

# **ZONING LOCAL LAW**

## **TOWN OF KIRKWOOD**

### **ARTICLE XV**

#### **ZONING BOARD OF APPEALS AND PLANNING BOARD RULES**

##### **SECTION 1501      Zoning Board of Appeals**

- A. The Town Board shall appoint a Zoning Board of Appeals, the creation and powers and duties of which shall be in accordance with the provision of the Town Law of the State of New York.
- B. The Zoning Board of Appeals shall have a full membership of five (5) members who are appointed by the Kirkwood Town Board for a term of five (5) years.
- C. Each application being reviewed, except for individual set back and lot line variances and area variances for a single family, two-family, or three-family residences, shall contain a Full Environmental Assessment Form pursuant to Article 8 of the Environmental Conservation Law of the State of New York which shall include a description and evaluation of the nature of the probable environmental impact, including specification of the predictable adverse impacts on the natural environment and an evaluation of measures to mitigate adverse effects. Any Environmental Impact Statement, if required, shall be submitted on electronic media in Microsoft Word format.

##### **SECTION 1501.1      General Governing Rules.**

- A. 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.
- B. The term “Board” as used in these rules shall mean the duly appointed Zoning Board of Appeals of the Town of Kirkwood.
- C. 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.
- D. 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 1501.2      Officers and Duties.**

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

- A. Chairperson. The chairperson shall be designated by the Town Board. The chairperson shall perform all duties required by law, ordinance and these rules. The chairperson 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.
- B. 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.

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- C. 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.
- D. 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.
  - 1. 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. Should the office of chairperson become vacant, the secretary shall add such fact to the notice required in Section 1501.2 D. 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 1501.3 Meetings.**

- A. Meetings:
  - 1. Regular Meetings. The regular meetings of the Board shall be held on the third Monday of each month at 7:00 p.m. in the Kirkwood Town Hall.
  - 2. Annual Meetings. The annual organizational meeting of the Board shall be the first regular meeting of the year.
- B. Special Meetings:
  - 1. 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.
  - 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.
- C. 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.
- D. Proceeding. The order of business at regular meetings shall be as follows: (A) roll call; (B) Review and approval of minutes of preceding meeting; (C) action on held cases; (D) public hearing (when scheduled; see Section 1501.6 I.); (E) other business; (F) adjournment.
- E. 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 1501.4 Voting.**

- A. Quorum:
  - 1. A quorum shall consist of a majority of the members of the Board.
  - 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.

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**B. Voting:**

1. 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.
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.

**C. 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.**

**D. 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.**

**E. 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 1501.5 Appeals and Procedures.**

**A. 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.**

**B. Filing of Appeals.**

1. 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.
2. 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.
3. 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.
4. 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.

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5. 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.
- C. Amendments to Appeals. Appeals may be amended fifteen (15) days prior to the public hearing thereon.
- D. 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.
- E. 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.
- F. 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.
- G. 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 1501.6 Hearings.**

- A. 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.
- B. 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.
- C. 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.
- D. Notice of Hearing—Appeal to Build on Unimproved or Unmapped Street. Same as Section 1501.6 B. See Section 280-a, Subdivision 3, of the Town Law.
- E. Notice of Hearing— Special Use Permits. Same as Section 1501.6 B. See Section 274- b(6) of the Town Law.

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- F. Notice of Hearing — Flood Damage Prevention Local Law. Same as Section 1501.6 B. See Town of Kirkwood Local Law 2-1987.
- G. 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.
- H. 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.
- I. 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 1501.3 D.).
1. General Rules. Any party may appear in person or by agent or by attorney.
  2. The chairperson, or in his absence, the acting chairperson, may administer oaths and compel the attendance of witnesses.
  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 1501.7 Referrals.**

**A. 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.

**B. 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

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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 1501.8 Decisions.**

- A. 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.
- B. 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.
- C. 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.
- D. 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.
- E. 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.
- F. The Board shall show in its findings that it has:
  - 1. Made a thorough review of the question including:
    - a. Consideration of all information or evidence;
    - b. Hearing all parties in question;
    - c. Taking into account any intimate knowledge it has of the subject; and
  - 2. Made a personal inspection of the parcel in question and from this examination certain findings were ascertained.

