

**TOWN OF KIRKWOOD**  
**BUILDING AND CODE ENFORCEMENT DEPT.**

TELEPHONE:      MAILING ADDRESS:      LOCATION:      FAX:      E-MAIL:  
(607) 775-4313      70 CRESCENT DR.      41 FRANCIS ST.      (607) 775-9924      [bldgcode@townofkirkwood.org](mailto:bldgcode@townofkirkwood.org)  
KIRKWOOD, NY 13795

**ZONING BOARD OF APPEALS**

We welcome your interest in obtaining information for The Zoning Board of Appeals Board in the Town of Kirkwood.

Please refer to the Town of Kirkwood Codes as follows (copies attached):

Town of Kirkwood  
Zoning Board of Appeals Rules  
    Section 5 - Appeals and Procedures  
    Section 6 - Hearings  
    Section 7 - Referrals  
    Section 8 - Decisions

Zoning Local Law  
Article XIV  
Administration  
Section 1407 - Fees (Make check for \$100.00 payable to Town of Kirkwood)

- \$50.00 Application fee.
- \$50.00 Publication cost for legal notice in the official town newspaper under subsections A(1) and (2) shall be \$50.00, unless otherwise provided by the Town Building Inspector.

Application for Zoning Board of Appeals is attached.

If you have any questions, please contact me at 775-4313.

***Scott Russell***

Scott Russell  
Building Inspector and Code Enforcement Officer

Attachments

**TOWN OF KIRKWOOD**  
**BUILDING AND CODE ENFORCEMENT DEPT.**

TELEPHONE:  
(607) 775-4313

MAILING ADDRESS:  
70 CRESCENT DR.

LOCATION:  
41 FRANCIS ST.  
KIRKWOOD, NY 13795

FAX:  
(607) 775-9924

E-MAIL:  
[bldgcode@townofkirkwood.org](mailto:bldgcode@townofkirkwood.org)

**ZONING BOARD OF APPEALS**  
**APPLICATION FOR APPEAL**

(Internal Use Only)

Zoning Board of Appeals meeting date: \_\_\_\_\_

Zoning Board of Appeals # \_\_\_\_\_

Application Fee \$50.00 Cash/Check# \_\_\_\_\_ Dated: \_\_\_\_\_

Date \_\_\_\_\_ Publication Fee \$ \_\_\_\_\_ Cash/Check# \_\_\_\_\_ Dated: \_\_\_\_\_

TO: The Zoning Board of Appeals, Kirkwood, New York 13795

I (We) \_\_\_\_\_ of \_\_\_\_\_  
(Name of Applicant) (Mailing Address)

\_\_\_\_\_  
(State, Zip)

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

Hereby appeal to the Zoning Board of Appeals, whereby the enforcement officer did

- deny a:
- |  |         |            |
|--|---------|------------|
| <input type="checkbox"/> Building Permit                             | # _____ | date _____ |
| <input type="checkbox"/> Sign Permit                                 | # _____ | date _____ |
| <input type="checkbox"/> Certificate of Occupancy                    | # _____ | date _____ |
| <input type="checkbox"/> Floodplain Development Permit               | # _____ | date _____ |
| <input type="checkbox"/> Special Use Permit or extension thereof     |         |            |
| <input type="checkbox"/> Special Use Permit extension for cell tower |         |            |
| <input type="checkbox"/> Other _____                                 |         |            |

Owner of Property (name and address): (if different from Name of Applicant above):  
\_\_\_\_\_  
\_\_\_\_\_

Location of property (address):  
\_\_\_\_\_  
\_\_\_\_\_

Mailing address (if different from above):  
\_\_\_\_\_  
\_\_\_\_\_

Tax Map No.: \_\_\_\_\_ Use District on Zoning Map: \_\_\_\_\_

Project name: \_\_\_\_\_

Brief project description: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is property located within 500 ft. (1500 ft. for cell tower): (check all which apply)

	YES	NO
a) Any Town of Kirkwood Municipal boundary	_____	_____
b) State/County Road	_____	_____
c) Under Article 25AA of the County Law, a farm located in an Agricultural District	_____	_____
d) State/County Park or Other Recreation Area	_____	_____
e) State/County Drainage way/Watercourse	_____	_____
State/County-owned land on which a public building or institution is located	_____	_____

**TYPE OF APPEAL**

Appeal is made herewith for:

- an area variance
- a use variance
- an interpretation of the zoning ordinance or zoning map
- an application for a Special Use Permit
- an extension to a Special Use Permit
- special permit 280A

Previous appeal  has or  has not been made with respect to the decision of the Enforcement Officer or with respect to this property. If so, such appeal(s) was (were) made with Appeal No. \_\_\_\_\_ dated \_\_\_\_\_.

