
- (5) State that the proposals shown thereon may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any such alteration or amendment must be presented for comment in the course of said hearing.

(b) Where a proposed general amendment to an existing Zoning Ordinance includes changes in an existing zoning map, public notice shall be given as required by subsection (a) of this section.

(c) Where a proposed amendment to an existing ordinance includes a specific change in a zoning district map but does not affect districts generally, public notice shall be given as required by subsection (a) of this section, with the additional requirements that:

- (1) Notice shall include a map showing the existing and proposed boundaries, zoning district boundaries, and existing streets and roads and their names, and Town boundaries where appropriate; and
- (2) Written notice of the date, time and place of the public hearing and the nature and purpose thereof shall be sent to all owners of real property whose property is located in or within not less than one thousand (1000) feet of their perimeter of the area proposed for change, whether within the town or within an adjacent city or town. Such notice shall be sent by registered or certified mail to the last known address of such owners as shown on the current real estate tax assessment records of the town in which the property is located.

(d) Notice of a public hearing shall be sent by certified mail, return receipt requested, to the city or town council of any city or town to which one or more of the following pertain:

- (1) Which is located in or within not less than one thousand (1000) feet of the boundary of the area proposed for change; or
- (2) Where there is a public or quasi-public water source, or private water source that is used or is suitable for use as a public water source, within two thousand (2,000) feet of any real property that is the subject of a proposed zoning change, regardless of municipal boundaries.

(e) Notice of a public hearing shall be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as a public water source and that is within 2,000 feet of any real property which is the subject of a proposed zoning change, provided, however, that the governing body of any state or municipal water department or agency, special water district or private water company has filed with the inspector in the town a map survey, which shall be kept as a public record, showing areas of surface water resources and/or watersheds and parcels of land within 2,000 feet thereof.

(f) No defect in the form of any notice under this section shall render any ordinance or amendment invalid, unless such defect is found to be intentional or misleading.

(g) Cost of any notice required under this section shall be borne by the applicant.

(h) In granting a Zoning Ordinance amendment, notwithstanding the provisions of R.I.G.L. 45-24-37, the town council may limit the change to one or more of the permitted uses in the zone to which the subject land is rezoned, and impose such limitations, conditions and restrictions, including without limitation:

(1) Requiring the petitioner to obtain a permit or approval from any and all state or local governmental agencies or instrumentalities having jurisdiction over the land and use which are the subject of the zoning change;

(2) Relating to the effectiveness or continued effectiveness of the zoning change; and/or

(3) Relating to the use of the land as it deems necessary.

The responsible town official shall cause the limitations and conditions so imposed to be clearly noted on the zoning map and recorded in the land evidence records, provided, however, in the case of a conditional zone change, the limitations, restrictions, and conditions shall not be noted on the zoning map until the zone change has become effective. If the permitted use for which the land has been rezoned is abandoned or if the land is not used for the requested purpose for a period of two years or more after the zone change becomes effective, the Town Council may, after a duly noticed public hearing as hereinbefore set forth, change the land to its original zoning use before such petition was filed. If any limitation, condition, or restriction in an ordinance is held to be invalid by a court in any action, that holding shall not cause the remainder of the ordinance to be invalid.

(i) The above requirements are to be construed as minimum requirements.

### **Sec. 13.3. Repetitive petitions.**

Where the town council denies a petition of specific amendment to the Zoning Ordinance or zoning map or otherwise rules against any applicant on other than procedural grounds, the town council may not consider another application requesting any or all of the same specific amendments for the same property except:

(a) Where ordered to do so by a court of competent jurisdiction;

(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 town council, showing a substantial change of circumstances justifying a rehearing.

#### **Sec. 13.4. Vested rights.**

Upon planning board review of a project and written decision setting forth their recommendation, the town council shall deem an application for amendment substantially complete. The Zoning Ordinance of 1973 (as amended to date) will apply to the project, 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.

#### **Sec. 13.5. Appeal of enactment of or amendment to Zoning Ordinance**

An appeal of an enactment of or an amendment to [the] Zoning Ordinance may be taken to the superior court for the county in which the municipality is situated by filing a complaint as set forth herein within 30 days after such enactment, or amendment has become effective. Such appeal may be taken by an aggrieved party or by any legal resident or landowner of the town or by any association of residents or landowners of the town. The appeal shall not stay the enforcement of the Zoning Ordinance, 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.

The complaint shall set forth with specificity the area or areas in which the enactment or amendment does not conform with the comprehensive plan and/or the manner in which it constitutes a taking of private property without just compensation.

The review shall be conducted by the court without a jury. The court shall first consider whether the enactment or amendment of the Zoning Ordinance is in conformance with the comprehensive plan. If the enactment or amendment is not in conformance with the comprehensive plan, then the court shall invalidate the enactment or the amendment, or those parts of such enactment or amendment which are not in conformance with the comprehensive plan. The court shall not revise the ordinance to conform with the comprehensive plan, but may suggest appropriate language as part of the court decision.

In the case of an aggrieved party where the court has found that the enactment or amendment of the Zoning Ordinance is in conformance with the comprehensive plan, then the court shall next determine whether the enactment or amendment works as a taking of property from the aggrieved party. If the court determines that there has been a taking, the court shall remand the case to the town council, with its findings that a taking has occurred, and order the town to either provide just compensation or rescind such enactment or amendment within 30 days.

The superior court shall retain jurisdiction, in the event that the aggrieved party and the town do not agree on the amount of compensation, in which case the superior court shall hold further hearings to determine such compensation and award same. Furthermore, the superior court shall retain jurisdiction to determine the amount of an award of compensation for any temporary taking, if the same shall exist.

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.