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- G. 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.
- H. 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.
- I. 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.
- J. 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.
- K. 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.
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.
  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,

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



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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.
- N. 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.
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.
  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.
- O. 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.
1. Agricultural data statement; notice provision. Upon the receipt of such application by the Board, the secretary 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.
  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.
  3. Notice to county planning agency. The secretary 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.

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**SECTION 1501.9    Zoning Board of Appeals Ad Hoc Members**

Be it enacted by the Town Board of the Town of Kirkwood as follows:

**A. Authority**

This Local Law is enacted pursuant to the authority of Chapter 365 of the Laws of 1976 which added a new subparagraph (3) to paragraph d of subdivision I of section 10 of the Municipal Home Rule Law authorizing towns to adopt a local law which may amend or supersede any provision of the Town Law in relation to the property, affairs or government of the town or in relation to any of the other enumerated subject matters in such section 10, unless there is a State legislative restriction on such amendment or supersession.

**B. Purpose**

In order to permit the Zoning Board of Appeals to transact business in the event where absence or conflicts of interest preclude a full membership of five (5) members from considering a particular matter, it is deemed advantageous by the Kirkwood Town Board to enact a local law superseding Town Law Section 267 to provide for the appointment of ad hoc members to the Zoning Board of Appeals.

**C. Section 267 of the Town Law is hereby amended and superseded in its application to the Town of Kirkwood by adding a new subparagraph IA providing as follows:**

1. The Town Board of the Town of Kirkwood may, in any year it deems necessary, appoint temporary ad hoc members to the Zoning Board of Appeals to serve as provided in this section. The number of temporary members so appointed pursuant to this section in any year shall not exceed three (3). Such temporary members shall be appointed for one year terms of office. The chairman of the Zoning Board of Appeals shall assign such temporary members as necessary when absence of regular members of said Board or the conflict of interest of regular members of said Board would otherwise prevent five (5) members of said Board from considering any pending matter but no more than two temporary members shall sit in determination of any pending matter. Such temporary members shall be designated on a rotating basis in the manner provided in the general governing rules of the Zoning Board of Appeals such that each temporary member shall be afforded an equal opportunity to serve. Once designated to serve on a particular matter before the Board, the temporary member shall have the same powers and duties as regular members of the Board until that matter is concluded. Any determination of said Board consisting of temporary members shall have the same weight and be entitled to the same authority as the act or deed of the regular Zoning Board of Appeals and all laws, statutes and regulations shall apply and be applied with equal force and effect. Such temporary members appointed pursuant to this section shall be paid for their respective services as fixed by resolution of the Town Board.

**D. If any part or provision of this Local Law or the application thereof to any person or circumstances be adjudged invalid by any court of competent jurisdiction such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances and the Town Board of the Town of Kirkwood hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.**

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- E. All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby repealed.
- F. This Local Law shall take effect immediately.

**SECTION 1502      Planning Board**

Be it enacted by the Town Board of the Town of Kirkwood as follows:

- A. Authority  
This Local Law is enacted pursuant to the provisions of paragraph 13 of Section 271 of the Town Law of the State of New York.
- B. The Planning Board shall have a full membership of five (5) members who are appointed by the Kirkwood Town Board for a term of five (5) years.
- C. Purpose  
The purpose of this Local Law is to adopt the recommendations of the Town of Kirkwood Planning Board approved at the June 12, 1995 regular meeting of said Board to establish rules and regulations pursuant to which the Town of Kirkwood Planning Board shall conduct its business, as follows:

**SECTION 1502.1      Governing Rules.**

- A. The Planning Board of the Town of Kirkwood shall be governed by the provisions of all applicable state statutes, local laws, ordinances and these rules.
- B. The term “board” as used in these rules shall mean the duly appointed Planning Board of the Town of Kirkwood.
- C. 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.
- D. The board shall 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.

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**SECTION 1502.2 Officers and Duties.**

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

- A. Chairperson. The chairperson shall be designated by the Town Board or on failure to do so, shall be elected by the board from its own members. 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.
- B. Acting Chairperson. An acting chairperson shall be designated by the board to serve in the absence of the chairperson. He shall have all the powers of the chairperson during his absence, disability or disqualification.
- C. Secretary. A secretary shall be designated by the board. 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 official actions.
- D. 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 for the designation of a replacement.
- E. 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.
- F. Should the office of chairperson become vacant, the secretary shall add such fact to the notice required in Section 1502.2 D. 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 1502.3 Meetings.**

- A. Meetings:
  - 1. Regular Meetings. The regular meetings of the Planning Board shall be held on the second Wednesday of each month at 7:00 p.m. in the Kirkwood Town Hall. (Amended 3/4/25)
  - 2. Annual Meeting. The annual organizational meeting of the board shall be the first regular meeting of the year.
- B. Special Meetings.
  - 1. 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.
  - 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.

