

# ZONING BOARD OF APPEALS RULES

TOWN OF KIRKWOOD  
BROOME COUNTY, NEW YORK

**Adopted by the Zoning Board of Appeals of the Town of Kirkwood  
October 28, 1996**

## SECTION 1. General Governing Rules.

1.1.1 The Zoning Board of Appeals of the Town of Kirkwood shall be governed by the provisions of all applicable state statutes, local laws, ordinances and these rules.

1.1.2 The term "Board" as used in these rules shall mean the duly appointed Zoning Board of Appeals of the Town of Kirkwood.

1.2.1 The Board shall become familiar with all the duly enacted ordinances and laws of the town under which it may be expected to act as well as with the applicable state statutes.

1.2.2 The Board shall become familiar with the community goals, desires and policies as expressed in a "Town comprehensive plan," and in rendering decisions shall be guided by such plan, and grant the minimum relief which shall insure that the goals and policies of the plan are preserved and substantial justice is done.

## SECTION 2. Officers and Duties.

2.1.1 The officers of the Board shall consist of a chairperson, acting chairperson and secretary.

2.2.1 Chairperson. The chairperson shall be designated by the town board. He shall perform all duties required by law, ordinance and these rules. He shall preside at all meetings of the Board. The chairperson shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the Board. The chairperson shall appoint any committees found necessary to carry out the business of the Board. The chairperson may administer oaths and compel the attendance of witnesses as necessary to carry the business of the Board. The chairperson's signature shall be the official signature of the Board and shall appear on all decisions as directed by the Board.

2.3.1 Acting Chairperson. An acting chairperson shall be designated by the Board of Appeals to serve in the absence of the chairperson. He shall have all the powers of the chairperson during his absence, disability or disqualification.

2.4.1 Secretary. A secretary shall be designated by the Board of Appeals. The secretary, subject to the direction of the Board and the chairperson, shall keep minutes of all Board proceedings, showing the vote of each member upon every question, or if absent or failing to vote, indicating such fact, and shall also keep records of all Board examinations and other official actions.

2.5.1 Vacancies. Should any vacancy on the Board occur for any reason, the secretary shall give immediate notice thereof to the town clerk for the town board.

2.5.2 Should such a vacancy occur among the officers of the Board subject to election by the Board, such office shall be filled by election, for the unexpired term, at the next meeting of the Board.

2.5.3 Should the office of chairperson become vacant, the secretary shall add such fact to the notice required in section 2.5.1 of these rules. The acting chairperson shall handle the duties of the chairperson until such time as the town board shall appoint a new chairperson.

SECTION 3. Meetings.

3.1.1 Regular Meetings. The regular meetings of the Board shall be held on the fourth Monday of each month at 7:30 p.m. in the Kirkwood Town Hall.

3.1.2 Annual Meetings. The annual organizational meeting of the Board shall be the first regular meeting of the year.

3.2.1 Special Meetings. Special meetings of the Board may be called by the chairperson. At least forty-eight (48) hours written notice of the time, place and business of the meeting shall be given each member of the Board.

3.2.2 The chairperson shall call a special meeting within ten (10) days of receipt of a written request from any three members of the Board, which request shall specify the matters to be considered at such special meetings.

3.3.1 Cancellation of Meetings. Whenever there are no appeals or applications for variance or other business at a regular meeting, the chairperson may dispense with such meeting by written notice to all members not less than forty-eight (48) hours prior to the time set for such meeting.

3.4.1 Proceeding. The order of business at regular meetings shall be as follows: (A) roll call; (B) reading and approval of minutes of preceding meeting; (C) action on held cases; (D) public hearing (when scheduled; see Section 6.4.1); (E) other business; (F) adjournment.

3.5.1 Meetings. All meetings of such board of appeals shall be open to the public to the extent provided in article 7 of the Public Officers Law.

SECTION 4. Voting.

4.1.1 Quorum. A quorum shall consist of a majority of the members of the Board.

4.1.2 No hearing or meeting of the Board shall be held, nor any action taken, in the absence of a quorum; however, those members present shall be entitled to request the chairperson to call a special meeting for a subsequent date. All subsequent hearings shall be re-advertised in accordance with the requirements of the applicable law.

4.2.1 Voting. All matters pending before the Board shall be decided by roll call vote. Decisions on any matter before the Board shall require the affirmative vote of a majority of the Board unless otherwise specified herein.

