

Chapter 50. PLANNING BOARD AND ZONING BOARD OF APPEALS

Article I. PLANNING BOARD

§ 50-1. Creation and Membership.

A. There is hereby established a Planning Board having the powers authorized under the Consolidated Laws of the State of New York. Said Board shall consist of seven (7) members, appointed by the Town Board. An appointment to a vacancy occurring prior to expiration of term shall be for the remainder of the unexpired term.

§ 50-2. Training and Continuing Education.

A. In making appointments to the Planning Board, the Town Board shall require Planning Board members to complete training and continuing education courses in accordance with any local requirements for the training of such members. The Town Board shall reimburse the members for appropriate expenses incurred in obtaining training. New Planning Board members shall be required to take eight hours of training within the first year of appointment. After their first year of service, all members shall henceforth be required to take a minimum of four hours per year thereafter. All training shall be relevant to that member's powers or duties on the Planning Board and sponsored by the New York Association of Towns, New York Planning Federation, State of New York or any political subdivision thereof, or any such session approved by the Planning Board Chairperson.

§ 50-3. Membership Performance.

A. Planning Board members are required to attend at least 70% of all board meetings in any calendar year.

B. Failure of a Planning Board member to satisfy the attendance or training requirement may be cause for removal from the Planning Board.

C. The Planning Board Chairperson shall cause notice of Planning Board members' compliance with these requirements to be entered into the minutes of the Planning Board as the official record of the Planning Board. The Chairperson shall require proof of attendance and to submit documentation to the Town Board.

§ 50-4. Process for removing Planning Board member from office.

A. The Town Board shall have the power to remove, after public hearing, any member of the Planning Board for cause. Any Planning Board member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town Board by local law or ordinance.

B. A public hearing for the removal of a Planning Board member pursuant to this article shall be given to said Planning Board member at least 10 days prior to the date of such public hearing.

C. The Town Board shall hold said public hearing at its next regularly scheduled meeting occurring 10 days following the delivery of notice to the Planning Board member as prescribed in b. above. The decision of the Town Board after said public hearing will be final and effective as of the date of the decision.

D. The Town Board shall, at its organizational meeting each year, appoint a Chairperson and Secretary to the Planning Board. The term of office shall be one year.

§ 50-5. Alternate Member Position on the Planning Board.

A. There is hereby established one (1) alternate Planning Board member position for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest, illness or absence.

B. Alternate member of the Planning Board shall be appointed by resolution of the Town Board, for terms established by the Town Board.

C. The chairperson of the Planning Board may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board or because of that member's illness or absence.

D. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Planning Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.

E. All provisions of New York State Town Law, the Town of Richmond Zoning Local Law and any Town of Richmond rules, regulations, policies or procedures relating to Planning Board member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to the alternate member.

§ 50-6. Powers and Duties of the Planning Board.

The Planning Board shall have the following powers and duties:

A. To read, review and become familiar with the community goals, desires and policies as expressed in the Comprehensive Plan of the Town of Richmond and in rendering approvals, recommendations and reports shall be guided by such plan. Each member, as part of their annual education and training requirements, shall sign an acknowledgement that they have read or re-read the New York State Town Comprehensive Plan law under Section 272-a. The Chairperson shall forward to the Town Board copies of the signed acknowledgements.

B. To review and recommend revisions to the comprehensive plan for the development of the Town as provided under Section 272-a of Town Law and/or Town Board Resolution.

C. To review and comment on all proposed zoning amendments and to make investigations, maps, reports and recommendations relating to the planning and development of the Town as it deems desirable. This shall include but not be limited to changes in boundaries of districts, recommended changes in the provisions of this local law, other land use and development matters of importance to the Planning Board, and to act on any matter lawfully referred to it by the Town Board.

D. To review Site Plans as authorized by New York State Town Law and prescribed in Article 10 of this Local Law.

E. To review applications for Special Use Permits as authorized by Article 9 of this Local Law.

F. To review proposals to approve or disapprove the laying out, closing off, abandonment or changes in lines of streets, highways and public areas and to make recommendations to the Town Board.

G. To review, act on or provide advisory reports as specified by this local law.

H. To make referrals to other Town Departments, Boards and/or officials to request advisory opinions to assist the Planning Board in making decisions which affect the development of the Town.

I. All such powers and duties as are conferred upon Town Planning Boards and subject to the limitations set forth in Sections 272, 272-a, 274, 274-a, 275, 276, 277, 278, and 281 of the New York State Town Law, as the same may be amended, modified, or changed from time to time, or any sections subsequently adopted pertaining to Planning Boards.

§ 50-7. Planning Board Office.

A. The Office of the Code Enforcement Officer shall be the Office of the Planning Board. Every rule, regulation, amendment or repeal thereof and every order, requirement, decision or determination of the Board shall immediately be filed in said office as required by the Town Law of the State of New York. The Planning Board shall keep minutes of its proceedings, showing

the vote, indicating such fact, and shall keep records of its environmental reviews and determination, its examinations and other official actions.

