

Zoning Board of Review

City of Newport

Policies and Procedures

The Rhode Island Zoning Enabling Act states that zoning boards of review "shall establish written rules of procedure..... R.I.G.L. § 45-24-56. -Similarly, the Newport Zoning Ordinance provides: "The zoning board of review shall adopt from time to time such rules and procedures as may be deemed necessary to carry into effect the provisions of this zoning code." Newport Zoning Ordinance, § 17.112.050(A).

I. Composition

A. Membership

1. The Zoning Board of Review (ZBOR) consists of five members and two alternate members, designated as first and second alternates, all or whom shall be elected by the city council for a term of five years.
2. The alternate members shall sit and may actively participate in hearings.

B. Officers.

1. At its regular meeting in January of each year, the ZBOR shall elect officers of the ZBOR to include a Vice-Chairperson, and a Secretary from its regular membership by a majority vote of all members, including alternates. The Chairperson of the ZBOR shall be appointed by the City Council.
2. If an officer of the ZBOR resigns or is otherwise unable to serve, the vacancy shall be filled at the next regular meeting by a majority of vote of the remaining members, including alternates. The newly elected officer shall begin his or her term immediately and serve out the remainder of the term of the replaced officer.

C. Duties and Policies

1. The Chairperson shall preside over all meetings and hearings of the ZBOR, and shall, consistent with these rules and the Zoning Ordinance, administer oaths, compel the attendance of witnesses, decide all points of order and procedure, rules of evidentiary objections, and make any assignments or carry out other duties necessary for the ZBOR to perform its work properly and expeditiously.

2. When the Chairperson is absent or unable to hear a petition, the Vice-Chairperson shall assume all the duties and have all the powers of the Chairperson. In the absence of both the Chairperson and Vice-Chairperson, the Secretary shall assume all the duties and have all the powers of the Chairperson.
3. The Chairperson or, in his or her absence, the Vice-Chairperson, may administer oaths and compel the attendance of witnesses by the issuance of subpoenas. The Secretary shall assume these duties if required.

II. Petitions

- A. Petitions for zoning relief or a special use permit shall be filed on the appropriate application form provided by the Zoning Officer pursuant to the provisions of the Zoning Ordinance. Administrative appeals shall be in appropriate written form identifying the appellant and providing the grounds for the appeal in sufficient detail.
- B. Applications shall be filed with the Zoning Officer on or before the first day of the month of the scheduled regular monthly meeting of the ZBOR. Before an application may be filed, it must be certified as complete by the Zoning Officer, who may make such certification by signing or initialing the petition on its face. A completed application shall consist of a completed application form, including information as to clearly and fully describe the proposed project including but not limited to:
 1. Dimensional measurements, including all data detailing calculations for existing and proposed lot coverage.
 2. A site plan, showing all dimensions of the lot or lots in question, including adjacent streets, existing and proposed driveways, parking and loading spaces, storage spaces and all existing and proposed buildings and/or elevations as to clearly and fully describe the proposed project. The plan shall also include storm drainage, sewage disposal facilities, landscaping and all existing and proposed contour lines where applicable. This plan shall be drawn to a scale of not less than one hundred feet to the inch.
 3. Preliminary architectural plans of all proposed buildings or renovations to existing buildings, including floor plans, general exterior elevations and details of any proposed signs. These plans shall be drawn to a scale of not less than eight feet to the inch.
 4. For dimensional and/or use variance petitions, the application must provide explanation/information pertaining to the reasons or necessity

for relief and shall address the standards as found in Section 17.108.010 (B)(5) and (6)(a) of the zoning code.

- C. In the case of a petition for a regulatory variance or a request of a minor nature, plans may not be required to meet the degree of detail outlined above, but shall be required to show any and all information pertinent to the petition. The zoning officer shall determine the specific information that may be required based on the nature of the petition.
- D. A petition for relief or an appeal shall be accompanied by a filing fee as established by applicable ordinance or law.
- E. The Zoning Officer shall not accept any incomplete petition and may request additional informational to clarify the petition.
- F. It shall be the duty of the Zoning Officer's office to notify all property owners within 200 ft. of the subject property by regular mail, at least fourteen (14) days prior to the hearing on said petition. All property owners within this area shall be considered aggrieved parties and shall be considered to have standing regarding the subject petition. Aggrieved parties having standing shall also consist of those persons considered to be aggrieved parties by applicable law.