4.2.2 A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of the application under consideration.

4.2.3 No member of the Board shall sit in hearing or vote on any matter in which he is personally or financially interested. Said member shall not be counted by the Board in establishing the quorum for such matter.

4.2.4 No member shall vote on the determination of any matter requiring public hearing unless he has attended the public hearing thereon; however, where such member has familiarized himself with such matter by reading the record, he shall be qualified to vote.

4.2.5 Filing Requirements. Every rule, regulation, every amendment or repeal thereof and every order, requirement, decision or determination of the Board shall be filed in the office of the Town Clerk within five business days and shall be a public record.

SECTION 5. Appeals and Procedures.

5.1.1 Appeals. The Board shall hear and decide appeals from and review any order, requirement, decision, interpretation, or determination made by an administrative official charged with the enforcement of any ordinance or local law adopted pursuant to Article 16 of the Town Law. It shall also hear and decide all matters referred to it or upon which it is required to pass under any other law.

Such an appeal may be taken by any person aggrieved, or by any officer, department, board or bureau of the town.

#### 5.1.2 Filing of Appeals.

(a) An appeal shall be taken within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the administrative officer charged with the enforcement of such ordinance or local law.

(b) The applicant must file a notice of appeal with the administrative official from whom the appeal is taken and with the board of appeals and the notice of appeal must specify the grounds therefor and the relief sought.

(c) The administrative official from whom the appeal is taken shall be responsible, at the direction of the board of appeals, for providing the applicant with proper forms including environmental quality review forms, if applicable, and for instructing the applicant in the manner for completing and filing said forms. All information thereon shall be completed before an appeal is considered filed.

(d) The administrative official from whom the appeal is taken shall forthwith transmit six (6) copies of all the papers constituting the record upon which the action appealed from was taken to the Board.

(e) The cost of sending or publishing any notices relating to such appeal or a reasonable fee relating thereto shall be borne by the appealing party and shall be paid to the Board prior to the hearing of the appeal.

5.1.3 Amendments to Appeals. Appeals may be amended fifteen (15) days prior to the public hearing thereon.

5.1.4 Notice to Applicant. The applicant shall be notified by letter within five (5) days of the hearing on his application or of his failure to complete his application properly.

5.1.5 Assistance to the Board. The Board shall have authority to call upon any department, agency or employee of the town for such assistance as shall be deemed necessary and as shall be authorized by the town board. Such department, agency or employee shall be reimbursed for any expenses incurred as a result of such assistance by the applicant.

5.1.6 Stay upon Appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the administrative official charged with the enforcement of such ordinance or local law, from whom the appeal is taken, certifies to the Board, after the notice of appeal shall have been filed with the administrative official, that by reason of facts stated in the certificate a stay, would, in his or her opinion, cause imminent peril to life or property, in which case proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of appeals or by a court of record on application, on notice to the administrative official from whom the appeal is taken and on due cause shown.

5.1.7 Compliance with State Environmental Quality Review Act. The Board shall comply with the provisions of the State Environmental Quality Review Act under Article 8 of the Environmental Conservation Law and its implementing regulations as codified in Title 6, Part 617 of the New York Codes, Rules and Regulations.

### SECTION 6. Hearings.

6.1.1 Time of Hearing. The Board shall schedule a hearing of all appeals or applications within a reasonable time (62 days for a special use permit) of the filing of the appeal or application.

6.2.1 Notice of Hearing — Zoning Appeals. The Board shall give notice of the hearing at least five (5) days (Section 267, Subdivision 7, Town Law) prior to the date thereof by publication in the official town newspaper.

6.2.2 Notice of Hearing — Official Map Appeals. The Board shall give public notice of the hearing at least ten (10) days prior to the date thereof by publication in a newspaper of general circulation in the town, in accordance with Section 279 of the Town Law, for appeals from the town official map; or in accordance with Section 239-j of the General Municipal Law, for appeals from the county official map.

6.2.3 Notice of Hearing—Appeal to Build on Unimproved or Unmapped Street. Same as Section 6.2.1. See Section 280-a, Subdivision 3, of the Town Law.

6.2.4 Notice of Hearing— Special Use Permits. Same as Section 6.2.1. See Section 274-b(6) of the Town Law.

6.2.5 Notice of Hearing — Flood Damage Prevention Local Law. Same as Section 6.2.1. See Town of Kirkwood Local Law 2-1987.

