

Proposed

Town of Rensselaerville

Local Law No. 3 of 2016

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

Section 1. Title:

This law shall be known as the Alternate Members of Zoning Board of Appeals and Planning Board Law.

Section 2. Purpose and Intent:

The current Town Zoning Law allows for the appointment of an alternate member of the Zoning Board of Appeals, pursuant to the authority set out in Local Law No. 2 of 2008, known as the "Alternate Members of Zoning Board of Appeals Law" and codified in Chapter 75 of the current Town Law. It has been determined that the Planning Board would benefit from the same option of appointment of an alternate member. In addition, the harmonization of the provisions for alternate members for both the Zoning Board of Appeals and the Planning Board in the current Town Zoning Law would provide for consistency and clarity.

Section 3. Repeal:

The "Alternate Members of Zoning Board of Appeals Law" and codified in Chapter 75 of the current Town Law, is hereby repealed.

Section 4. Amendments Pertaining to the Zoning Board of Appeals:

Section 8(A) of Article XIII of the current Town Zoning Law is hereby amended as follows:

By amending Section 8(A)(2) to read as follows:

2. Training and Continuing Education. Every member of the Zoning Board of Appeals shall comply with all requirements for training and continuing education as set out in Town Law § 267 or any other provision of applicable law. The Town Board shall pay the reasonable expense of such training or continuing education.

By adding the following as new Section 8(A)(6):

6. Alternate Members
 - a. The Chairperson of the Zoning Board of Appeals, or in his or her absence, the acting Chairperson, shall designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board or to take the place of a member whose seat is vacant until such time such seat is filled by appointment of the Town Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals

meeting at which the substitution is made.

- b. Alternate members appointed by the Town Board shall regularly attend the scheduled meetings and/or work sessions of the Zoning Board of Appeals to which they may be designated so as to be available for designation when required and familiar with the applications and/or matters pending before such Board.
- c. Alternate members shall serve without compensation.
- d. All provisions of state law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as provisions of any local law or ordinance relating to training and continuing education, shall also apply to alternate members.

Section 5. Amendments Pertaining to the Planning Board:

Section 9 of Article XIII of the current Town Zoning Law is hereby amended as follows:

By amending Section 9(A) to read as follows:

- A. Pursuant to §271 of the Town Law, the Planning Board shall consist of seven (7) members and one (1) alternate member appointed by the Town Board which shall also designate the Chairman thereof, in such manner and for such terms as provided in the Town Law. In the absence of a Chair, the Planning Board may designate a member to serve as acting Chair.

By re-designating Section 9(C) as 9(D), 9(D) as 9(E), and 9(E) as 9(F).

By adding the following as new Section 9(D):

D. Alternate Members:

1. The Chairperson of the Planning Board, or in his or her absence, the acting Chairperson, shall designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board or to take the place of a member whose seat is vacant until such time such seat is filled by appointment of the Town Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.
2. Alternate members appointed by the Town Board shall regularly attend the scheduled meetings and/or work sessions of the Planning Board to which they may be designated so as to be available for designation when required and familiar with the applications and/or matters pending before such Board.

3. Alternate members shall serve without compensation.
4. All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as provisions of any local law or ordinance relating to training and continuing education, shall also apply to alternate members.

By amending Section 9(F) (formerly Section 9(E)) to read as follows:

- F. Training and Continuing Education. Every member and alternate member of the Planning Board comply with all requirements for training and continuing education as set out in Town Law §271 or any other provision of applicable law. The Town Board shall pay the reasonable expense of such training or continuing education.

Section 6. Authority and Supersession:

This article is enacted by the Town Board of the Town of Rensselaerville pursuant to its authority to adopt local laws under the New York State Constitution, Article IX, and § 10 of the Municipal Home Rule Law and (i) with respect to the Zoning Board of Appeals, pursuant to the specific authority provided in Article 16, § 267, of the Town Law; and (ii) with respect to the Planning Board, pursuant to the specific authority provisioned in Article 16, § 271(15) of the Town Law. To the extent that said Town Law § 267(11), as to the Zoning Board of Appeals, and Town Law § 271(15), as to the Planning Board, provide authority for the use of alternate members where a regular member is unable to participate due to a conflict of interest, the Town Board hereby intends to supersede said section pursuant to its home rule powers to also allow alternate members to be substituted for regular members in cases of absences of regular members.

Section 7. Severability of Provisions:

Should any section or provision of this local law be declared null, void, voidable, or invalid, such finding shall not affect the validity of the remaining portions of this local law.