III. Meetings.

- A. All hearings and meetings of the ZBOR shall be open to the public as required by Title 42, Chapter 46 of the Rhode Island General Laws.
- B. Notice of public hearings shall be given by the ZBOR as required by the Rhode Island General Laws and the Zoning Ordinance.
- C. The schedule of regular meetings for the forthcoming year shall be established by the ZBOR at its regular December meeting. Special meetings may be called by the Chairperson or scheduled at the ZBOR's discretion in accordance with Section III (A.) and III (I.).
- D. The regular meeting shall be scheduled for the fourth Monday of each month when not in conflict with a holiday.
- E. Regular meetings of the ZBOR will be scheduled to begin promptly at 7:00 pm and will not extend beyond 11:00 pm without the concurring consensus of five (5) members. The Chairperson may determine that no petition will begin to be heard after 10:30 pm unless all testimony and arguments can be concluded by 11:00 pm.

- F. The order of business for regular meetings of the ZBOR, including public hearings, shall normally be as follows:
1. Call to order
 2. Acceptance of minutes of prior meetings
 3. Communications (continuances and withdrawals)
 4. Summary Calendar
 5. Old business, including public hearings carried over from earlier meetings
 6. New business, including public hearings on new petitions for special use permits or variances in the order in which the petitions were accepted as complete by the Zoning Officer
 7. Other business
 8. Adjournment
- G. The minutes of prior meetings shall be reviewed, and if necessary, corrected, amended and accepted by a majority vote of the members sitting when the vote is taken.
- H. Notwithstanding the foregoing, the Chairperson may, with the concurrence of the other ZBOR members, alter the order of business.
- I. Public hearings on administrative appeals based on Chapter 23 of Title 45 of the General Laws (Land Development and Subdivision Review) shall be held within 45 days of the receipt of the appeal.
- J. It is expected that all petitioners, appellants and remonstrants be present when the subject matter is called before the ZBOR.
- K. At public hearings of the ZBOR a person may appear in person or may be represented by an attorney. Weighed testimony however shall normally be limited to parties with “standing” and or “aggrieved” status.
- L. A public hearing may be continued to another date by majority vote of the members then sitting, and no further public notice shall be required, provided the time, place, and date of the resumption of the hearing is announced at the time of continuance and is not subsequently changed. The ZBOR shall make a determination of requests for continuances made by the petitioner or an aggrieved party.

- M. In conducting hearings and making decisions, the ZBOR shall at all times consist of five voting members. If a regular member is absent or has a conflict of interest, the first alternate member shall vote and the second alternate member shall vote if two members of the zoning ZBOR of review are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate member. No member or alternate member of the ZBOR may vote on any matter before the ZBOR unless they have attended all hearings concerning that matter. An alternate member may participate in any hearing to the extent of asking questions regarding the matter at hand. However once the hearing has been closed, only the 5 voting members may discuss the matter at hand and vote on the petition.
- N. The Chairperson may request that one or both alternate members participate at all hearings on a petition in order to prevent the loss of a quorum in the event that a regular member is unable to serve at a subsequent hearing.
- O. A member who has a conflict of interest shall recuse himself or herself as soon as he or she is aware of the conflict, and thereafter shall not take part in any of the proceedings.

IV. Public Hearing Procedures

- A. No petition requiring a comment and/or approval of the Planning Board or the approval of the Historic District Commission, will be heard by the ZBOR until such comment or approval is transmitted to the ZBOR in writing.
- B. Public hearings on petitions for variances, other than summary hearings on petitions for dimensional variances [see Subsection B, below], special use permits, and administrative appeals shall normally be conducted in the following order:
 - 1. Calling of applicant or appellant by the Chairperson
 - 2. Reading summary of petition or appeal by Secretary
 - 3. Presentation by applicant, appellant, or counsel
 - 4. Supporting testimony by other parties
 - 5. Testimony by opponents
 - 6. Other public comment, both for and against the petition or appeal
 - 7. Rebuttal by applicant or appellant
 - 8. Closing argument by opponents
 - 9. Closing argument by applicant or appellant
 - 10. Close of hearing