6.2.6 Notice to Park Commission or Planning Agency. At least five days before such hearing, the board of appeals shall mail notices thereof to the parties; to the regional state park commission having jurisdiction over any state park or parkway within five hundred feet of the property affected by such appeal; and to the county, metropolitan or regional planning agency, as required by Section 239-m of the General Municipal Law, which notice shall be accompanied by a full statement of the matter under consideration, as defined in subdivision I of Section 239-m of the General Municipal Law.

6.3.1 Form of Notice. Such notice shall state the location of the building or lot, the general nature of the question involved, the date, time and place of the hearing and the nature of the relief sought.

6.4.1 Proceedings. The order of business at a hearing shall be as follows: (A) roll call; (B) the chairperson shall give a statement of the case and read all correspondence and reports received thereon; (C) the applicant shall represent his case; (D) those opposed shall present their arguments; (E) rebuttal by both sides; (F) additional cases; (G) adjournment of hearings; (H) call to order of regular meeting (when applicable; see Section 3.4.1).

6.5.1 General Rules. Any party may appear in person or by agent or by attorney.

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

6.5.3 The proceedings for appeals, special use permits and flood plain variances before the Board shall be tape recorded, unless the chairperson or the acting chairperson deems it necessary to have a transcript of the proceeding prepared by a stenographer.

## SECTION 7. Referrals.

7.1.1 Zoning Referrals. All matters requiring referral as specified by any ordinance enacted under Article 16 of the Town Law shall be so referred to the proper agency for its recommendations. Within thirty (30) days (or as specified in the particular ordinance) after receipt of a full statement of such referred matter, said agency shall report its recommendations thereon to the Board, with a full statement of the reasons for such recommendations. If such agency fails to respond within the prescribed time the Board may act without such report. The Board shall not act contrary to any said agency's recommendations without first fully setting forth in the official record the reasons for such contrary action. The chairperson shall read all such reports at the hearing on the matter under it.

7.2.1 County Zoning Referrals. Prior to taking action on any matter which would cause change in the regulations or use of land or buildings on real property as specified in Section 239-m of the General Municipal Law, the Board shall make referrals to the county planning agency.

Within thirty (30) days after receipt of a full statement of such referred matter, the planning agency to which referral is made, or an authorized agent of said agency, shall report its recommendations thereon to the Board, accompanied by a full statement of the reasons for such recommendations. If such planning agency disapproves the proposal, or recommends modification thereof, the Board shall not act contrary to such disapproval or recommendation except by a vote of a majority plus one of all the members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. The chairperson shall read the report of the county planning agency at the public hearing on the matter under review.

If such planning agency fails to report within such period of thirty (30) days or such longer period as may have been agreed upon by it and the referring agency, the Board may act without such report.

However, if the Board receives the report of the county planning agency after thirty (30) days, but prior to the final action by the Board, then the Board shall not act contrary to the recommendation by the county planning agency, except by a vote of a majority plus one of all of the members thereof.

## SECTION 8. Decisions.

8.1.1 Time of Decisions. Decisions by the Board shall be made within sixty-two (62) days from the date of the final hearing. The time within which the Board must render its decision may be extended by mutual consent of the applicant and the Board.

8.1.2 Filing of Decision and Notice. The decision of the board of appeals on the appeal shall be filed in the office of the town clerk within five business days after the day such decision is rendered, and a copy thereof mailed to the applicant.

8.2.1 Form of Decision. The final decision on any matter before the Board shall be made by written order signed by the chairperson. Such decision shall state the findings of fact which were the basis for the Board's determination. After such determination, the Board may reverse or affirm, wholly or partly, or may modify the order or requirement of the administrative official appealed from. The decision shall also state any conditions and safeguards necessary to protect the public interest.

8.3.1 Basis for Decisions. In reaching said decision, the Board shall be guided by standards specified in the Town Law of the State of New York and the applicable ordinance, as well as by the community goals and policies, specified in a comprehensive plan and by the findings of the Board in each case.

8.3.2 Findings — General Contents. The findings of the Board and the supporting facts shall be spelled out in detail regardless of whether it is based on evidence submitted or on the personal knowledge of the Board.

