

SECTION IV - ADMINISTRATION

A. The Administrative Officer

1. The administration of these subdivision regulations shall be under the direction of the Administrative Officer.
2. The Administrative Officer's responsibilities shall include:
 - a. issuing certificates of completeness, failure to act notices, approval notices;
 - b. reviewing and coordinating the review process on applications for subdivisions;
 - c. collecting required fees for applications for subdivision;
 - d. receiving and reviewing for proper form, all applications for subdivisions;
 - e. transmitting all applications to the Planning Board and other City officials as is necessary for proper review;
 - f. keeping records on compliance of the subdivision regulations;
 - g. inspecting suspected violations of these regulations and issuing violation notices;
 - h. collecting fees for violations;
 - i. maintaining and updating the text and appendices of the subdivision regulations;
 - j. reviewing the subdivision regulations at regular intervals; and whenever changes are necessary to identify the changes and forward recommendations to the Planning Board; and
 - k. upon written request and reasonable notice, the Administrative Officer shall, in order to provide guidance and clarification, coordinate the pre-application conference.
3. The subdivision regulations shall be enforced by the Administrative Officer who is hereby authorized to cause any building, structure, premises or use in connection with an application for subdivision to be inspected or examined, and to order, in writing, remedying of any condition found to exist therein or thereon in violation of any provisions of the subdivision regulations. It shall be the duty of the City Solicitor, whenever a violation or contemplated violation of any provisions of the subdivision regulations is brought to his or her attention, to institute due legal proceedings to compel compliance or to restrain the erection, alteration or use of any building, structure or use, altered or used in violation of any of the provisions of the subdivision regulations. The City may also cause suit to be brought in the supreme court or superior court, or municipal court, including a municipal housing court having jurisdiction in the City, to restrain the violation of, or to compel compliance with, the provisions of the subdivision regulations.

4. Whoever violates or fails to comply with any of the provisions of the subdivision regulations or violates the terms and conditions of any action imposed by the Planning Board or any other agency or officer charged in the subdivision regulations with enforcement of any of the provisions shall be fined not more than One Hundred Dollars (\$100) for each offense, such fine to inure to the City. A separate offense shall be deemed committed each day during or on which a violation or noncompliance occurs.
5. Violations of these regulations shall include any action related to the transfer or sale of land in unapproved subdivisions. Any owner, or agent of the owner, who transfers, sells or negotiates to sell any land by reference to or exhibition of, or by any other use, a plat of the subdivision before the plat has been approved by the Planning Board and recorded in the Land Evidence Department of the City of Newport, shall be in violation of the subdivision regulations and subject to penalties as provided for in these regulations. Violations shall also include noncompliance with any terms or conditions of any action imposed by the Planning Board or of any other agency or officer charged in these regulations with enforcement of any of the provisions of the subdivision regulations.

The City of Newport may enjoin such transfer or sale of agreement by action for injunction brought in the Superior Court of Newport County, or may recover such penalty by an action of the case in any court of competent jurisdiction, or may pursue both of these remedies.

Any sale of land subdivided in violation of the provisions of these rules and regulations shall be voidable at the option of the purchaser thereof, and shall subject the seller thereof to the forfeiture of any and all consideration received or pledged therefore, together with any damages sustained by the purchaser, who may maintain an action in the case to recover any amounts due him under the provisions of this paragraph.

B. Planning Board - Procedures

1. All records of the Planning Board proceedings and decisions shall be written and kept permanently available for public review. Completed applications for proposed subdivisions under review by the Planning Board, shall be available for public review.
2. Participation in a Planning Board meeting or other proceedings by any party shall not be a cause for civil action or liability except for acts not in good faith, intentional misconduct, knowing violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or willful misconduct.

3. All final written comments to the Planning Board from the Administrative Officer, other City departments and boards, state and federal agencies and commissions shall be made part of the permanent record of the development application.
4. All votes of the Planning Board shall be made part of the permanent record and shall show the members present and their votes. A decision by the Planning Board to approve any subdivision application shall require a vote for approval by a majority of the current Planning Board membership.

C. Waivers - Modifications and Reinstatement of Plans

1. Waiver of Development Plan Approval
 - i. The Planning Board may waive requirements for development plan approval where there is a change in use or occupancy and no extensive construction of improvements is sought. The waiver may be granted only by a decision by the Planning Board finding that the use will not affect existing drainage, circulation, relationship of buildings to each other, landscaping, buffering, lighting, and other considerations of development plan approval, and that the existing facilities do not require upgraded or additional site improvements.
 - ii. The application for a waiver of development plan approval review shall include documentation as required by the Planning Board, on prior use of the site, the proposed use, and its impact.
2. Waiver and/or Modification of Requirements. The Planning Board shall have the power to grant such waivers and/or modifications from the requirements for subdivision approval as may be reasonable and within the general purposes and intents of the provisions of these regulations. The only grounds for such waivers and/or modifications shall be where the literal enforcement of one (1) or more provisions of these regulations is impracticable and will exact undue hardship because of peculiar conditions pertaining to the land in question or where such waiver and/or modification is in the best interest of good planning practice and/or design as evidenced by consistency with the City of Newport Comprehensive Plan and the Zoning Code.
3. In cases where approval deadlines have exceeded for administrative and minor subdivisions, the applicant shall be required to resubmit the application for subdivision unless for good cause shown, the Planning Board, upon request of the applicant, extends the approval deadline for an additional period of time. In cases where approval deadlines have exceeded for major subdivision applications, the application shall be reinstated at the final plan stage of the review when no major change to plans are proposed and,

reinstated at the preliminary plan stage of the review when major changes are proposed.