**REASON FOR APPEAL** (Use extra sheet if necessary)

- a) Interpretation for the zoning ordinance is requested because \_\_\_\_\_  
\_\_\_\_\_
- b) A Special Permit is required pursuant to Article \_\_\_\_\_ of the Zoning Ordinance because \_\_\_\_\_  
\_\_\_\_\_
- c) Extension to a Special Permit is requested because \_\_\_\_\_  
\_\_\_\_\_
- d) A **USE** variance is requested for these reasons: (all reasons must be answered)
  - 1. The applicant cannot realize a reasonable return, provide that lack of return is substantial as demonstrated by competent financial evidence because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

(continued from page 2)

2. The alleged hardship relating to the property in question is unique and does not apply to a substantial portion of the district or neighborhood because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The requested use variance, if granted, will not alter the essential character of the neighborhood because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The alleged hardship has not been self-created because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

e) An **AREA** variance is requested for these reasons: (all reason must be answered)

1. No undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by granting of the area variance because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

2. The benefit sought cannot be achieved by some method feasible for the applicant to pursue other than an area variance because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

3. The requested area is not substantial because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

4. The proposed variance will have no adverse effect or impact on the physical or environmental conditions in the neighborhood because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

5. The alleged difficulty was not self-created because \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Town of Kirkwood Zoning Board of Appeals  
Application for Appeal  
Page 4 of 4

Environmental Assessment Form: Short \_\_\_\_\_ Long \_\_\_\_\_ n/a \_\_\_\_\_

239 Review Submission Form necessary? YES \_\_\_\_\_ NO \_\_\_\_\_

**Fifteen (15) copies of plans, maps, bound material, color brochures, and any extra pertinent information must be supplied by applicant and be received by the Building Code Officer at LEAST 35 days prior to the scheduled Zoning Board of Appeals meeting. The Zoning Board meets on the third Monday of each month.**

The forgoing certification as well as the contents of this entire application is hereby subscribed by the applicant and is hereby affirmed by the applicant as true under the penalties of perjury.

Date: \_\_\_\_\_

Applicant **Print** Name: \_\_\_\_\_

Applicant **Sign** Name: \_\_\_\_\_

**617.20**  
**Appendix B**  
**Short Environmental Assessment Form**

**Instructions for Completing**

**Part 1 - Project Information. The applicant or project sponsor is responsible for the completion of Part 1.** Responses become part of the application for approval or funding, are subject to public review, and may be subject to further verification. Complete Part 1 based on information currently available. If additional research or investigation would be needed to fully respond to any item, please answer as thoroughly as possible based on current information.

Complete all items in Part 1. You may also provide any additional information which you believe will be needed by or useful to the lead agency; attach additional pages as necessary to supplement any item.

<b>Part 1 - Project and Sponsor Information</b>			
Name of Action or Project:			
Project Location (describe, and attach a location map):			
Brief Description of Proposed Action:			
Name of Applicant or Sponsor:		Telephone:	
		E-Mail:	
Address:			
City/PO:		State:	Zip Code:
1. Does the proposed action only involve the legislative adoption of a plan, local law, ordinance, administrative rule, or regulation? If Yes, attach a narrative description of the intent of the proposed action and the environmental resources that may be affected in the municipality and proceed to Part 2. If no, continue to question 2.			<b>NO</b>
			<b>YES</b>
2. Does the proposed action require a permit, approval or funding from any other governmental Agency? If Yes, list agency(s) name and permit or approval:			<b>NO</b>
			<b>YES</b>
3.a. Total acreage of the site of the proposed action? _____ acres			
b. Total acreage to be physically disturbed? _____ acres			
c. Total acreage (project site and any contiguous properties) owned or controlled by the applicant or project sponsor? _____ acres			
4. Check all land uses that occur on, adjoining and near the proposed action.			
<input type="checkbox"/> Urban <input type="checkbox"/> Rural (non-agriculture) <input type="checkbox"/> Industrial <input type="checkbox"/> Commercial <input type="checkbox"/> Residential (suburban)			
<input type="checkbox"/> Forest <input type="checkbox"/> Agriculture <input type="checkbox"/> Aquatic <input type="checkbox"/> Other (specify): _____			
<input type="checkbox"/> Parkland			