Section 8. Effective Date:

This local law shall take effect pursuant to the provisions of Town Law Section 264.

SECTION 8. ZONING BOARD OF APPEALS

A. Establishment.

1. A Zoning Board of Appeals has been established in accordance with Section 267, 267-a, and 267-b of the Town Law. It shall consist of five (5) members and one (1) alternate member, each to serve for a term of five (5) years. The term of office of the members of the Board of Appeals, and the manner of their appointment shall be in accordance with the provisions of Section 267 of the Town Law. A member of the Board of Appeals shall not at the same time be a member of the Town Board. All Zoning Board of Appeals members shall be residents of the Town of Rensselaerville.
2. **Training and Continuing Education.** Every member of the ~~Planning Board~~Zoning Board of Appeals shall comply with all requirements for training and continuing education as set out in Town Law § 267 or any other provision of applicable law, annually attend four (4) hours at one (1) or more training or continuing education course related to the work of the Planning Board each year as per Town Law Sections 7-712 and 7-718. The Town Board shall pay the reasonable expense of such training or continuing education.
3. Vacancies occurring in said Board shall be filled for such unexpired period only.
4. The Town Board shall designate its chairperson and shall provide for such expenses as may be necessary and proper. In the absence of a chairperson, the Zoning Board of Appeals may designate a member to serve as acting chairperson.
5. The Town Board shall have the power to remove any member of the Zoning Board of Appeals for cause.
6. Alternate Members
 - a. The Chairperson of the Zoning Board of Appeals, or in his or her absence, the acting Chairperson, shall designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board or to take the place of a member whose seat is vacant until such time such seat ~~is~~ filled by appointment of the Town Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Zoning Board of Appeals meeting at which the substitution is made.
 - b. Alternate members appointed by the Town Board shall regularly attend the scheduled meetings and/or work sessions of the Zoning Board of Appeals to which they may be designated so as to be available for designation when required and familiar with the applications, and/or matters pending before such Board.
 - c. Alternate members shall serve without compensation.
 - 5-d. All provisions of state law relating to Zoning Board of Appeals member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as provisions of any local law or ordinance relating to training and continuing education, shall also apply to alternate members.

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B. Powers

1. The Zoning Board of Appeals shall have the duties, rights, powers, and functions conferred upon it by Section 267 of the Town Law and any other provisions of the Town Law, and any other provisions of law or ordinance applicable thereto in connection with appeals to review any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer. The three reasons to appear before the Zoning Board of Appeals are:
 - a. Planning Board disapproval
 - b. Zoning Enforcement Officer disapproval
 - c. to clarify the Zoning Law
2. Hearing appeals. The jurisdiction of the board of appeals shall be appellate and shall include hearing and deciding appeals from, and reviewing any order, requirement, decision, interpretation, or determination made by the Code Enforcement Officer or the Planning Board. Such appeal of a decision made by an officer, department, board, or any interpretations of the zoning law, may be initiated by any person aggrieved.

C. Conduct of Business

1. The Zoning Board of Appeals may employ such clerical or other staff as may be necessary, provided that it shall not incur expenses beyond the amount of appropriations made available by the Town Board for such purposes.
2. Meetings, minutes, records. Meetings of the Zoning Board of Appeals shall be open to the public to the extent provided in Article 7 of the Public Officer's Law. Such board of appeals shall keep minutes of its 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 its examinations and other official actions.
3. Filing requirements. Every rule, regulation, every amendment or repeal thereof, and every order, requirement, decision or determination of the board of appeals shall be filed in the office of the Town clerk within five (5) business days, and shall be a public record.
4. Assistance to Zoning Board of Appeals. Such board shall have the 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 may be reimbursed for any expenses incurred as a result of such assistance. Further, the Zoning Board of Appeals shall have the authority to call upon any professional to assist in its review of applications. Expense for such professional shall be borne by the applicant.
5. The Zoning Board of Appeals shall have the power to promulgate forms in order to fulfill its responsibilities under this local law.
6. All meetings of the Zoning Board of Appeals shall be held at the call of the chairperson, and at such other times as the Board may determine.
7. Time of appeal. Any appeal must be made within sixty (60) days after the filing of any order, requirement, decision, interpretation or determination of the Code Enforcement Officer, Planning Board, or any other department, by filing with such officer and with the board of

appeals, a notice of appeal, specifying the grounds thereof, and the relief sought on forms prescribed by the Zoning Board of Appeals. Such application shall refer to the specific provision of this Local Law involved and shall specify the grounds for the variance requested, the interpretation claimed, or for the reversal of an order, requirement, decision or determination of an administrative official. The Code Enforcement Officer or Planning Board shall transmit to the zoning board of appeals all the papers constituting the record upon which the action appealed from was taken.