11. Submission of memoranda of law (at the ZBOR's discretion)
 12. Discussion and development of findings of fact
 13. Vote
- C. The ZBOR may allow a party to withdraw a petition without prejudice provided the hearing on the petition has not commenced or has commenced and other parties or objectors would not be prejudiced by allowing the withdrawal. If a matter is not permitted to be withdrawn without prejudice, the petitioner will be required to present the petition for a ZBOR decision, or it shall be considered withdrawn with prejudice.
- D. Summary Hearings - At the beginning of a public hearing on petitions for dimensional variances, the following procedure shall be followed to determine and dispose of the summary calendar.
1. The Chairperson shall read aloud the name of each applicant who is applying for a dimensional variance (and no other relief) and the location of the property, in the order in which such petitions appear on the docket. The Chairperson shall ask after reading each name, whether any member of the ZBOR or any person attending the hearing has any objection to the petition or for any other reason objects to a summary hearing on that petition.
 2. If no objection is raised nor is on file by an aggrieved party, the petition may be marked for a summary hearing. If any aggrieved person objects for any reason, the petition shall be marked for a full hearing.
 3. After all eligible petitions have been thus announced and opportunity for objection has been given, a narrative of each petition marked for a summary hearing, including the name of the applicant, the location of the property involved, and the nature of the relief sought, shall be read aloud. The Chairperson shall again ask if there are any objections to the petition. If no objections are heard, the ZBOR may immediately vote to approve the petition. If prior to the vote an objection or question is raised, the petition may be held for later consideration at a full hearing together with other petitions requiring a full hearing.
 4. If any ZBOR member requests information or is in need of clarification of a petition, the Chairperson may determine that an “abbreviated hearing” may be appropriate. The Chairperson may request the petitioner be sworn and provide limited testimony on facts related to the petition. This testimony may be held as part of the summary hearing.
 5. The findings of fact for a summary petition shall be based upon the staff report prepared by the Zoning Officer which must support the petition based

upon the criteria as set forth by applicable law for the approval of the variance.

6. Following the disposition of all petitions marked for a summary hearing, the ZBOR shall proceed with full hearings of all other matters on the docket.

D. Full Hearings - Variances

1. A written petition for a variance may be made by any person, group, agency, or corporation and shall be submitted to the zoning officer demonstrating that:
 - a. Special conditions and circumstances exist which are peculiar to the land, structure or building involved and which are not applicable to other lands, structures or buildings in the same district;
 - b. A literal interpretation of the provisions of this zoning code would deprive the applicant of rights commonly enjoyed by other property owners in the same district under the provisions of this zoning code;
 - c. Special conditions and circumstances do not result from the actions of the applicant. Purchase or lease of the property shall not constitute such actions.
2. The zoning officer shall immediately send each petition to the ZBOR and shall also forward a copy of each petition for a special use permit or a use variance to the Planning Board.
3. The ZBOR or Zoning Officer may request that the Planning Board and/or staff report its findings and recommendations, including a statement on the general consistency of the petition with the goals and purposes of the comprehensive plan, in writing to the ZBOR within thirty (30) days of receipt of the petition from the board.
4. In granting a variance, the ZBOR shall require that evidence of the following standards shall be entered into the record of the proceedings:
 - a. That the reasons set forth in the petition justify the granting of the variance, and that the variance, if granted, is the minimum variance that will make possible the reasonable use of the land, building or structure;
 - b. That the variance will not be injurious to the neighborhood or otherwise detrimental to the public welfare, and will not impair the intent or purpose of the zoning code or the comprehensive plan upon which this zoning code is based;

- c. That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not to the general characteristics of the surrounding area; and is not due to a physical or economic disability of the applicant; and
 - d. That the hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain.
5. The ZBOR shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:
- a. In granting a “use variance,” the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning code. Nonconforming use of neighboring lands or structures in the same district and permitted use of lands or structures in an adjacent district shall not be considered in granting a use variance; and
 - b. In granting a “dimensional variance”, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief;
 - c. In granting any variance the ZBOR may prescribe appropriate conditions and safeguards in conformity with this zoning code. These conditions must be reasonable and not arbitrary, unnecessary or oppressive and may include, but not be limited to:
 - 1. Time limitations or probationary periods;
 - 2. Controlling the sequence of development, including when it must be commenced and/or completed;
 - 3. Minimizing adverse impact of the development
 - d. Violations of such conditions and safeguards, when made a part of the terms under which the variance is granted, shall be deemed a violation of the zoning code.

