

This presentation is a summary of the fundamental elements of the zoning laws recently enacted at the State level. It is in no way exhaustive or comprehensive, and is intended to provide an introduction and understanding prior to the Public Hearing on the City's related ordinance amendments.

Overview of Zoning regulations & process

2023 Zoning Ordinance Amendments

History of zoning

Zoning was established to provide for public health and safety. It segregates uses, and sets dimensional limits for buildings to provide access to light and air.

- Zoning is barely **100 years old** in the United States.
- The earliest zoning laws were the Los Angeles Ordinances of 1908, and the New York City Zoning Resolution of 1916 which began the evolution of rules and guidelines that has given shape to that city and other cities since that time.
- Naturally, as zoning ordinances were imposed on existing parcels of land, legal suits arose and were adjudicated all the way to the **Supreme Court** in *Village of Euclid v. Ambler Realty Co.* (1926) which confirmed the **right of municipalities to impose guidelines, rules, and regulations for the betterment of the entire community.**

From national case law, to state law, to local regulations

- Enabling legislation at the State level allows the creation of municipal zoning ordinances.
- The ordinances created by a municipality need to be consistent with State enabling legislation.
- Zoning also needs to be consistent with the City's Comprehensive Plan.

H6059 sub A, S1032-A

- This is the first comprehensive update of the **Rhode Island Zoning Enabling Act** of 1991 since its enactment. It is an effort by State leaders to address issues Rhode Island communities are facing today.

From national case law, to state law, to local regulations

The zoning that is in place in Newport is a statute that was first implemented on April 13, 1977.

It's important to note, that since the majority of Newport was developed long before that date, most buildings do not conform to these "new" zoning requirements.



Local zoning code – adoption & amendments

- The City Council – adopts or amends the zoning ordinance
- The Planning Board – provides recommendations for consistency with the Comprehensive Land Use Plan and the purposes of zoning.



Photo: Newport Daily News

Local zoning code - implementation

For each parcel of land, zoning regulates:

- What types of uses are allowed
- Where structures can be located
- How high structures can be built

The Zoning Board of Review:

- Grants variances
- Grants special use permits
- Hears appeals as the Zoning Board of Appeals.



Local Zoning Officer

- Enforcement of the Zoning Ordinance
- Staff to the Zoning Board, the Board that grants relief from the requirements of the zoning ordinance
- Approval of Modifications - *NEW*