4. The Planning Board shall approve, approve with conditions or deny the request for either a waiver or modification.

D. Precedence of Approvals

1. Where an applicant requires both a variance from the Zoning Board of Review and Planning Board approval, the applicant shall first obtain an advisory recommendation from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed subdivision, which may be simultaneous, then obtain conditional Zoning Board of Review relief, and then return to the Planning Board for subsequent required approval(s).
2. Where an applicant requires both a special-use permit under the Zoning Code and Planning Board approval, the applicant shall first obtain an advisory recommendation from the Planning Board, as well as conditional Planning Board approval for the first approval stage for the proposed subdivision, which may be simultaneous, then obtain a conditional special-use permit from the Zoning Board of Review, and then return to the Planning Board for subsequent required approval(s).

E. Public Hearing and Notice - Adoption and Amendment

1. No subdivision regulations shall be adopted, repealed, or amended until after a public hearing has been held upon the question before the Planning Board. The Planning Board shall first give notice of the public hearing by publication of notice in a newspaper of general circulation in the City at least once each week for three (3) successive weeks prior to the date of the hearing, which may include the week in which the hearing is to be held. At this hearing opportunity shall be given to all persons interested to be heard upon the matter of the proposed regulations. Written notice, which may be a copy of the newspaper notice, shall be mailed to the Associate Director of the Division of Planning of the Rhode Island Department of Administration at least two (2) weeks prior to the hearing. The newspaper notice shall be published as a display advertisement, using a type size as large as the normal type used by the newspaper in its news articles, and shall:
 - i. Specify the place of said hearing and the date and time of its commencement;
 - ii. Indicate that adoption, amendment or repeal of local regulations is under consideration;

- iii. Contain a statement of the proposed amendments to the subdivision regulations that may be printed once in its entirety, or may summarize or describe the matter under consideration;
 - iv. Advise those interested where and when a copy of the matter under consideration may be obtained or examined and copied; and
 - v. State that the proposals shown thereon may be altered or amended prior to the close of the public hearing without further advertising, as a result of further study or because of the views expressed at the public hearing. Any such alteration or amendment must be presented for comment in the course of said hearing.
2. Notice of the public hearing shall be sent by first class mail to the city or town planning board of any municipality where there is a public or quasi-public water source, or private water source that is used or is suitable for use as a public water source, located within two thousand feet (2,000') of the City boundaries.
 3. Notice of a public hearing shall be sent to the governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water source and/or surface watershed that is used or is suitable for use as a public water source located within either the City or two thousand feet (2,000') of the City boundaries, provided, however, that a map survey has been filed with the building inspector.
 4. No defect in the form of any notice under this section shall render any regulations invalid, unless such defect is found to be intentional or misleading.
 5. The above requirements are to be construed as minimum requirements.

F. Publication and Availability

1. Printed copies of these subdivision regulations shall be available to the general public at a reasonable charge and shall be revised to include all amendments and any appendices.
2. Upon publication of these regulations and any amendments thereto, the City shall send a copy to the Rhode Island Department of Administration's Division of Planning and to the State Law Library.

G. Appeals to the Board of Appeal

1. An appeal from any decision of the Planning Board, or the Administrative Officer may be taken to the Board of Appeal.

2. An appeal to the Board of Appeal from a decision or action of the Planning Board or Administrative Officer may be taken by an aggrieved party. Such appeal must be taken within twenty (20) days after the decision has been recorded and posted in the office of the City Clerk.
3. The appeal shall be in writing and shall state clearly and unambiguously the issue or decision which is being appealed, the reason for the appeal, and the relief sought. The appeal shall either be sent by certified mail, with a return receipt requested, or shall be hand-delivered to the Board of Appeal.
4. Upon receipt of an appeal, the Board of Appeal shall require the Planning Board or the Administrative Officer to transmit forthwith to the Board of Appeal, all papers, documents and plans, or a certified copy thereof, constituting the record of the action which is being appealed.
5. An appeal shall stay all proceedings in furtherance of the action being appealed.
6. The Board of Appeal shall hold a public hearing on the appeal within forty-five (45) days of the receipt of the appeal, give public notice thereof, as well as due notice to the parties of interest. At the hearing any party may appear in person, or may be represented by an agent or attorney. The Board of Appeal shall render a decision within ten (10) days of the close of the public hearing. The cost of any notice required for the hearing shall be borne by the appellant.
7. The Board of Appeal shall only hear appeals of the actions of the Planning Board or the Administrative Officer at a meeting called especially for the purpose of hearing such appeals and which has been so advertised.
8. The hearing, which may be held on the same date and at the same place as a meeting of the Zoning Board of Review, must be held as a separate meeting from any Zoning Board of Review meeting. Separate minutes and records of votes shall be maintained by the Board of Appeal.
9. In instances of a Board of Appeal's review of a Planning Board or Administrative Officer's decision on matters subject to these regulations, the Board of Appeal shall not substitute its own judgment for that of the Planning Board or the Administrative Officer but must consider the issue upon the findings and record of the Planning Board or the Administrative Officer. The Board of Appeal shall not reverse a decision of the Planning Board or the Administrative Officer except on a finding of prejudicial procedural error, clear error, or lack of support by the weight of the evidence in the record.