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- C. Cancellations of Meetings. Whenever there is no business to be conducted 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.
- D. Proceeding. The order of business at regular meetings shall be as follows: (A) roll call; (B) Review and approval of minutes of preceding meeting; (C) public hearing (when scheduled); (D) action on held over matters; (E) new business; (F) adjournment.
- E. New business. No new matter will be considered unless the completed appropriate application for said matter is received by the Enforcement Officer on behalf of the Planning Board on the form provided for that purpose:
  - 1. At least 35 days prior to the meeting at which any complete application for site plan review by the Broome County Planning Board pursuant to General Municipal Law section 239, which time period can be waived by the Chairperson if the Broome County review recommendation is received at least 14 days prior to the next monthly meeting, or
  - 2. At least 14 days prior to the meeting at which any other matter is to be considered. (Amended Dec. 30, 2003 by LL No. 17-2003)
- F. Meeting Agenda. The Enforcement Officer shall be responsible, at the direction of the board, for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing said forms. All information required thereon shall be complete before an application is considered filed. The Chairperson or his designee shall review all applications so received by the Enforcement Officer for completeness. If the application is in proper form for consideration, he shall place it upon the next meeting agenda which he shall mail to all Planning Board members and temporary ad hoc members at least seven (7) days prior to the meeting. He shall also notify the applicant that the matter has been placed on said agenda. If said application is incomplete, he shall return it to the applicant within five (5) days of receipt with instructions as to remedying the same. The Chairperson or his designee shall then report to the board, at the next meeting, as to all incomplete applications not on the agenda. (Amended Dec. 30, 2003 by LL No. 17-2003)
- G. Enforcement Officer. At each meeting of the Planning Board, the Enforcement Officer shall be present to report, if the chairperson deems necessary, on the nature of any matter on the agenda.
- H. Fees. The applicant shall pay the charge for the publication of the notice of public hearing in the official newspaper of the Town for any application requiring a public hearing.
- I. Executive Meetings. All meetings will comply with the requirements of the Open Meetings Law, Section 105 of the Public Officers Law.

**SECTION 1502.4    Voting.**

- A. Quorum.
  - 1. A quorum shall consist of a majority of the members of the board.
  - 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 republished in accordance with the requirements of the applicable law.

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##### **B. Voting.**

1. All matters 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.
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.
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. 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.

#### **SECTION 1502.5 Referrals**

##### **A. Zoning Referrals.**

All matters requiring referral as specified by an ordinance or local law shall be so referred to the Planning Board for its recommendations. Within a reasonable time as specified by the Town Board or other party making the referral after receipt of a full statement of such referred matter, the Planning Board shall report its recommendations thereon, with a full statement of the reasons for such recommendations. If the Planning Board fails to respond within the prescribed time the referring board or agency may act without such report.

##### **B. 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-n of the General Municipal Law, the board shall make referrals to the Broome County Department of Planning having jurisdiction in accordance with Sections 239-1, m and n of the General Municipal Law.

Within thirty (30) days after receipt of a full statement of such referred matter, the Broome County Department of Planning to which referral is made, 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.

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**SECTION 1502.6 Plan Review**

The Planning Board has been delegated by the Town Board in Article V Section 502 of the Town of Kirkwood, New York Zoning Ordinance the authority to conduct site plan reviews.

Pursuant to the provisions of said Article V Section 502 and Section 274-a of the Town Law the rules and regulations set forth herein are hereby adopted to establish a procedure to review the same.

**SECTION 1502.7 Land Subdivision Regulations**

The Planning Board has been delegated by the Town Board on March 5, 1963 to approve subdivision plats in the Town of Kirkwood. Pursuant to the resolution of delegation and Section 276 of the Town Law the rules and regulations set forth herein are hereby adopted to establish a procedure to review the same.

