

COOPERATIVE ZONING BOARD OF APPEALS BYLAWS

TOWNS OF FLORENCE, MONTAGUE, OSCEOLA, PINCKNEY, TURIN

Amended 25 November 2003

Section 1. General

- 1.1 The term *board* as used in these rules shall mean the duly appointed Zoning Board of Appeals of the Towns of Florence, Montague, Osceola, Pinckney, and Turin.

Section 2. Officers and Duties

- 2.1 The officers of the board shall consist of a chairman, acting chairman, and secretary.
- 2.2 **Chairman.** The chairman shall be elected annually by the board and preside at all meetings of the board. The chairman shall decide on all points of order and procedure, subject to these rules, unless directed otherwise by a majority of the board. The chairman shall appoint any committees found necessary to carry out the business of the board. The chairman may administer oaths and compel the attendance of witnesses as necessary to carry out the business of the board. The chairman's signature shall be the official signature of the board and shall appear on all decisions as directed by the board.
- 2.3 **Acting Chairman.** An acting chairman shall be designated by the board to serve in the absence of the chairman and shall have all the powers of the chairman during the chairman's absence, disability, or disqualification.
- 2.4 **Secretary.** A secretary shall be elected annually by the board. The secretary shall be responsible for overseeing the preparation of minutes, findings, correspondence, public notices, and other records of the board, and to oversee the proper custodianship of any records of the board which have not been placed in the custody of member municipal clerks.
- 2.5 **Vacancies.** Should any vacancy on the board occur for any reason, the chairman shall cause notice to be immediately given to the town clerk of the town where the vacancy has occurred. 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.

Section 3. Meetings

- 3.1 **Annual Meeting.** The annual organizational meeting of the board shall be conducted prior to the first public hearing of the year.
- 3.2 **Meetings.** Meetings of the board may be called by the chairman. At least 48 hours notice of the time, place, and business of the meeting shall be given each member of the board, and proper public notice shall be given.
- 3.3 The chairman shall call a meeting within 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 meeting.
- 3.4 **Proceedings.** The order of business at meetings shall be as follows:
- (a) Roll Call
 - (b) Reading and approval of the minutes of the preceding meeting
 - (c) Action on held cases
 - (d) Public hearing (when scheduled)
 - (e) Other business
 - (f) Adjournment

Section 4. Voting

- 4.1 A quorum shall consist of a majority of the members of the full representation of the board. Should the full representation of the board ever become an even number, a quorum shall consist of fifty percent of the full representation plus one.
- 4.2 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 chairman to call a meeting for a subsequent date.
- 4.3 All matters shall be decided by a roll call vote. Decisions on any matter before the board shall require the affirmative vote of a majority of the entire membership of the board unless otherwise specified herein.

- 4.4 A tie vote or favorable vote by a lesser number than the required majority shall be considered a rejection of an appeal for an interpretation or variance.
- 4.5 No member of the board shall sit in hearing or vote on any matter in which he is personally or financially interested.
- 4.6 No member shall vote on the determination of any matter requiring public hearing unless he has familiarized himself with such matter by reading the record.

Section 5. Appeals and Procedures

- 5.1 The board shall hear and decide appeals from and review any order, requirement, decision, or determination made by the zoning officer of any member town. Such appeal may be taken by any person aggrieved, or by any officer or board of any town which is a member of the board.
- 5.2 An appeal must be made within 60 days of the filing of an action of the zoning officer. The applicant must file a notice of appeal with the zoning officer or with the chairman. Such notice shall be made on the form provided for that purpose. The zoning officer and/or town clerk shall be responsible for providing any applicant with the proper forms and for instructing the parties concerned on the proper manner for completing and filing such forms. All information required thereon shall be complete before an appeal is considered.