5. Is the proposed action, a. A permitted use under the zoning regulations?  b. Consistent with the adopted comprehensive plan?	NO	YES	N/A
6. Is the proposed action consistent with the predominant character of the existing built or natural landscape?	NO	YES	
7. Is the site of the proposed action located in, or does it adjoin, a state listed Critical Environmental Area? If Yes, identify: _____ _____	NO	YES	
8. a. Will the proposed action result in a substantial increase in traffic above present levels?  b. Are public transportation service(s) available at or near the site of the proposed action?  c. Are any pedestrian accommodations or bicycle routes available on or near site of the proposed action?	NO	YES	
9. Does the proposed action meet or exceed the state energy code requirements? If the proposed action will exceed requirements, describe design features and technologies: _____ _____	NO	YES	
10. Will the proposed action connect to an existing public/private water supply? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing potable water: _____	NO	YES	
11. Will the proposed action connect to existing wastewater utilities? [If Yes, does the existing system have capacity to provide service? <input type="checkbox"/> NO <input type="checkbox"/> YES] If No, describe method for providing wastewater treatment: _____	NO	YES	
12. a. Does the site contain a structure that is listed on either the State or National Register of Historic Places?  b. Is the proposed action located in an archeological sensitive area?	NO	YES	
13. a. Does any portion of the site of the proposed action, or lands adjoining the proposed action, contain wetlands or other waterbodies regulated by a federal, state or local agency?  b. Would the proposed action physically alter, or encroach into, any existing wetland or waterbody? If Yes, identify the wetland or waterbody and extent of alterations in square feet or acres: _____ _____	NO	YES	
14. Identify the typical habitat types that occur on, or are likely to be found on the project site. Check all that apply: <input type="checkbox"/> Shoreline <input type="checkbox"/> Forest <input type="checkbox"/> Agricultural/grasslands <input type="checkbox"/> Early mid-successional <input type="checkbox"/> Wetland <input type="checkbox"/> Urban <input type="checkbox"/> Suburban			
15. Does the site of the proposed action contain any species of animal, or associated habitats, listed by the State or Federal government as threatened or endangered?	NO	YES	
16. Is the project site located in the 100 year flood plain?	NO	YES	
17. Will the proposed action create storm water discharge, either from point or non-point sources? If Yes, a. Will storm water discharges flow to adjacent properties? <input type="checkbox"/> NO <input type="checkbox"/> YES  b. Will storm water discharges be directed to established conveyance systems (runoff and storm drains)? If Yes, briefly describe: <input type="checkbox"/> NO <input type="checkbox"/> YES _____ _____	NO	YES	

18. Does the proposed action include construction or other activities that result in the impoundment of water or other liquids (e.g. retention pond, waste lagoon, dam)? If Yes, explain purpose and size: _____ _____ _____	NO	YES
19. Has the site of the proposed action or an adjoining property been the location of an active or closed solid waste management facility? If Yes, describe: _____ _____ _____	NO	YES
20. Has the site of the proposed action or an adjoining property been the subject of remediation (ongoing or completed) for hazardous waste? If Yes, describe: _____ _____ _____	NO	YES
<b>I AFFIRM THAT THE INFORMATION PROVIDED ABOVE IS TRUE AND ACCURATE TO THE BEST OF MY KNOWLEDGE</b>		
Applicant/sponsor name: _____ Date: _____		
Signature: _____		

**Part 2 - Impact Assessment. The Lead Agency is responsible for the completion of Part 2.** Answer all of the following questions in Part 2 using the information contained in Part 1 and other materials submitted by the project sponsor or otherwise available to the reviewer. When answering the questions the reviewer should be guided by the concept "Have my responses been reasonable considering the scale and context of the proposed action?"