**SECTION 1502.8 Mobile Home Parks and Trailer Ordinance**

The Town Board in Section 401.4 of a local law governing the occupancy and maintenance of mobile home parks and travel trailer campgrounds adopted September 4, 1973 delegated to the Planning Board the power to recommend to the Town Board approval, disapproval or conditional approval of any application filed for a license thereunder. Pursuant to the provisions of said local law and Section 271 (14) of the Town Law, the rules and regulations set forth herein are hereby adopted to establish a procedure to review the same.

**SECTION 1502.9 Planned Unit Development District**

The Town Board pursuant to Article VI Section 601 (D) of the Town of Kirkwood, New York Zoning Ordinance delegated to the Planning Board the power to recommend to the Town Board approval, disapproval or conditional approval of any application filed to obtain a change in zone to permit development as a Planned Unit Development District.

Pursuant to the provisions of said Article VI Section 601 (D) and Section 271 (14) of the Town Law, the rules and regulations set forth herein are hereby adopted to establish a procedure to review and recommend relative to the same.

**SECTION 1502.10 Aquifer Protection District**

The Town Board in Article VIII Section 809 of the Town of Kirkwood, New York Zoning Ordinance delegated to the Planning Board the power to recommend to the Town Board approval, disapproval or conditional approval of any application filed to obtain a special permit pursuant to said Article.

Pursuant to the provisions of said Article VIII Section 809 and Section 271 (14) of the Town Law, the rules and regulations set forth herein are hereby adopted to establish a procedure to review and recommend relative to the same.

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**SECTION 1502.11 Coordination with Agricultural Districts Program.**

- A. Agricultural data statement; submission, evaluation. Any application for a site plan approval requiring municipal review and approval by the Planning Board pursuant to this article, 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 Planning 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.
- B. Agricultural data statement; notice provision. Upon the receipt of such application by the Planning Board, the clerk of the Code Enforcement Office 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.
- C. 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.
- D. Notice to county planning agency. The secretary of the Planning Board shall refer all applications requiring an agricultural data statement to the county planning agency as required by Section 239m of the General Municipal Law. (Amended March 6, 2001 by LL No. 3-2001)

**SECTION 1502.12 Hearings**

- A. Time of Hearing. If a public hearing is required, the board shall schedule a hearing of all applications within the time permitted by the applicable ordinance, law or regulation giving jurisdiction to the Planning Board in the matter but not later than sixty-two (62) days of the filing of the completed application.
- B. Notice of Hearing. The board shall give notice of the hearing at least five (5) business days prior to the date thereof by publication in the official paper. The board shall mail notices of the hearing to the parties and to the members of the Town Board and, if required by §239-I, 239-rn, and 239-n of the General Municipal Law, to the Broome County Planning Board.
- C. Form of Notice. Such notice shall state the name of the applicant, the location of the property involved, the general nature of the application involved, and the date, time and place of the hearing sought.
- D. 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; (C) the chairperson shall read all correspondence and reports received thereon; (D) the applicant shall present his case; (E) those in favor shall present their arguments; (F) those opposed shall present their arguments; (G) rebuttal by both sides; (H) adjournment of hearings.



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- E. General Rules. Any party may appear in person or by agent or by attorney.
- F. The chairperson, or in his absence, the acting chairperson, may administer oaths

**SECTION 1502.13 Determinations**

- A. Time of Determinations. Determinations by the board shall be made within the time permitted by the applicable ordinance, law or regulation giving jurisdiction to the Planning Board on the matter but not later than sixty-two (62) days from the date of receipt of the completed application, unless such time be further extended by the applicant.
- B. Form of Determination. The final determination on any matter before the board shall be made by written order signed by the chairperson.
- C. Basis for Determination. The board in reaching said determination shall be guided by standards specified in the applicable ordinance, law or regulation as well as by the community goals and policies as specified in the Town comprehensive plan.
- D. Findings. The findings of the board may be based on evidence submitted or on the personal knowledge of the board to show that:
  - 1. It has made an intelligent review of the question.
  - 2. It has considered all of the information or evidence.
  - 3. It has heard all parties in question.
  - 4. Any intimate knowledge it has of the subject under question has been taken into
  - 5. It has made a personal inspection of the parcel in question and from this examination certain findings were ascertained.
- E. 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 6 NYCRR 617.
- F. 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.
- G. Filing of Determinations. Determinations of the board shall be immediately 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.