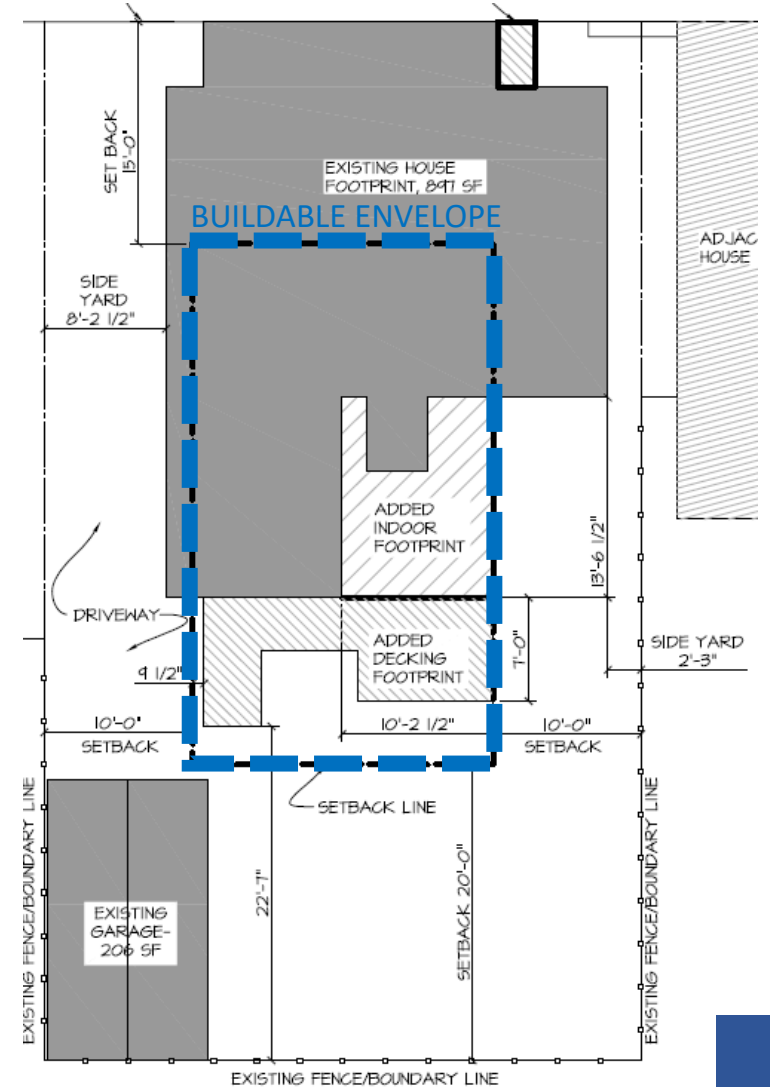


Required changes

1. **Proportionality.** Revising dimensional standards for substandard lots.
2. **Variances.** Revising the required findings for granting a variance.
3. **Modifications.** Allowing small-scale, administratively- approvable variances on any property.
4. **Special Use Permits.** Providing objective standards for all uses requiring a Special Use Permit.
5. **Unified Development Review.** Including this process to allow the Planning Board to approve variances and special use permits in certain circumstances.
6. **Adaptive Reuse.** A process that allows for the conversion of commercial buildings into residential units.

Nonconforming properties

- A significant amount of properties in Newport are classified as “substandard” in size (i.e. their lot size is smaller than the minimum size required in their zone).
- Approximately **89%** of R-10 properties do not meet minimum 10,000 sq.ft. of land area.
- This renders many structures on these properties “nonconforming” to other zoning requirements, typically setbacks and lot coverage.
- When property owners seek to expand their nonconforming structures, this almost always triggers variances and special use permits, leading to a large number of zoning applications each month.



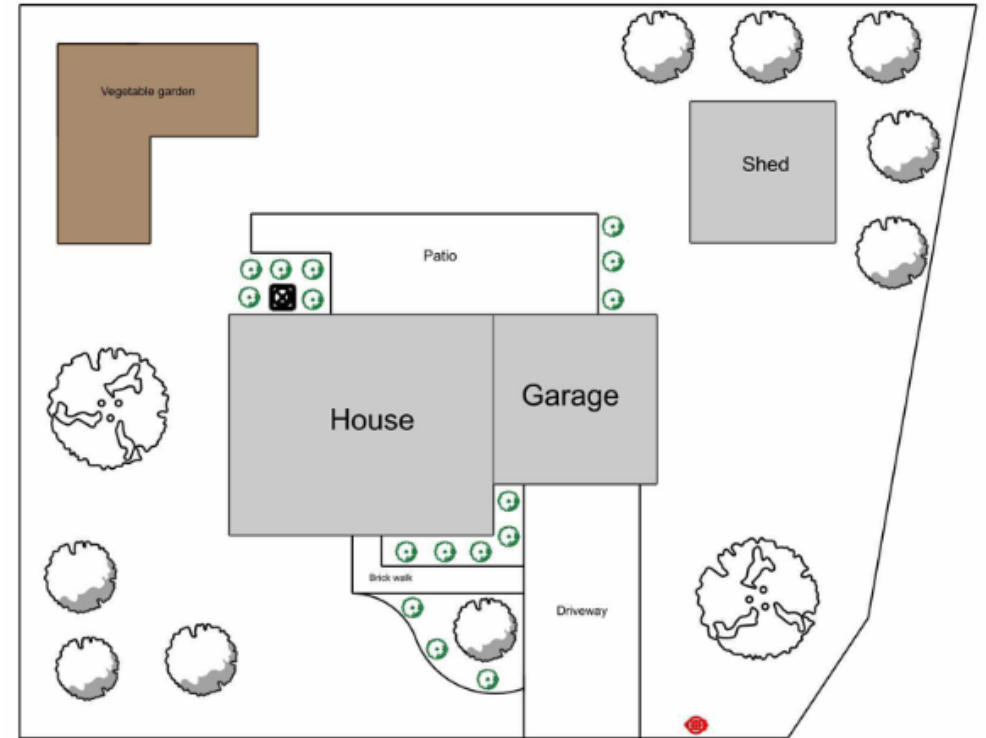
Substandard lots – proportionality

SUBSECTION 17.72.010.G (PAGE 32)

Cities must now revise dimensional standards for substandard lots:

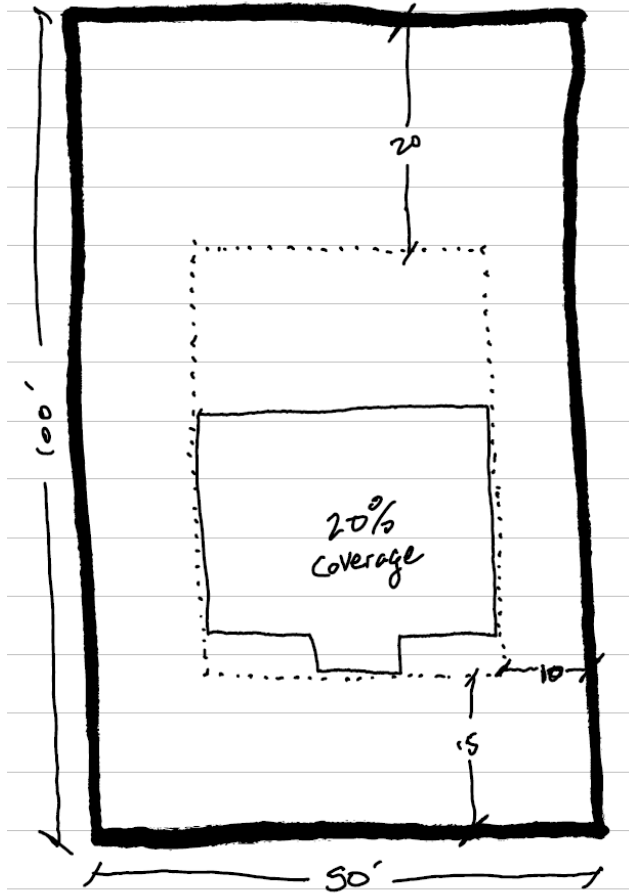
- Setbacks and lot width requirement for structures on substandard lots shall be reduced
- Lot coverage shall be increased proportionally to how substandard the property is.

This is unique for each property that is substandard in size



Substandard lots – 5,000 sq. ft. in R-10 zone

Current 5,000 sq.ft. lot

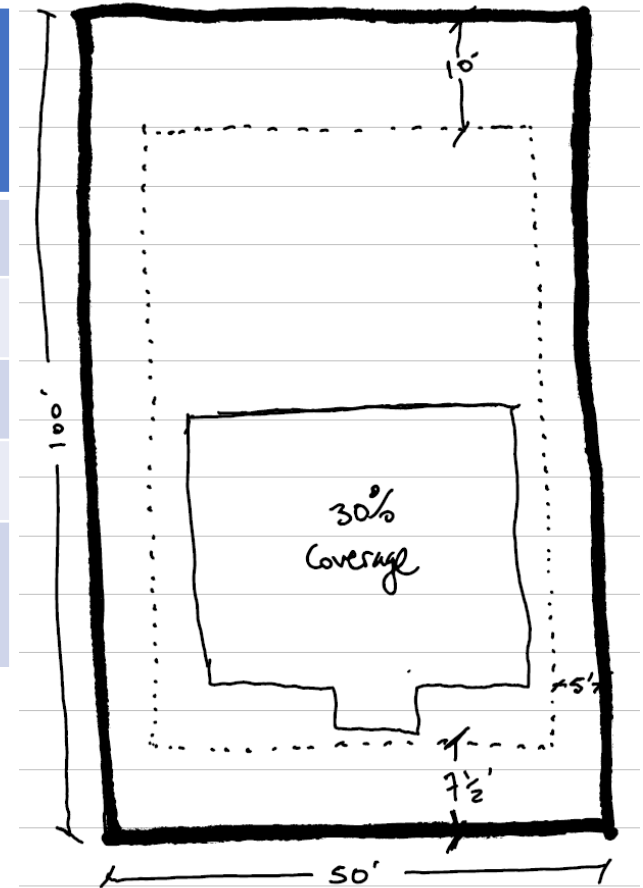


R10	Current Requirements	Substandard Lot Example
Lot area	10,000sf	5,000sf
Front setback	15'	7.5'
Side setback	10'	5'
Rear setback	20'	10'
Lot Coverage	20%	30%

20% coverage =
1,000 sq.ft.