	No, or small impact may occur	Moderate to large impact may occur
1. Will the proposed action create a material conflict with an adopted land use plan or zoning regulations?		
2. Will the proposed action result in a change in the use or intensity of use of land?		
3. Will the proposed action impair the character or quality of the existing community?		
4. Will the proposed action have an impact on the environmental characteristics that caused the establishment of a Critical Environmental Area (CEA)?		
5. Will the proposed action result in an adverse change in the existing level of traffic or affect existing infrastructure for mass transit, biking or walkway?		
6. Will the proposed action cause an increase in the use of energy and it fails to incorporate reasonably available energy conservation or renewable energy opportunities?		
7. Will the proposed action impact existing: a. public / private water supplies? b. public / private wastewater treatment utilities?		
8. Will the proposed action impair the character or quality of important historic, archaeological, architectural or aesthetic resources?		
9. Will the proposed action result in an adverse change to natural resources (e.g., wetlands, waterbodies, groundwater, air quality, flora and fauna)?		

	No, or small impact may occur	Moderate to large impact may occur
10. Will the proposed action result in an increase in the potential for erosion, flooding or drainage problems?		
11. Will the proposed action create a hazard to environmental resources or human health?		

**Part 3 - Determination of significance. The Lead Agency is responsible for the completion of Part 3.** For every question in Part 2 that was answered “moderate to large impact may occur”, or if there is a need to explain why a particular element of the proposed action may or will not result in a significant adverse environmental impact, please complete Part 3. Part 3 should, in sufficient detail, identify the impact, including any measures or design elements that have been included by the project sponsor to avoid or reduce impacts. Part 3 should also explain how the lead agency determined that the impact may or will not be significant. Each potential impact should be assessed considering its setting, probability of occurring, duration, irreversibility, geographic scope and magnitude. Also consider the potential for short-term, long-term and cumulative impacts.

<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action may result in one or more potentially large or significant adverse impacts and an environmental impact statement is required.	
<input type="checkbox"/> Check this box if you have determined, based on the information and analysis above, and any supporting documentation, that the proposed action will not result in any significant adverse environmental impacts.	
_____	_____
Name of Lead Agency	Date
_____	_____
Print or Type Name of Responsible Officer in Lead Agency	Title of Responsible Officer
_____	_____
Signature of Responsible Officer in Lead Agency	Signature of Preparer (if different from Responsible Officer)

## ZONING BOARD OF APPEALS RULES

### SECTION 5. Appeals and Procedures.

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

#### 5.1.2 Filing of Appeals.

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

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

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

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

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

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

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

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

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

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

## ZONING BOARD OF APPEALS RULES

### SECTION 6. Hearings.

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

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

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

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

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

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

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

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

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

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

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

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

### SECTION 7. Referrals.

7.1.1 Zoning Referrals. All matters requiring referral as specified by any ordinance enacted under Article 16 of the Town Law shall be so referred to the proper agency for its

## ZONING BOARD OF APPEALS RULES

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

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

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

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

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

### SECTION 8. Decisions.

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

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

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

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

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

The Board shall show in its findings that it has:

- (a) Made a thorough review of the question including:
  - (1) Consideration of all information or evidence;
  - (2) Hearing all parties in question;

## ZONING BOARD OF APPEALS RULES

(3) Taking into account any intimate knowledge it has of the subject; and

(b) Made a personal inspection of the parcel in question and from this examination certain findings were ascertained.

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

8.3.4 Expiration of Permits. Unless otherwise specified, any order or decision of the Board for a permitted use shall expire if a building or occupancy permit for the use is not obtained by the applicant within ninety (90) days from the date of the decision; however, the Board may extend this time an additional ninety (90) days.

8.3.5 Rehearing. A motion for the zoning board of appeals to hold a rehearing to review any order, decision or determination of the board not previously reviewed may be made by any member of the board. A unanimous vote of all members of the board then present is required for such rehearing to occur. Such rehearing is subject to the same notice provisions as an original hearing. Upon such rehearing the board may reverse, modify or annul its original order, decision or determination upon the unanimous vote of all members then present, provided the board finds that the rights vested in persons acting in good faith in reliance upon the reviewed order, decision or determination will not be prejudiced thereby.

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

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

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

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

(b) That the alleged hardship relating to the property in question is unique, and does not apply to a substantial portion of the district or neighborhood;

(c) That the requested use variance, if granted, will not alter the essential character of the neighborhood; and

(d) That the alleged hardship has not been self-created.