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**SECTION 1502.14 Ad hoc temporary members. (Added March 6, 2001 by LL No. 3-2001)**

- A. Pursuant to the provisions of Local Law 1 –2001 authorizing the Town Board of the Town of Kirkwood to appoint temporary ad hoc members to the Planning Board to be assigned by the Chairperson to serve when absence or the conflict of interest of regular members of the Planning Board would otherwise prevent five (5) members of said Board from considering any pending matter, which temporary ad hoc members shall be designated on a rotating basis in the manner provided in these rules, the following procedure shall prevail:
1. After the Town Board at its annual organizational meeting shall designate the temporary ad hoc members to serve that year, the names of such temporary ad hoc members shall be placed in alphabetical order by the Secretary of the Planning Board.
  2. Thereafter should a situation arise when less than five (5) members are present at any meeting of the Planning Board, the Chairperson of the Planning Board shall assign in alphabetic order one or more temporary ad hoc members present at said meeting (but not more than two such temporary ad hoc members) when absence or conflict of regular members of the Planning Board shall occur.
  3. Should such situation arise at any further meeting of the Planning Board, the Chairperson shall assign in alphabetic order commencing with the next name of such members in said such alphabetic order (but not more than two such members) who is present at said meeting when absence or conflict of regular members of the Planning Board shall occur. (Section 14.1 and 14.1b amended September 6, 2016 by LL #6-2016)

**SECTION 1502.15 Separability Clause**

If any part or provision of this Local Law or the application thereof to any person or circumstance be adjudged invalid by any court of competent jurisdiction such judgment shall be confined in its operation to the part or provision or application directly involved in the controversy in which such judgment shall have been rendered and shall not affect or impair the validity of the remainder of this Local Law or the application thereof to other persons or circumstances and the Town Board of the Town of Kirkwood hereby declares that it would have passed this Local Law or the remainder thereof had such invalid application or invalid provision been apparent.

**SECTION 1502.16 Repeal**

All Ordinances, Local Laws and parts thereof inconsistent with this Local Law are hereby repealed.

**SECTION 1502.17 Effective Date**

This local law shall take effect immediately upon filing in the Office of the Secretary of State.

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**SECTION 1503      Planning Board and Zoning Board of Appeals TRAINING REQUIREMENTS**

The Law shall be entitled: “A local law establishing training requirements for members and alternate members of the Planning Board and Zoning Board of Appeals of the Town of Kirkwood.

**SECTION 1503.1      PURPOSE AND INTENT.**

- A. The Town Board (here in after the “Town Board”) of the Town of Kirkwood (here in after the “Town”) finds that appropriate training of the Town Zoning Board of Appeals (here in after the “ZBA”) and the Town Planning Board (here in after the “Planning Board”) members is essential to the proper functioning of said Boards.
- B. The Legislature of the State of New York has recognized the importance of training and has established training and attendance requirements in its recent amendments to the Planning Board and ZBA statutes (Town Law Sections 271 and 267, respectively) as contained in Chapter 662 of the Laws of 2006.
- C. It is the purpose of the local law to assist the ZBA and Planning Board members in obtaining appropriate training to enhance their ability to carry out their duties under applicable provisions of Law, and to pay the reasonable costs of such training as a Town charge.
- D. It is also the purpose of this local law to establish minimum training and continuing education course requirements for such members.

**SECTION 1503.2      MINIMUM TRAINING REQUIREMENTS.**

- A. All members and alternate members (hereinafter individually or collectively referred to as “Member”) of the ZBA and Planning Board shall complete, at a minimum, four (4) hours of relevant training courses each year designed to enable such members to more effectively carry out their duties.
- B. Training received by a member in excess of four (4) hours in any one year may be carried over into succeeding years in order to meet these requirements.
- C. Such training requirements can be waived or modified by resolution of the Town Board when, in the judgment of the Town Board, it is in the best interest of the Town to do so.
- D. Non-compliance with these minimum requirements relating to training shall result in ineligibility for reappointment and shall also be deemed a proper cause for removal from office.
- E. The reasonable costs of such training courses, seminars, workshops or continuing education courses so designated shall be a Town charge. Members shall also be reimbursed for reasonable travel and meal expenses according to Town policies. Such training sessions shall be approved in advance by the Town Board.