Section 6. Hearings

- 6.1 ***Time of Hearing.*** The board shall schedule a hearing on all appeals or applications within a reasonable time of the filing of the appeal or application.
- 6.2 ***Notice of Hearing - Zoning Appeals.*** The board shall give notice of the hearing at least 5 days prior to the date thereof by publication in a paper of general circulation in the town in which the appeal is to be heard. The board shall mail notices of the hearing to the parties and to the Regional State Park Commission having jurisdiction over any state park or parkways within 500 feet of the property affected by such appeal, at least 5 days prior to the hearing.
- 6.3 ***County Zoning Referrals.*** Any matter which would cause any change in the regulations or use of land or building on real property as specified in Section 239-m of the General Municipal Law shall be referred to the county planning agency 5 days prior to the public hearing. If within 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 such agency, disapproves the proposal or recommends modification thereof, the board shall not act contrary to such disapproval or recommendation except by a vote of five members thereof and after the adoption of a resolution fully setting forth the reasons for such contrary action. The chairman shall read the report of the county planning agency at the public hearing on the matter under review. If such a planning agency fails to report within such period of 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.
- 6.4 ***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.
- 6.5 ***Proceedings.*** The order of business at a hearing shall be as follows:
 - (a) Roll call
 - (b) The chairman shall give a statement of the case and read correspondence and reports received thereon.
 - (c) The applicant shall present 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)
- 6.6 ***General Rules.*** Any party may appear in person or by agent or by attorney. The presence of the applicant or a representative of the applicant is mandatory.

6.7 The chairman may administer oaths and compel the attendance of witnesses.

6.8 **Rehearing.** Upon motion initiated by any member, and adopted by unanimous vote of the members present, the board shall review at a rehearing any order, decision, or determination of the board not previously reviewed. Upon such hearing--and provided that it shall appear that no vested rights due to reliance on the original order, decision, or determination will be prejudiced thereby--the board may, upon concurrence of all the members present, reverse, modify, or annul its original order, decision, or determination. An application for a rehearing may be made in the same manner as provided for the original hearing. The application for rehearing may be denied by the board if from the record it shall appear that there has been no substantial change in facts, evidence, or conditions.

Section 7. Decisions

7.1 **Time of Decisions.** Decisions by the board shall be made not later than 62 days from the date of the final hearing. Such time may be extended by mutual consent of the applicant and the board.

7.2 **Form of Decisions.** The final decision on any matter before the board shall be made by written order signed by the chairman. 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 zoning officer. The decision shall also state any conditions and safeguards necessary to protect the public interest.

7.3 **Basis for Decisions.** The board, in reaching said decision, shall be guided by standards specified in the zoning law as well as by community goals and policies as specified in the comprehensive plan, and by the findings of the board in each case.

7.4 **Findings - 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 should show that:

- (a) It has made an intelligent review of the question;
- (b) It has considered all of the information or evidence;
- (c) It has heard all parties in question;
- (d) Any intimate knowledge it has of the subject under question has been taken into account;
- (e) It has made a personal inspection of the parcel in question and from this examination certain findings were ascertained.

7.5 **Conflicts with Other Laws or Regulations.** In reviewing an application on any matter, the standards in any applicable local law 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.

7.6 **Decisions on Rehearings.** After a rehearing, other than one based on a substantial change in conditions, the original order may be changed only by a concurring vote of all the members then present, but not less than a majority of the board, and in conformance with Section 6.8 of these regulations.

7.7 **Filing of Decisions.** Decisions of the board shall be filed with the town clerk of the town in which the appeal has been heard within 5 business days after the day such decision is rendered, and shall be made public record. The date of filing of each decision shall be entered in the official records and minutes of the board.

7.8 **Notice of Decision.** Copies of the decision shall be mailed to the applicant, and the county planning agency when referral to the county planning agency is required in the particular case.

7.9 **Certification of Decision.** A certified copy of the board's decision, including all terms and conditions, shall be transmitted to the zoning officer, and shall be binding upon and observed by him, and he shall fully incorporate such terms and conditions of the same in the permit to the applicant or appellant whenever a permit is authorized by the board.

Section 8. Adoption and Amendment of Rules and Regulations

- 8.1 **Adoption.** Upon adoption of these rules by the board, the chairman shall file a copy of these rules with the town clerk of each member town and they shall be a public record.
- 8.2 **Amendment.** These rules may be amended by an affirmative vote of not less than a majority of the full board, provided that such amendment be presented in written form at a meeting at which the vote was taken.
- 8.3 **Filing.** All amendments adopted shall be filed in the same manner as provided for in Section 8.1 above.