E. Full Hearings - Special Use Permits

- 1. Special use permits shall be granted only where the ZBOR finds that the proposed use or the proposed extension or alteration of an existing use is in accord with the public convenience and welfare, after taking into account, where appropriate:

- a. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of the structure;
- b. The resulting traffic patterns and adequacy of proposed off-street parking and loading;
- c. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area;
- d. The proximity of dwellings, churches, schools, public buildings and other places of public gathering;
- e. The fire hazard resulting from the nature of the proposed buildings and uses and the proximity of existing buildings and uses;
- f. All standards contained in the zoning code;
- g. The comprehensive plan for the city. It is the policy of the ZBOR not to hear a petition for a special use permit until such time as the Newport Planning Board has rendered an opinion as to the petition's conformance to the comprehensive plan.

D. Full Hearings – Administrative Appeals

1. The ZBOR shall function as an appellant body in appeals from administrative determinations and decisions of the Historic District Commission.
2. An appellant must qualify as an “aggrieved party” and must be present at the hearing.
3. The appeal shall be based on the findings of fact, decision and record of the Historic District Commission or the information and records of the administrative officer whose decision was appealed.
4. No new evidence or exhibits shall be presented to the ZBOR except on appeals of determinations of an administrative officer/zoning officer.
5. The appellant shall present the basis for his or her appeal, orally and/or in writing, and shall be given ample opportunity to explain why the administrative determination or Historic District Commission decision should be reversed.
6. A member designated by the Historic District Commission or the administrative officer whose decision was appealed, may be requested to

offer oral testimony (only in the case of an administrative appeal) and /or written memorandum to explain why the Historic District Commission's decision or the administrative officer's determination should be affirmed.

7. In determining appeals from an administrative determination, the ZBOR has the same powers as possessed by the administrative officer whose determination is being appealed.
 8. In determining appeals from a decision of the Historic District Commission, the ZBOR may not substitute its own judgment for that of the Commission, but must consider the issue upon the findings and record of the Commission. The ZBOR may not reverse a decision of the Historic District Commission except on a finding of:
 - a. Prejudicial procedural error
 - b. Clear error
 - c. Lack of support by the weight of the evidence
 9. If the ZBOR overturns the decision of the Historic District Commission, the matter may be remanded to the Commission for further proceedings and/or final disposition consistent with the ZBOR's decision.
- E. When the ZBOR is sitting as the Board of Appeal under Chapter 23 of Title 45 of the General Laws (Land Development and Subdivision Review) a public hearing shall be held as a separate meeting from any ZBOR meeting, and separate minutes and records of votes shall be maintained. Such public hearings shall be conducted in the same manner as other administrative appeals [see Subsection D above], with the following exceptions:
1. The appeal shall be based on the findings and record of the Planning Board.
 2. No new evidence or exhibits shall be presented to the Board of Appeal.
 3. The appellant shall present the basis for his or her appeal, orally and/or in writing, and shall be given ample opportunity to explain why the administrative decision should be reversed.
 4. A Planning Board member designated by that Board to appear before the Board of Appeals, shall present the basis for the decision, orally and/or in writing, and shall be given ample opportunity to explain why the administrative decision should be affirmed.

5. If the ZBOR overturns the decision of the Planning Board, the matter shall be remanded to the Planning Board for further proceedings and/or final disposition consistent with the Board of Appeals' decision.
6. The ZBOR shall render its decision within ten days of the close of the public hearing.

V. Evidence.

- A. All witnesses shall be sworn by the Chairperson or his or her designee prior to testifying.
- B. In order to testify as an expert, a witness must first be recognized as an expert by the ZBOR or demonstrate his or her qualifications to render an opinion on the subject matter to the satisfaction of the ZBOR. If no member objects, the Chairperson may rule, after hearing the witness's qualifications, that the ZBOR accepts the witness as an expert. The Chairperson may also reserve the decision on the qualifications of the expert witness to render an opinion until the expert is actually asked to render an opinion. If a member objects, the witness may testify as an expert only by majority vote of the sitting members of the ZBOR.
- C. All witnesses may be questioned by ZBOR members and may be cross-examined by opposing counsel. The Chairperson may allow cross examination of witnesses by aggrieved parties without counsel or he/she may require such aggrieved parties to ask questions of the witnesses through the Chairperson. The Chairperson may request questions for witnesses other than by counsel be addressed to the Chairperson in writing for consideration.
- D. Any written statement, document or exhibit filed with the ZBOR not later than the day of the hearing or submitted at the hearing itself may be received and considered. No correspondence or other evidence pertaining to a particular petition or appeal shall be accepted by the ZBOR after the close of the public hearing, although the ZBOR may allow legal memoranda to be submitted after the close of the public hearing and prior to the decision.
- E. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in civil cases in the superior courts of this state shall be followed; but when necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be submitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The ZBOR shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties

will not be prejudiced substantially, any part of the evidence may be received in written form;

- F. Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;
- G. A party may conduct cross examination required for a full and true disclosure of the facts;
- H. Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the ZBOR's specialized knowledge; but parties shall be notified either before or during the hearing, or by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The ZBOR's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence.

VI. Voting and Decisions

- A. Only five active members shall be entitled to vote on any issue. An alternate member may vote only when sitting as an active member at the request of the Chairperson upon the absence, disqualification or recusal of a regular member.
- B. If the same five members, regular or alternate, have not participated in all hearings on a matter, a member who has missed one or more hearings may vote after stating on the record that he or she has reviewed transcripts and all exhibits of the missed meeting or meetings and has reviewed the documents in the record.
- C. The concurring vote of three members shall be necessary to reverse any order, requirement, decision or determination of the Planning Board, Historic District or of an administrative officer.
- D. The concurring vote of four members shall be required to approve a petition for a special-use permit or variance, or for approval of any other matter on which the ZBOR is authorized to render a decision.
- E. All decisions of the ZBOR for a variance or a special use permit must incorporate "Findings of Fact." The fact finding power of the ZBOR is comprehensive in its scope. In reaching a decision the ZBOR members must resolve evidentiary conflicts, make the prerequisite factual determination and apply proper legal principals.

- F. A decision may be modified without reopening the public hearing in order to correct typographical or other clerical errors, upon approval by the Chairperson, provided such modification does not change the substance of the decision.
- G. The decision shall include a record of how each member voted, the absence of a member or his or her failure to vote, the reasons for its decision, specific findings of fact, and any special conditions imposed by the ZBOR in approving a petition.
- H. The Chairperson of the ZBOR may request that counsel for prevailing parties prepare a draft of the Findings of Fact and decision for the ZBOR's signature. It shall be the responsibility of the Zoning Officer with assistance from the City Solicitor to draft the decision of any petition without legal counsel.
- H. The Chairperson of the ZBOR or, if designated by the Chairperson, the Zoning Officer, shall promptly certify ZBOR decisions by signing them and filing them in the office of the ZBOR and City Clerk, where they shall be available to the public.

VII. Similar Petitions (Administrative Finality)

- A. If a petition for a variance or a special-use permit has been withdrawn with prejudice or denied by the ZBOR, another petition requesting substantially the same relief may not be submitted until twelve (12) months from the date of such withdrawal with prejudice or the recording of the decision.
- B. A property owner may petition the ZBOR a second time with respect to the same property by:
 - 1. Submitting a “substantially” different petition.
 - and/or
 - 2. Demonstrating that a “substantial” or “material” change of circumstances has occurred since the first proceeding.
- B. Before the ZBOR may consider a similar petition within twelve (12) months of the hearing, it must first determine, by submitted evidence, whether the requirements of Section VII (B)(1) and/or (2) are met and must by a vote of at least 3 members answer that question in the affirmative.

VIII. Amendments

- A. These procedural rules may be amended by an affirmative vote of a majority of all members of the ZBOR, provided that public notice of the proposed amendment has been given at least 14 days before the public hearing at which the amendment is adopted.

- B. Any provision of these rules may be waived by a concurring vote of four of the active members sitting at a hearing unless the waiver is inconsistent with the Zoning Ordinance, the Comprehensive Plan, or Chapter 45-24 of the Rhode Island General Laws or any other applicable law.

IX. Effective Date

These Rules of Procedure have been adopted by the City of Newport Zoning Board of Review and shall be effective on November 24, 2003.

Peter O'Connell,
Chair

Rebecca McSweeney,
Acting Secretary