8. Stay upon appeal. An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Enforcement Officer certifies to the board of appeals, 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.
9. Hearing on appeal.
 - a. The Zoning Board of Appeals shall fix a hearing date for the appeal or other matter referred to it within forty five (45) days after receipt of a complete application.
 - b. The Zoning Board of Appeals shall give public notice of such hearing by publication in a paper of general circulation in the Town at least five (5) days prior to the date thereof. 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 such appeal.
 - c. In addition to the public notice of a hearing, notice shall be given in writing to all property owners of the land included in such proposed change, and the land immediately adjacent extending one hundred (100) feet there from, and the land directly opposite thereto extending one hundred (100) feet from the street or highway frontage of such opposite land, as said property owners and addresses appear on the latest completed assessment roll of the Town.
 - d. Upon the hearing, any party may appear in person, by agent, or by attorney.
10. Notice to county planning board. At least five (5) days before such hearing, the board of appeals shall mail notices thereof to the county planning board as required by Section 239-m of the General Municipal Law. This notice shall be accompanied by a full statement of the proposed action, as defined in subdivision one of Section 239-m of the General Municipal Law.
 - a. No action shall be taken on variances referred to the County Planning Board until its recommendation has been received, or 30 days have elapsed after its receipt of the full statement of the proposed variance, unless the County and Town agree to an extension beyond the thirty (30) day requirements for the County Planning Board's review.
 - b. A majority-plus-one (1) vote shall be required to approve any variance which receives a recommendation of disapproval from the County Planning Board because of the referral process specified above, along with a resolution setting forth the reasons for

such contrary action.

11. Time of decision on appeal. The board of appeals shall decide upon the appeal within sixty-two (62) days after the conduct of said hearing. The time within which the board of appeals must render its decision may be extended by mutual consent of the applicant and the board.
12. Voting requirements.
 - a. Decision of the board. Every motion or resolution of a Zoning Board of Appeals shall require for its adoption the affirmative vote of a majority of all the members of the board of appeals as fully constituted regardless of vacancies or absences.
 - b. Default denial of appeal. In exercising its appellate jurisdiction only, if an affirmative vote of a majority of all members of the board is not attained on a motion or resolution to grant a variance or reverse any order, requirement, decision or determination of the Zoning Enforcement Officer within the time allowed by this section, the appeal is denied. The board may amend the failed motion or resolution and vote on the amended motion or resolution within the time allowed without being subject to the rehearing process as set forth in subdivision fifteen (15) of this section.
13. Filing of decision and notice. The decision of the Zoning 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.
14. Compliance with state environmental quality review act. The Zoning Board of Appeals 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.
15. 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 reheard 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 reheard order, decision or determination will not be prejudiced thereby.

D. Permitted action by Zoning Board of Appeals.

1. Orders, requirements, decisions, interpretations, determinations. The Zoning Board of Appeals may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, interpretation, or determination appealed from, and shall make such order, requirement, decision, interpretation, or determination as in its opinion ought to have been made in the matter by the administrative official charged with the enforcement of such ordinance or local law and to that end, shall have all the powers of the administrative official from whose order, requirement, decision, interpretation, or determination the appeal is taken.
2. Use variances.
 - a. The Zoning Board of Appeals, 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, as defined herein.

- b. The Zoning Board of Appeals, in the granting of use variances, shall grant the minimum variance that it shall deem necessary and adequate to address the unnecessary hardship proven by the applicant, and at the same time preserve and protect the character of the neighborhood along with the health, safety, and welfare of the community.
3. Area variances.
 - a. The Zoning Board of Appeals shall have the power, upon an appeal from a decision or determination of the administrative official charged with the enforcement of such ordinance or local law, to grant area variances as defined herein.
 - b. The Zoning Board of Appeals, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate while at the same time ensuring the preservation and protection of the character of the neighborhood, and the health, safety, and welfare of the community.
 4. Imposition of conditions. The Zoning Board of Appeals 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.

E. Court Review of Board Decisions

1. Any person or persons jointly or severally aggrieved by any decision of the Zoning Board of Appeals may apply to the Supreme Court for review by a proceeding under Article 78 of the Civil Practice Law.
2. Expiration of appeal decision. Unless otherwise specified by the Zoning Board of Appeals, a decision on any appeal shall expire if the appellant fails to obtain any necessary building permit within twelve (12) months of the date of such decision.
3. Grant of Variance. The grant of a variance shall serve as authorization for the Building Inspector to issue a project permit, provided that the project complies with all other applicable provisions of this local law and other regulations.

