

ORDINANCE

THE TOWN OF SMITHFIELD HEREBY ORDAINS:

CHAPTER 154

BUILDING CONSTRUCTION

Article III

Temporary Construction Easements

§ 154-8 Purpose.

Whereas, the Smithfield Zoning Ordinance requires no side or rear yard setbacks in the Village zoning district, and whereas, property owners in the Village zoning district are required to build to the front lot line, the Town Council hereby finds that it is in the public interest that property owners in the Village zoning district who are without adequate setbacks must be given temporary access to adjoining land in order to properly maintain their properties. The Town Council finds that it is in the interests of public health, safety and welfare that buildings in the Village zoning district be maintained, restored, rehabilitated, and repaired in conformity with all applicable codes. This Chapter is enacted in furtherance of these purposes.

§154-9 Temporary Construction Easement Permit.

A person (hereinafter “applicant”) who owns a building in the Village zoning district who cannot properly maintain, restore, rehabilitate or repair said building without gaining temporary access to adjoining property may apply to the Zoning Official for a temporary construction easement permit (hereinafter “permit”) on a form to be provided by the Zoning Official. The application shall be accompanied by a \$25 processing fee.

§154-10 Application Requirements.

Said application shall include the following:

- a) a plan showing the proposed temporary construction easement area which shall be limited to the area reasonably necessary to allow access to the applicant’s building, but in no event more than 10 feet onto the adjoining property. The plan shall include the location and distances from the property line of all structures and accessory uses, including parking lots, on the adjoining property;
- b) the full name and address of the owners(s) of the temporary construction easement area;

- c) a summary of the nature, extent and duration of the proposed construction activities with specific reference to the proposed uses of the temporary construction easement area; and
- d) a certificate of general liability and property insurance which names the owner of the temporary construction easement area as an additional insured under the policy.

§ 154-11 Permit Limitations.

All temporary construction easement permits issued hereunder shall be subject to the following limitations:

- a) The temporary construction easement area shall be limited to that area the Zoning Official finds is reasonably necessary to complete the proposed maintenance, restoration, rehabilitation and/or repairs to the applicant's building, and which does not unreasonably interfere with the adjoining property owner's use of his or her property.
- b) The temporary construction easement permit shall be for no more than eight (8) weeks in duration.
- c) The applicant, and his or her contractors, subcontractors and employees, may have access to, and shall be permitted to erect and use construction equipment on the temporary construction easement area, but on no other land of the adjoining property owner, during the period of time when the permit is in effect.
- d) The applicant, and his or her contractors, subcontractors and employees, shall exercise due care to avoid damaging the temporary construction easement area and shall promptly repair any damage should it occur.
- e) The applicant, and his or her contractors, subcontractors and employees, shall at all times cooperate with the adjoining property owner and comply with reasonable requests made by said property owner not inconsistent with the purposes for which the permit is issued. Upon completion of the construction, the applicant shall clean the temporary construction easement area of all rubbish, excess material, temporary structures, and equipment, and shall reasonably restore the same to its condition prior to the issuance of the permit.
- f) The applicant, and his or her contractors, subcontractors and employees, shall hold the adjoining property owner harmless, and shall indemnify said property owner for all claims and damages resulting from his, her and/or their activities in the temporary construction easement area.

§154-12 Just Compensation.

The owner of the temporary construction easement area shall be entitled to payment of just compensation for the applicant's use of said easement area. The Town Council finds that just compensation for use of the temporary construction easement area shall be One Hundred Dollars (\$100) per week. Prior to issuing any permit hereunder, the Zoning Official shall collect from the applicant the sum of One Hundred Dollars (\$100) per week for the term of the permit and shall remit said sum to the owner of the temporary construction easement area. The owner of the temporary construction easement area may file an appeal with the Zoning Board of Review should he or she feel that the sum paid by the applicant is less than just compensation for use of the temporary construction easement area. The Zoning Board of Review shall thereafter decide said appeal in accordance with its Rules of Procedure and shall establish the amount and require payment of just compensation for the applicant's use of the temporary construction easement area.

§154-13 Notice of Application; Appeal Rights.

Prior to the issuance of any permit hereunder, the Zoning Official shall send a copy of the application with all accompanying materials to the owner of the temporary construction easement area with notification that said adjoining property owner has thirty (30) calendar days to submit comments or objections to the application. After the expiration of said thirty (30) day period, the Zoning Official shall act upon said application by either approving or denying it, in full or in part. The applicant may appeal any full or partial denial of the application to the Zoning Board of Review within thirty (30) calendar days of the denial. The owner of the temporary construction easement area may appeal the full or partial approval of any permit to the Zoning Board of Review within thirty (30) calendar days of the issuance of the permit. Upon appeal, the Zoning Board of Review shall determine if the permit was properly granted or denied in accordance with the terms of this Chapter and shall determine the amount of just compensation if that issue is raised on appeal. An appeal hereunder shall operate to stay the issuance of a permit until the Zoning Board of Review rules on said appeal.

§154-14 Property Rights.

No permit issued hereunder shall prevent the owner of the temporary construction easement area from the use of his or her property except that such use shall not unreasonably interfere with the rights granted by the permit.

THIS ORDINANCE SHALL BECOME EFFECTIVE AT THE EXPIRATION OF THIRTY (30) DAYS AFTER ADOPTION.

ORDINANCE INTRODUCED BY
TOWN COUNCIL VICE-PRESIDENT
MICHAEL FLYNN

PROPOSED ORDINANCE
APPROVED AS TO FORM:

EDMUND L. ALVES, JR.
TOWN SOLICITOR