10. The concurring vote of three (3) of the five (5) members by the Board of Appeal, shall be necessary to reverse any decision of the Planning Board or the Administrative Officer.
11. In the instance where the Board of Appeal overturns a decision of the Planning Board or the Administrative Officer, the proposed project application shall be remanded to the Planning Board or the Administrative Officer, at the stage of processing from which the appeal was taken, for further proceedings before the Planning Board or the Administrative Officer and/or for the final disposition, which shall be consistent with the Board of Appeal's decision.
12. The Board of Appeal shall keep complete records of all proceedings including a record of all votes taken, and shall put all decisions on appeals in writing. The Board of Appeal shall include in the written record the reasons for each decision.

H. Appeals to Superior Court

1. An aggrieved party may appeal a decision of the Board of Appeal to the Newport County Superior Court by filing a complaint setting forth the reasons of appeal within twenty (20) days after the decision has been recorded and posted in the office of the City Clerk. The Board of Appeal shall file the original comments acted upon by it and constituting the record of the case appealed from, or certified copies thereof, together with such other facts as may be pertinent, with the Clerk of the Court within thirty (30) days after being served with a copy of the complaint. When the complaint is filed by someone other than the original applicant or appellant, the original applicant or appellant and the members of the Board of Appeal shall be made parties to the proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make such other orders as it deems necessary for an equitable disposition of the appeal.
2. The review shall be conducted by the Superior Court without a jury. The court shall consider the record of the hearing before the Board of Appeal and, if it shall appear to the court that additional evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal to present the evidence in open court, which evidence, along with the report, shall constitute the record upon which the determination of the court shall be made.
3. The court shall not substitute its judgment for that of the Board of Appeal as to the weight of the evidence on questions of fact. The court may affirm the decision of the Board of Appeal or remand the case for further proceedings,

or may reverse or modify the decision if substantial rights of the appellant have been prejudiced because of findings, inferences, conclusions, or decisions which are:

- i. In violation of constitutional, statutory, or ordinance or Planning Board regulations provisions;
- ii. In excess of the authority granted to the Board of Appeal by statute or ordinance;
- iii. Made upon unlawful procedure;
- iv. Affected by other error of law;
- v. Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
- vi. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

I. Appeal of Enactment of or Amendment to Subdivision Regulations

1. An appeal of an enactment of or an amendment to these regulations may be taken to the Newport County Superior Court by filing a complaint, as set forth herein, within thirty (30) days after the enactment or amendment has become effective. The appeal may be taken by an aggrieved party or by any legal resident or landowner of the city or by any association of residents or landowners of the city. The appeal shall not stay the enforcement of the Subdivision Regulations, as enacted or amended, but the court may, in its discretion, grant a stay on appropriate terms, which may include the filing of a bond, and make such other orders as it deems necessary for an equitable disposition of the appeal.
2. The complaint shall set forth with specificity the area or areas in which the enactment or amendment is not consistent with the Comprehensive Planning Act, the Zoning Enabling Act of 1991, City of Newport's Comprehensive Plan and the Zoning Code.
3. The review shall be conducted by the court without a jury. The court shall first consider whether the enactment or amendment of the Subdivision Regulations is consistent with the Comprehensive Plan. If the enactment or amendment is consistent with the Comprehensive Plan, then the court shall invalidate the enactment or the amendment, or those part of the enactment or amendment which are not consistent. The court shall not revise the Subdivision Regulations to be consistent, but may suggest appropriate language as part of the court decision.
4. The court may, in its decision, upon motion of the parties or on its own motion, award reasonable attorney's fees to any party to an appeal, as set forth herein, including the City.

J. Severability

If any provision of these Subdivision Regulations or of any rule, regulation, or determination made thereunder, or the application thereof to any person, agency, or circumstance, is held invalid by a court of competent jurisdiction, the remainder of the Subdivision Regulations, rule, regulation, or determination and the application of the provisions to other persons, agencies, or circumstances shall not be affected thereby. The invalidity of any section or sections of these Subdivision Regulations shall not affect the validity of the remainder of these Subdivision Regulations.