

## ARTICLE XIII. ZONING BOARD OF REVIEW

### Section A. ESTABLISHMENT AND PROCEDURES

#### 1. Appointment of members.

a) Members of the Zoning Board of Review shall be appointed by majority vote of the Town Council.

b) In case any vacancy occurs in said Board for any case or cause, the Town Council shall appoint a member to said Board to fill said vacancy for the remainder of the term of the member who has vacated his office.

c) The Zoning Board of Review shall consist of five (5) members, each to hold office for the term of five (5) years; provided, however, that the original appointments shall be made for terms of one, two (2), three (3), four (4), and five (5) years, respectively. The Zoning Board of Review shall also include two (2) alternates to be designated as the first [1st] and second [2nd] alternate members, their terms to be set by the ordinance, but not to exceed five (5) years.

(1) Members of zoning boards of review serving on the effective date of adoption of a zoning ordinance under this chapter shall be exempt from provisions of this section respecting terms of originally appointed members until the expiration of their current terms.

#### 2. Alternates

Alternate members shall sit and may actively participate in hearings. The first and second alternates shall be designated by the chairperson on a case by case basis. The first alternate shall vote if a member of the board is unable to serve at a hearing and the second shall vote if two (2) members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate.

#### 3. Removal of a Member

Members of the Zoning Board of Review may be removed from the Board for due cause by majority vote of the Town Council.

#### 4. Organization of the Board

a) The Zoning Board of Review shall annually elect a chairperson, a vice chairperson and a secretary. The chairperson, or in his or her absence, the vice chairperson, shall preside over all meetings of the Board.

#### 5. Expenses

a) Individual members of the Board may be reimbursed for expenses incurred in the performance of official duties with approval of the Chair.

b) The Zoning Board of Review may engage legal, technical, or clerical assistance to aid in the discharge of its duties.

c) The Town may provide for remuneration to members of the Zoning Board of Review.

6. Procedures Generally

a) The Zoning Board of Review shall adopt and maintain written rules of procedure, which shall be available to any applicant or the general public at the office of the Zoning Enforcement Officer. Said rules of procedure shall include, at a minimum, a mailing address to which appeals and correspondence to the Zoning Board of Review shall be sent, and an office where records and decisions shall be filed.

(1) In case of conflict between such rules of procedure and this ordinance, the provisions of this ordinance shall apply.

b) The chairperson, or in his or her absence, the vice chairperson, may administer oaths and compel the attendance of witnesses by the issuance of subpoenas.

c) No member or alternate may vote on any matter before the board unless they have attended all hearings concerning that matter.

7. Any petition for a variance or a special use permit to the Zoning Board of Review of the said Town, said petition shall be accompanied by a fee as prescribed by the Town of Portsmouth Ordinance pertaining to fees.

**Section B. APPLICATION PROCEDURE**

1. All applications including applications requests for variances, special use permits and appeals from a ruling of the zoning enforcement officer shall be made on forms as provided by the rules of the Board and the written ruling or decision of the enforcement official together with all other papers, plans and data constituting the record of the case shall be transmitted to the Board. All such applications must include a completed form or forms as specified by the Zoning Board of Review plus specific information required for the subject matter by this Ordinance.

2. Completed applications shall be delivered to the Zoning Enforcement Officer as specified in the written rules of procedure of the Zoning Board of Review, but in no case less than one week prior to the date of publication of the first public notice on the subject matter. The Zoning Board of Review shall decline to hear any application which requires public notice for which a substantially complete application has not been submitted by the deadline, except applications pertaining directly to life safety requirements.

3. A time period of twelve (12) months shall be required to pass before a successive similar application to the Zoning Board of Review may be filed.

**Section C. POWERS AND DUTIES OF ZONING BOARD OF REVIEW.**

1. The Zoning Board of Review shall hold a public hearing on all appeals including appeals in which applications for variances are involved and on all requests for special use permits and shall publish a notice of such hearings and give notice thereof to the parties in interest, as required by this Ordinance.