§ 50-8. Service on Other Planning Boards.

A. No person may be disqualified from serving as a member of the Planning Board by serving as a member of the Ontario County Planning Board.

Article II. ZONING BOARD OF APPEALS

§ 50-9. Creation and Membership.

A. There is hereby established a Zoning Board of Appeals having the powers authorized under the Consolidated Laws of the State of New York. Said Board shall consist of five (5) members, appointed by the Town Board. An appointment to a vacancy occurring prior to expiration of term shall be for the remainder of the unexpired term.

§ 50-10. Training and Continuing Education.

A. In making appointments to the Zoning Board of Appeals, the Town Board shall require ZBA members to complete training and continuing education courses in accordance with any local requirements for the training of such members. The Town Board shall reimburse the members for appropriate expenses incurred in obtaining training. New Zoning Board of Appeals members shall be required to take eight hours of training within the first year of appointment. After their first year of service, all members shall henceforth be required to take a minimum of four hours per year thereafter. All training shall be relevant to that member's powers or duties on the Zoning Board of Appeals and sponsored by the New York State Association of Towns, New York Planning Federation, State of New York or any political subdivision thereof, or any such session approved by the Zoning Board of Appeals Chairperson.

§ 50-11. Membership Performance.

A. Zoning Board of Appeals members are required to attend at least 70% of all board meetings in any calendar year.

B. Failure of a Zoning Board of Appeals member to satisfy the attendance or training requirement shall be cause for removal from the Zoning Board of Appeals.

C. The Zoning Board of Appeals Chairperson shall cause notice of Zoning Board of Appeals members' compliance with these requirements to be entered into the minutes of the Zoning Board of Appeals as the official record of the Zoning Board of Appeals. The Zoning Board of Appeals Chairperson shall require proof of attendance and to submit documentation to the Town Board.

§ 50-12. Process for removing Zoning Board of Appeals member from office.

A. The Town Board shall have the power to remove, after public hearing, any member of the Zoning Board of Appeals for cause. Any Zoning Board of Appeals member may be removed for non-compliance with minimum requirements relating to meeting attendance and training as established by the Town Board by local law or ordinance.

B. A public hearing for the removal of a Zoning Board of Appeals member pursuant to this article shall be given to said Zoning Board of Appeals member at least 10 days prior to the date of such public hearing.

C. The Town Board shall hold said public hearing at its next regularly scheduled meeting occurring 10 days following the delivery of notice to the Zoning Board of Appeals member as prescribed by Law. The decision of the Town Board after said public hearing will be final and effective as of the date of the decision.

§ 50-13. Alternate Member Positions on the Zoning Board of Appeals.

A. There is hereby established one (1) alternate Zoning Board of Appeals member position for purposes of substituting for a member in the event such member is unable to participate because of a conflict of interest, illness or absence.

B. Alternate member of the Zoning Board of Appeals shall be appointed by resolution of the town board, for terms established by the town board.

C. The chairperson of the Zoning Board of Appeals may designate an alternate member to substitute for a member when such member is unable to participate because of a conflict of interest on an application or matter before the board or because of that member's illness or absence.

D. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Zoning Board of Appeals. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.

E. All provisions of New York State Town Law, the Town of Richmond Zoning Town Code and any Town of Richmond rules, regulations, policies or procedures relating to Zoning Board of Appeals member training and continuing education, attendance, conflict of interest, compensation, eligibility, vacancy in office, removal, and service on other boards, shall also apply to alternate members.

§ 50-14. Organization and Procedures.

A. Appointment of Officers, Meetings

1. The Town Board shall appoint a Chairperson. The Board of Appeals shall adopt rules and regulations consistent with law or ordinance. Meetings of the Board shall be held at the call of the Chairperson and at such other times as the Board may determine.

2. The Chairperson or, in his absence, the acting Chairperson, may administer oaths and compel the attendance of witnesses.

B. The Zoning Board of Appeals shall establish such rules and regulations as are required by state and Local Laws for the transaction of its business and may amend, modify and repeal the same from time to time.

§ 50-15. Hearings Open to the Public.

A. Hearings of the Board of Appeals shall be public. The Board shall keep minutes of its proceedings, showing the action of the Board, and the vote of each member upon each question, or if absent or failing to vote indicating such fact, and shall keep records of its inspections and other official actions, all of which shall be a public record.

§ 50-16. Quorum, Voting.

A. The presence of three (3) members shall constitute a quorum. The Zoning Board of Appeals shall act by resolution. Except as otherwise required by State, County or Local Law, Rule or Requirement, the concurring vote of a majority of the members of the Board shall be necessary to reverse any order, requirement or decision or determination of the Zoning Officer or to decide in favor of the applicant any matter upon which it is required to pass under this Local Law or to grant any variation from the requirements of this Local Law.