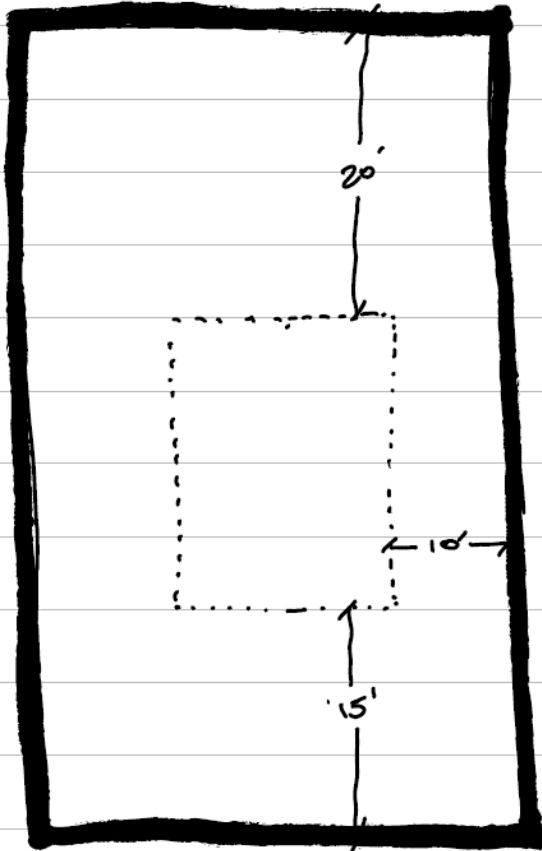
30% coverage =
1,500 sq.ft.

“Proportional” 5,000 sq.ft. lot



Substandard lots – 2,500 sq. ft. in R-10 zone

Current 2,500 sq.ft. lot
“Buildable Envelope”

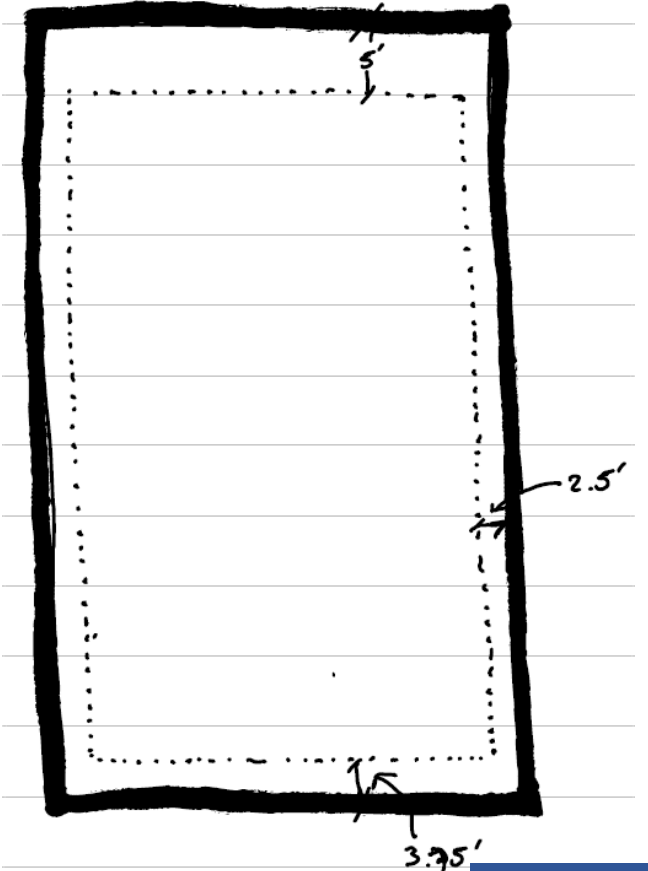


R10	Current Requirements	Substandard Lot Example
Lot area	10,000sf	2,500sf
Front setback	15'	3.75'
Side setback	10'	2.5'
Rear setback	20'	5'
Lot Coverage	20%	35%

20% coverage =
500 sq.ft.

35% coverage =
875 sq.ft.

“Proportional” 2,500 sq.ft. lot
“Buildable Envelope”



Substandard lots – proportionality calculator

Developed a calculator to quickly determine the new allowances

Zone
R-160

Lot Area: **24385**
Min. Lot Area 160000

Calculating % Deficient

$$\frac{24385 \text{ (L.S.)}}{160000 \text{ (M.L.S.)}} = 15.2\% \text{ (M.L.S. \%)}$$

$$100\% - 0.15240625 \text{ (M.L.S. \%)} = 84.8\% \text{ (\% Deficient)}$$

Lot Coverage

$$\frac{6\% \text{ (Permitted L.C.)}}{1} + \left(\frac{85\% \text{ (\% Deficient)}}{1} \times \frac{6\% \text{ (Permitted L.C.)}}{1} \right) = 11.1\% \text{ (New Lot Cov.)}$$

