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 TOWN OF FOSTER, RI



ORDINANCE NO. _____

**AN ORDINANCE IN AMENDMENT TO
 THE ZONING CODE OF THE TOWN OF FOSTER**

IT IS HEREBY ORDAINED by the Town Council of Foster, Rhode Island, that the Zoning Ordinance of the Town be amended as follows:

Chapter 38 – ZONING

ARTICLE VII – SPECIAL USE PERMITS AND VARIANCES

Sec 38-321: Procedure generally shall be amended to come into compliance with RIGL, Article VII – Special Use Permits and Variances shall be amended to come into compliance with RIGL:

ARTICLE VII. – SPECIAL USE PERMITS, MODIFICATIONS AND VARIANCES

Sec. 38-321. - Procedure generally and issuance of modifications.

- (a) *Application* An application for a variance for relief from the literal requirements of a zoning ordinance because of hardship, an application for a special-use permit, or an application for a modification, may be made by any person, group or agency by filing with the administrative officer an application describing the request and supported by such data and evidence as may be required by the zoning board of review, planning board or by the terms of this chapter. Every applicant for a use variance, dimensional variance, modification, or special-use permit must submit a site plan for review.
- (b) *Filing fee.* In filing for a variance, or special-use permit, the applicant, in addition to filing plans and specifications, shall accompany the request with a list of property owners within 200 feet of the property in question. A filing fee of \$100.00, payable to the town shall be required for all applications under this article. In filing for a modification greater than five percent (5%), the applicant shall accompany the request with a list of all property owners abutting the subject property.
- (c) *Transmission to boards.* The administrative officer shall immediately transmit each variance application received to the zoning board of review and shall transmit a copy of each application to the planning board.
- (d) *Vested rights.* Pursuant to Article XI of this chapter, an application shall be considered substantially complete when the administrative officer certifies that the application is complete.
- (e) *Preapplication conference.* A preapplication conference may be held between the applicant and the administrative officer and/or zoning enforcement officer prior to formal submission of an application for a special-use permit, variance, or modification.
- (f) *Request findings and recommendation.* The zoning board of review, immediately upon receipt of an application for a variance in the application of the literal terms of this chapter, may request that the planning board report its findings and recommendations, including a statement on the general consistency with the goals and purposed of the comprehensive plan, in writing, to the zoning board of review within thirty (30) days of receipt of the application from that board.
- (g) *Public hearing requirements.* The zoning board of review or planning board on applications filed under

this article shall hold a public in an expeditious manner, after receipt, in proper form of an application, and shall give public notice thereof pursuant RIGL 45-24-41 for variance applications, RIGL 45-24-42 for special-use permit applications or RIGL 45-23-50.1 for applications reviewed under unified development review.

(h) *Modifications.*

(1) *Modifications defined.* A modification is permission granted and administered by the zoning-enforcement officer, pursuant to the provisions of this chapter to grant a dimensional variance other than lot area requirements to a limited degree not to exceed twenty-five percent (25%) of each of the applicable dimensional requirements listed in Sec 38-192.

(2) *Amount of relief qualifying as a modification.* Modifications from the literal dimensional requirements of the zoning ordinance in the instance of construction, alteration, or structural modification of a structure or lot of record. The zoning-enforcement officer is authorized to grant modification permits. Modifications encroaching up to twenty-five percent (25%) of each of the dimensional requirements specified in Sec. 38-192 are authorized to be granted by the zoning-enforcement officer. A modification does not permit moving of lot lines.

(3) *Decision.* Within ten (10) days of the receipt of a request for a modification, the zoning-enforcement officer shall make a decision as to the suitability of the requested modification based on the following determinations:

- a. The modification requested is reasonably necessary for the full enjoyment of the permitted use;
- b. If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;
- c. The modification requested does not require a variance of a flood hazard requirement, unless the building is built in accordance with applicable regulations; and
- d. The modification requested does not violate any rules or regulations with respect to freshwater wetlands.

(4) *Modifications of five percent (5%) or less.* Upon an affirmative determination, in the case of a modification of five percent (5%) or less, the zoning enforcement officer shall have the authority to issue a permit approving the modification, without any public notice requirements.

(5) *Modifications greater than five percent (5%).* In the case of a modification of greater than five percent (5%), the zoning enforcement officer shall notify, by first class mail, all property owners abutting the property which is the subject of the modification request, and shall indicate the street address of the subject property in the notice, and shall publish in a newspaper of local circulation within the city or town that the modification will be granted unless written objection is received

within fourteen (14) days of the public notice. If written objection is received within fourteen (14) days, the request for a modification shall be scheduled for the next available hearing before the zoning board of review on application for a dimensional variance following the standard procedures for such variances, including notice requirements provided for under this section. If no written objections are received within fourteen (14) days, the zoning-enforcement officer shall grant the modification. The zoning-enforcement officer may apply any special conditions to the permit as may, in the opinion of the officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests for modifications, and of findings, determinations, special conditions, and any objections received. Costs of any notice required under this subsection shall be borne by the applicant requesting the modification.

- (i) *Uses requiring special-use permit in designated growth areas.* Uses requiring a special-use permit in designated growth areas, identified in Sec. 38-131 shall be reviewed by minor or major land development, whichever is applicable, in addition to the special-use permit review. Such applications shall be reviewed under Unified Development Review pursuant to RIGL 45-23-50.1 and RIGL 45-24-46.4.

(Ord. of 4-24-2025)