§ 50-17. Powers and Duties.

A. To read, review and become familiar with the community goals, desires and policies as expressed in the "Town Comprehensive plan," and in rendering approvals, recommendations and reports shall be guided by such plan. Each member, as part of their annual education and training requirements, shall sign an acknowledgement that they have read or re-read the New York State Town Comprehensive Plan law under Section 272-a. The Chairperson shall forward to the Town Board copies of the signed acknowledgements.

B. Action of the Board of Appeals

In exercising its powers, the Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from, and may value such order, requirement, decision or determination as in its judgment ought to be made in accordance with the provisions of this Local Law and pursuant to the Consolidated Laws of the State of New York.

C. Hear and Decide Appeals

1. To hear and decide appeals where it is alleged that error or misinterpretation in any order, requirement, decision, grant or refusal made by the Zoning Officer or other administrative official in the carrying out or enforcement of the provisions of this Local Law or any local law or ordinance pursuant thereto.
2. Such appeal may be taken by any person aggrieved, or by an officer, board, or department of the Town. Such appeal shall be taken within 62 days after the filing in the Town Clerk's office of any order, requirement, decision, interpretation or determination of the Zoning Officer.
3. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appealed from and shall make such order, requirement, decision or determination as in its opinion ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

D. Interpretation

The ZBA may issue interpretations of the Town Code upon request from any party.

E. Hold Public Hearings

1. The Zoning Board of Appeals shall hold public hearings, as required, and as may be permitted by this Local Law, prior to issuing a decision on a request for variance, interpretation, or other appeal.
2. The applicant shall place one (1) sign on the property for which a variance or other appeal is requested. Said sign shall be provided by the Zoning Officer. The sign shall be placed in a location that is easily read from a public street. The sign shall specify the date, time and place of the public hearing and a telephone number to call for more specific information. Such sign shall be placed on the site not less than ten (10) days prior to the public hearing and shall be brought to the hearing by the applicant or his designated representative.

F. Hear and Decide Area Variances

1. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such Local Law or Local Law, or in conjunction with an application for Site Plan Review or subdivision approval, to grant area variances.
2. In making its determination, the Zoning Board of Appeals shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination, the board shall also consider:
 - a. Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance, or whether neighbors will be deprived of the quiet enjoyment of their property.
 - b. Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance.
 - c. Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district.

d. Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

3. In the case of a setback variance from a public or private right-of-way, the ZBA shall determine that visibility along such right-of-way shall not be unduly compromise public safety. Any new off-street parking shall be located in such a way that visibility and safety is not unduly compromised. Wherein the ZBA finds the latter adjacent to a public right-of-way, the ZBA shall request a written opinion concerning the magnitude of compromise of visibility and safety from the agency of competent jurisdiction over such public right-of-way (for example, Town Highway Superintendent, County Commissioner of Public Works, or New York State Department of Transportation), and shall factor such opinions into its decision.

4. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

G. Hear and Decide Use Variances

1. The Zoning Board of Appeals, on appeal from the decision or determination of the administrative official charged with the enforcement of this Local Law, shall have the power to grant, grant with conditions, or deny use variances.

2. No such use variance shall be granted by the Zoning Board of Appeals without showing by the applicant that applicable zoning regulations and restrictions have caused unnecessary hardship. In order to prove such unnecessary hardship the applicant shall demonstrate to the Board of Appeals that, for each and every permitted use under the zoning regulations for the particular district where the property is located:

a. The applicant cannot realize a reasonable return, provided that lack of return is substantial as demonstrated by competent financial evidence provided by the applicant.

b. The alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood.

c. The requested use variance, if granted, will not alter the essential character of the neighborhood.

d. The alleged hardship has not been self-created.

3. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.

§ 50-18. Imposition of Conditions.

A. The Zoning Board of Appeals may, in the granting of both use variances and area variances, impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of this Local Law, and shall be imposed for the purpose of minimizing any adverse impact that such variance may have on the neighborhood or community.

§ 50-19. Rehearings.

A. Any member of the ZBA may make a motion for the ZBA to hold a rehearing to review any order, decision or determination of the board that has not been previously reheard. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon

such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reheard order, decision or determination will not be prejudiced thereby.

Article III. Attendance

§ 50-20. Attendance records; notice of absences.

A. The Secretary to the Zoning Board of Appeals and the Secretary to the Planning Board shall maintain such required attendance records. Attendance shall be recorded in the minutes by the Secretary. The Secretary to each respective board shall advise the Chairperson of that Board when a member has violated the attendance policy described above. The Chairpersons of the Zoning Board of Appeals and the Planning Board shall provide written notification to any member upon their third and fourth absences; notice to be served in accordance with § 50-4.

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