2. Public Notice

Notice of all public hearings held by the Zoning Board of Review shall be as follows:

a) A notice shall be published in the legal notice section of a newspaper of general circulation in the Town of Portsmouth once per week for three (3) weeks, one of which may include the week of the hearing and one of which must appear at least fourteen (14) days prior to the date of the hearing.

b) Notice of hearing, which may be a copy of the newspaper notice, shall be sent by first class mail to the applicant, and to all abutters, as defined in Article II Definitions. Notice shall also be mailed to the public water district if the subject of the application is within 2,000 feet of a public water source.

c) All notices shall specify the general nature of the hearing, its date, place and time. The notice shall also include the street address of the subject property.

d) A supplemental notice shall be posted at the office of the Town Clerk. This posting shall be for information purposes only and shall not constitute required notice of a public hearing.

e) The cost of notification, including actual advertising and mailing costs, shall be borne by the applicant.

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

a) 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 an administrative officer or agency in the enforcement or interpretation of this chapter, or of any ordinance adopted pursuant hereto. Such appeals shall also be governed by the provisions of Article XIV.

b) To authorize, upon application, in specific cases of hardship, variances in the application of the terms of the zoning ordinance, pursuant to Article VI. Section D.

c) To authorize, upon application, in specific cases, special-use permits, pursuant to Article VII.

d) To refer matters to the planning board, or to other boards or agencies of the Town as the Zoning Board of Review may deem appropriate, for findings and recommendations;

e) To hear and decide other matters, according to the terms of the ordinance or other statutes, and upon which the board may be authorized to pass under this ordinance or other statutes.

4. The Zoning Board of Review is required to vote as follows:

a) Five (5) active members shall be necessary to conduct a hearing. As soon as a conflict occurs for a member, that member shall recuse himself or herself, shall not sit as an active member, and take no part in the conduct of the hearing. Only five (5) active members shall be entitled to vote on any issue;

b) The concurring vote of three (3) of the five (5) members of the Zoning Board of Review sitting at a hearing shall be necessary to reverse any order, requirement, decision, or determination of any zoning administrative officer from whom an appeal was taken; and

c) The concurring vote of four (4) of the five (5) members of the Zoning Board of Review sitting at a hearing shall be required to decide in favor of an applicant on any matter within the discretion of the board upon which it is required to pass under the ordinance, including variances and special-use permits.

d) The concurring vote of three (3) of the five (5) members of the Zoning Board of Review sitting at a hearing shall be necessary to determine if, during the course of any hearing, an application is essentially changed and if said application shall be allowed to continue or shall require a new application.

#### **Section D. DECISIONS AND RECORDS OF ZONING BOARD OF REVIEW**

1. Following a public hearing, the Zoning Board of Review shall render a decision within a reasonable period of time. The Zoning Board of Review 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. Decisions shall be recorded and filed in the office of the Zoning Board of Review within thirty (30) working days from the date when the decision was rendered, and shall be a public record.

2. 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 shall 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 Zoning Board of Review 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.

3. Any decision by the Zoning Board of Review, including any special conditions attached thereto, shall be mailed to the applicant, to the zoning enforcement officer of the Town, and to the associate director of the division of planning of the Rhode Island department of administration. Any decision evidencing the granting of a variance, modification, or

special use shall also be recorded in the land evidence records of the Town.

4. All determinations of the Board shall be made in accordance with the comprehensive plan specified in Title 45 Chapter 24 of the General Law of 1956 as amended.

5. In authorizing special use permits, the Board shall be bound by the conditions for special uses which are set out in this Ordinance and in authorizing either special use permits or variances the Board may impose such further conditions as are deemed necessary for the protection of neighboring properties and the public interest, as further described in Article X. Special Conditions.

**Section E. PARTICIPATION IN ZONING HEARINGS**

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, a knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.