The Board shall show in its findings that it has:

- (a) Made a thorough review of the question including:
  - (1) Consideration of all information or evidence;
  - (2) Hearing all parties in question;
  - (3) Taking into account any intimate knowledge it has of the subject; and
- (b) Made a personal inspection of the parcel in question and from this examination certain findings were ascertained.

8.3.3 Conflicts with Other Laws or Regulations. In reviewing any application on any matter, the standards in any applicable local law or ordinance or state statute shall take precedence over the standards of these rules whenever a conflict occurs. In all other instances, the more restrictive rule shall apply.

8.3.4 Expiration of Permits. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building or occupancy permit for the use is not obtained by the

applicant within ninety (90) days from the date of the decision; however, the Board may extend this time an additional ninety (90) days.

8.3.5 Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any member of the board. 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 reviewed order, decision or determination will not be prejudiced thereby.

8.3.6 Filing of Decisions. Decisions of the Board shall be filed in the office of the Town Clerk and shall be a public record. The date of filing of each decision shall be entered in the official records and minutes of the Board.

8.4 Use Variances. The Board, on appeal from the decision or determination of the administrative official charged with the enforcement of such ordinance or local law, shall have the power to grant use variances, authorizing a use of the land which otherwise would not be allowed or would be prohibited by the terms of the ordinance or local law.

8.4.1 Finding of Facts for Use Variance. No such variance shall be granted by a Board without a 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 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;
- (b) That 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) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and
- (d) That the alleged hardship has not been self-created.

8.4.2 Granting of Use Variance.

- (a) The Board, 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.
- (b) The Board shall, in the granting of use variances, have the authority to 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 the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

8.5 Area Variances. The Board shall have the power, upon an appeal from a decision or determination of an administrative official charged with the enforcement of such ordinance or local law, to grant area variances from the area or dimensional requirements of such ordinance or local law.

8.5.1 Findings of Fact for Area Variances. In making its determination, the Board 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;
- (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 requested area variance is substantial;
- (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) 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.

#### 8.5.2 Granting of Area Variances.

- (a) The Board, 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.
- (b) The Board shall, in the granting of both use variances and area variances, have the authority to 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 the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

8.6 Flood Damage Prevention Local Law — Variances. The Board shall hear and decide appeals from the decision or determination of the Local Administrator.

8.6.1 In passing upon such applications, the Board shall consider the factors set forth in section 6.1(4) of Local Law 2-1987 imposing such conditions as the Board deems appropriate pursuant to sections 6.1(5) and 6.2 of said Local Law.

8.7 Granting of Special Use Permits. The Board shall have the power to grant special use permits authorizing a particular land use which is permitted by the Zoning Ordinance subject to requirements imposed by said ordinance to assure that the proposed use is in harmony with the Zoning Ordinance and will not adversely affect the neighborhood if such requirements are met.

8.7.1 Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the Board for an area variance pursuant to section two hundred sixty-seven-b of the Town Law, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

8.7.2 Conditions attached to the issuance of special use permits. The Board shall have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed special use permit.

8.8 Coordination with agricultural districts program. Agricultural data statement; submission, evaluation. Any application for a special use permit, site plan approval, or use variance, that would occur on property within an agricultural district containing a farm operation or on property with boundaries within five hundred feet of a farm operation located in an agricultural district, shall include an agricultural data statement. The Board shall evaluate and consider the agricultural data statement in its review of the possible impacts of the proposed project upon the functioning of farm operations within such agricultural district. The information required by an agricultural data statement may be included as part of the application form.

8.8.1 Agricultural data statement; notice provision. Upon the receipt of such application by the Board, the clerk of the Board shall mail written notice of such application to the owners of land as identified by the applicant in the agricultural data statement. Such notice shall include a description of the proposed project and its location, and may be sent in conjunction with any other notice required by state or local law, ordinance, rule or regulation for the said project. The cost of mailing said notice shall be borne by the applicant.

8.8.2 Agricultural data statement; content. An agricultural data statement shall include the following information: the name and address of the applicant; a description of the proposed project and its location; the name and address of any owner of land within the agricultural district, which land contains farm operations and is located within five hundred feet of the boundary of the property upon which the project is proposed; and a tax map or other map showing the site of the proposed project relative to the location of farm operations identified in the agricultural data statement.

8.8.3 Notice to county planning agency. The clerk of the Board shall refer all applications requiring an agricultural data statement to the county planning agency as required by Section 239-m of the general municipal law.