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**SECTION 1503.3    APPROVED TRAINING COURSES.**

Training sessions which relate to the duties of members of the ZBA and members of the Planning Board may include programs offered by the New York State Department of Environmental Conservation, the New York State Planning Federation, the Broome County Department of Planning and Economic Development, the Broome County Cooperative Extension, and other such entities, as well as in-house up-dates or training seminars or Municipal Law seminars conducted by the Town Attorney of the Town or the Law Firm with which such Town Attorney is affiliated. Such training may be provided in a variety of formats, including but not limited to electronic media, video, distance learning and traditional classroom training. The Town Board, after discussion with the Chairpersons of the ZBA and Planning Board, shall annually designate such training courses, seminars, workshops, or continuing education courses which may be offered within a reasonable distance and which may be helpful to or of assistance to the Zoning Board of Appeals, and/or Planning Board in carrying out their respective functions in a timely, fair and lawful manner.

**SECTION 1503.4    LACK OF TRAINING NOT TO AFFECT VALIDITY OF MEMBERS ACTIONS**

Notwithstanding the foregoing, the failure of a member of the Planning Board or ZBA to obtain such training shall not affect said person's appointment to serve on such board, the validity of such member's actions or the validity of any Decision, order or action of such Board.

**SECTION 1503.5    PROCEDURE FOR REMOVAL OF A MEMBER**

The chairperson of the ZBA and the Chairperson of the Planning Board shall notify the Town Board in writing on or about December 1 in any year of any member who fails to comply with the minimum requirements for training in any calendar year. In the event a member of the ZBA or Planning Board has failed to complete the minimum training requirements set forth in Section 1503.2, then the Town Board may remove such member for cause as herein provided:

- A. Notice. Such member shall be mailed a written notice specifying the nature of the failure of such member to meet the minimum requirements of Section 1503.2 above.
- B. Public Hearing. Such notice shall specify a date, not less than ten (10) nor more than thirty (30) days from the date of mailing such notice, when the Town Board shall convene and hold a public hearing on whether or not such member should be removed from service on such board. Such notice shall also specify the time, date and place of such hearing.
- C. Public Notice. Public notice of such hearing shall be published in the official newspaper of the time at least ten (10) days prior to the date of the public hearing.
- D. Conduct of Hearing. The public hearing on the charges shall be conducted before the Town Board. The member shall be given an opportunity to retain an attorney, present evidence, call witnesses to refute the charges, and cross-examine witnesses. A record of such hearing shall be made. The decision of the Town Board shall be reduced to writing together with specific findings of the Town Board with respect to each charge against such member. A copy of such decision and such findings shall be filed in the Office of the Town Clerk and mailed to the member.

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- E. Action by the Town Board. Following the hearing and upon a finding that such member has not met the minimum training established by this local law the Town Board may:
1. Remove such member from the ZBA or Planning Board; or
  2. Issue a written reprimand to such member without removing such member from such board; or
  3. If the Town Board shall find that the reasons for failing to meet the minimum training requirements are excusable because of illness, injury or other good and sufficient cause, the Town Board may elect to take no action.

**SECTION 1503.6 REMOVAL FOR CAUSE**

Nothing contained herein shall be deemed to limit or restrict the Town Board's authority to remove a member from the ZBA or Planning Board for cause (i.e. for other than the reasons enumerated herein). The procedural provisions of Section 1503.5 (Procedure) of this Local Law shall govern any hearing to remove a member for cause.

**SECTION 1503.7 SEPARABILITY**

The provisions of this local law are separable and if any provision, clause, sentence, subsection, word or part thereof is held illegal, invalid, unconstitutional, or inapplicable to any person or circumstance, such illegality, invalidity or unconstitutionality, or inapplicability shall not affect or impair any of the remaining provisions, clauses, sentences, subsections, words, or parts of this local law or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this local law would have been adopted if such illegal, invalid, or unconstitutional provision, clause, sentence, subsection, word or part had not been included therein, and as if such person or circumstance, to which the local law or part thereof is held inapplicable, had been specifically exempt therefrom.

**SECTION 1503.8 EFFECTIVE DATE AND APPLICABILITY**

- A. This local law shall take effect immediately upon filing with the New York State Secretary of State in accordance with Section 27 of the Municipal Home Rule Law.
- B. This local law shall apply to all members and alternate members of the ZBA and Planning Board regardless of the date of their appointment to such boards.
- C. Prospective members and alternate members of the ZBA and Planning Board shall be notified of the requirements of this local law prior to their appointment to such board.

Note: Local Law #12-2006 supersedes Local Law #4-2001 in its entirety which was originally adopted March 6, 2001 to address training requirements.