SECTION 9. PLANNING BOARD

- A. Pursuant to §271 of the Town Law, the Planning Board shall consist of seven (7) members ~~and one~~ (1) alternate member appointed by the Town Board which shall also designate the Chairman thereof, in such manner and for such terms as provided in the Town Law. In the absence of a Chair, the Planning Board may designate a member to serve as acting Chair.
- B. Terms. Terms of office for members of the Planning Board shall be for seven (7) years. If a vacancy shall occur otherwise than by expiration of term, the Town Board shall appoint the new member for the remainder of the term.
- C. A member of the Planning Board shall not simultaneously be a member of the Town Board or of the Zoning Board of Appeals. The Town Board shall have the power to remove any member appointed

by such board, including but not limited to the Chair, for cause. The Town Board shall provide for reasonable compensation for a clerk, and for such other expenses as may be necessary and proper.

D. Alternate Members:

1. The Chairperson of the Planning Board or in his or her absence, the acting Chairperson, shall designate an alternate to substitute for a member when such member is unable to participate on an application or matter before the Board or to take the place of a member whose seat is vacant until such time such seat is filled by appointment of the Town Board. When so designated, the alternate member shall possess all the powers and responsibilities of such member of the Board. Such designation shall be entered into the minutes of the initial Planning Board meeting at which the substitution is made.

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2. Alternate members appointed by the Town Board shall regularly attend the scheduled meetings and/or work sessions of the Planning Board to which they may be designated, so as to be available for designation when required and familiar with the applications and/or matters pending before such Board.

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3. Alternate members shall serve without compensation.

4. All provisions of state law relating to Planning Board member eligibility, vacancy in office, removal, compatibility of office and service on other boards, as well as provisions of any local law or ordinance relating to training and continuing education, shall also apply to alternate members.

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E. Powers of the Planning Board. The responsibilities of the Planning Board are as follows:

1. Reviewing and approving subdivision applications;
2. Reviewing and approving site plans;
3. Reviewing and approving special use permits;
4. Submitting of an advisory opinion to the Town Board for proposed amendments to this law and the Town's Subdivision Law.
5. Preparing changes to the Comprehensive Land Use Plan (unless the Town Board creates a separate committee for this purpose), and reviewing proposed amendments to this law; and
6. Any other matter that the Town Board shall, by amendment to this law, decide to vest as responsibilities of the Planning Board.

F. Training and Continuing Education. Every member and alternate member of the Planning Board comply with all requirements for training and continuing education as set out in Town Law § 271267 or any other provision of applicable law, shall annually attend four (4) hours at one (1) or more training or continuing education course related to the work of the Planning Board each year as per Town Law Sections 7-712 and 7-718. The Town Board shall pay the reasonable expense of such training or continuing education.

G. Conduct of Business

1. The Planning Board may employ such clerical or other staff or consulting assistance as may be necessary for the conduct of its business, provided that it shall not incur expenses beyond the amount of appropriations made available for such purposes, or covered by an escrow account. The Planning Board may also engage engineers, planners, architects, and other consulting services at the expense of the applicant for site plan review, subdivision approval, or a Special Use Permit upon agreement with the applicant. This agreement shall outline the necessity, provisions of reasonableness, and certainty of charges.
2. All meetings of the Planning Board shall be held at the call of the Chair and at such other times as such board may determine. Meetings shall be open to the public as provided in Article 7 of the Public Officers Law of the State of New York (Open Meetings Law). The Board shall keep minutes of its proceedings. The minutes shall show the vote of each member upon every question, or if absent or failing to vote, indicating such fact. The Planning Board shall also keep records of its examinations and other official actions, which shall also be filed in the Office of the Town Clerk.
3. The Planning Board may adopt forms. Such forms shall be filed in the Office of the Town Clerk and made available to the public.
4. Voting Requirements. The concurring vote of a majority of all members present shall be necessary to take action on any matter before it so long as a quorum is present. Where an action is the subject of a referral to the county planning agency, the voting provisions of Sections 239-m and 239-n of the General Municipal Law shall apply.
5. Procedure. All applications to the Planning Board shall be made in writing on forms prescribed by the Planning Board and provided by the Town Clerk. Every final decision of the Planning Board with respect to an application shall be made by resolution, and shall contain a full record of findings in the case. The decision of the Planning Board shall immediately be filed in the Office of the Town Clerk, and copies thereof mailed to the applicant and to the Zoning Enforcement Officer.