8.4.2 Granting of Use Variance.

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

(b) The Board shall, in the granting of use variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental

## ZONING BOARD OF APPEALS RULES

to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

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

8.5.1 Findings of Fact for Area Variances. In making its determination, the Board shall take into consideration the benefit to the applicant if the variance is granted, as weighed against the detriment to the health, safety and welfare of the neighborhood or community by such grant. In making such determination the Board shall also consider:

- (a) Whether an undesirable change will be produced in the character of the neighborhood or a detriment to nearby properties will be created by the granting of the area variance;
- (b) Whether the benefit sought by the applicant can be achieved by some method, feasible for the applicant to pursue, other than an area variance;
- (c) Whether the requested area variance is substantial;
- (d) Whether the proposed variance will have an adverse effect or impact on the physical or environmental conditions in the neighborhood or district; and
- (e) Whether the alleged difficulty was self-created, which consideration shall be relevant to the decision of the board of appeals, but shall not necessarily preclude the granting of the area variance.

8.5.2 Granting of Area Variances.

- (a) The Board, in the granting of area variances, shall grant the minimum variance that it shall deem necessary and adequate and at the same time preserve and protect the character of the neighborhood and the health, safety and welfare of the community.
- (b) The Board shall, in the granting of both use variances and area variances, have the authority to impose such reasonable conditions and restrictions as are directly related to and incidental to the proposed use of the property. Such conditions shall be consistent with the spirit and intent of the zoning ordinance or local law, and shall be imposed for the purpose of minimizing any adverse impact such variance may have on the neighborhood or community.

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

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

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

8.7.1 Application for area variance. Notwithstanding any provision of law to the contrary, where a proposed special use permit contains one or more features which do not comply with the zoning regulations, application may be made to the Board for an area variance pursuant to section two hundred

## ZONING BOARD OF APPEALS RULES

sixty-seven-b of the Town Law, without the necessity of a decision or determination of an administrative official charged with the enforcement of the zoning regulations.

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

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

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

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

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

**ZONING LOCAL LAW  
TOWN OF KIRKWOOD**

**ARTICLE XIV  
ADMINISTRATION**

**SECTION 1407 Application Fees**

Any person applying for a site plan review pursuant to section 502 of this Local Law or for a variance of the provisions of this Local Law or a special permit or interpretation hereunder shall pay to the Town Building Inspector an application fee required in this section before the matter is referred to the Town Planning Board or Zoning Board of Appeals as follows:

**A. Site Plan Review:**

1. \$100.00 involving a new structure or new use, plus cost of publication of legal notice in official town newspaper
2. \$50.00 involving an existing structure or existing use, plus cost of publication of legal notice in official town newspaper
3. The publication cost for legal notice in the official town newspaper under subsections A(1) and (2) shall be \$50.00, unless otherwise provided by the Town Building Inspector (Added 11/3/14)

# 2015

## PLANNING AND ZONING BOARD MEETING DATES AND SUBMISSION DEADLINES

<u>PLANNING BOARD</u>	<u>2015</u>	
	Date of Meeting	Last day for submittal of application/plans
JANUARY	01/12/15	12/03/14
FEBRUARY	02/09/15	12/31/14
MARCH	03/09/15	01/28/15
APRIL	04/13/15	03/04/15
MAY	05/11/15	04/01/15
JUNE	06/08/15	04/29/15
JULY	07/13/15	06/03/15
AUGUST	08/10/15	07/01/15
SEPTEMBER	09/14/15	08/05/15
OCTOBER	10/13/15**	09/03/15
NOVEMBER	11/09/15	09/30/15
DECEMBER	12/14/15	11/04/15
<u>ZONING BOARD OF APPEALS</u>	<u>2015</u>	
	Date of Meeting	Last day for submittal of application/plans
JANUARY	01/19/15	12/10/14
FEBRUARY	02/17/15*	01/08/15
MARCH	03/16/15	02/04/15
APRIL	04/20/15	03/11/15
MAY	05/18/15	04/08/15
JUNE	06/15/15	05/06/15
JULY	07/20/15	06/10/15
AUGUST	08/17/15	07/08/15
SEPTEMBER	09/21/15	08/12/15
OCTOBER	10/19/15	09/09/15
NOVEMBER	11/16/15	10/07/15
DECEMBER	12/21/15	11/10/15

\*President's Day is on Monday, 02/16/15. The Town is off that day. ZBA meeting has not been scheduled on President's Day in the past.

\*\*Columbus Day is on Monday, 10/12/15. The Town is off that day. The PLANNING BOARD has not been scheduled on Columbus Day in the past.