Setbacks

Front	$\frac{100 \text{ (Req. FYSB)}}{1} \times \frac{15.2\% \text{ (M.L.S. \%)}}{1} = 15.24 \text{ (New FYSB)}$
Side	$\frac{50 \text{ (Req. SYSB)}}{1} \times \frac{15.2\% \text{ (M.L.S. \%)}}{1} = 7.62 \text{ (New SYSB)}$
Rear	$\frac{50 \text{ (Req. RYSB)}}{1} \times \frac{15.2\% \text{ (M.L.S. \%)}}{1} = 7.62 \text{ (New RYSB)}$

A public version of the calculator is under development to be put on the City website

Variations – revisions to the required findings

SUBSECTION 17.108.020.C (PAGE 61)

Existing

- Is the variance the “least relief necessary”
- Provide proof of a hardship unique to the property
- 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.
- The granting of the variance will not alter the general character of the surrounding area.
- In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts 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.

Revised

- ~~Is the variance the “least relief necessary”~~
- Provide proof of a hardship unique to the property
- 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~~
- The granting of the variance will not alter the general character of the surrounding area.
- In granting a dimensional variance, that the hardship suffered by the owner of the subject property if the dimensional variance is not granted amounts to more than a mere inconvenience, **meaning that the relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is to be devoted.** 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.

Modifications – new concept for Newport

SUBSECTION 17.108.010 (PAGE 60)

- Modifications can be looked at as small-scale, administratively-approvable variances on any property.
- We are now State-mandated to allow modifications of at least 15%, and up to 25% relief from the “literal dimensional requirements”. ([We are recommending starting with 15%](#))
- Modifications include (but are not limited to) setbacks, lot coverage, and height.
- Will allow the Zoning Officer to review and approve minor variance requests and are in addition to the “proportionality” changes for substandard lots (which only affects setbacks and coverage).
- Two findings are required to be made, similar to variance findings.
- Abutters are allowed to object and force a public hearing at Zoning Board

Modifications - Examples

SUBSECTION 17.108.010 (PAGE 60)

*Modification request
Of 15%*

Applicant on a half-sized R-10 property proposes to build an addition that would:

- increase lot coverage from 30% (new baseline) to 34.5%
- Located 4' 3" from side property line (5' setback required); and
- Height proposed at 34.5' (30' limit)

*Modification request
Of 25%*

Applicant on a half-sized R-10 property proposes to build an addition that would:

- increase lot coverage from 30% (new baseline) to 37.5%;
- located 3'9" from side property line (5' setback required); and
- Height proposed at 37.5' (30' limit)

Special use permits - overview

CHAPTER 17.109 (PAGE 66-67)

- "Special use" is a permitted use, which requires a special use permit
- The enabling legislation requires local zoning code to “establish specific and objective criteria for the issuance of each type of use category of special-use permit..”
- To address this, special uses were grouped by intensity and impact into 6 categories

S-1

S-2

S-3

S-4

S-5

S-6

Special use permits – table of permitted uses

CHAPTER 17.14 (PAGE 20-29)

Use Type	Use	Residential Zones									Business & Commercial Zones					Innovation Hub Subdistricts			Open Space & Recreation	
		R-3	R-10	R-10A	R-20	R-40	R-40A	R-60	R-120	R-160	GB	LB	WB	CI	TM	UV	MT	MK	OS	RD
	Shopping centers	N	N	N	N	N	N	N	N	N	S-3	N	S-3	S-3	N	N	N	N	N	N
	Stores where goods are sold or service is rendered primarily at retail	N	N	N	N	N	N	N	N	N	Y	Y	Y	Y	N	Y	N	N	N	N
Vehicle Services																				
	A building for the inside storage of motor vehicles, wherein only light maintenance of the vehicles stored is allowed	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N
	Automobile dealership	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S-4	N	N	N	N
	Automobile repair shops	N	N	N	N	N	N	N	N	N	S-3	N	N	Y	N	N	N	N	N	N
	Automobile washing and cleaning establishments	N	N	N	N	N	N	N	N	N	N	N	N	Y	N	N	N	N	N	N
	Commercial parking lots	N	N	N	N	N	N	N	N	N	S-3	S-3	S-3	Y	N	N	N	N	N	N
	Gasoline filling stations (with minor repairing)	N	N	N	N	N	N	N	N	N	S-3	S-3	N	S-3	N	N	N	N	N	N
	Parking garage	N	N	N	N	N	N	N	N	N	N	N	N	N	N	S-4	S-4	N	N	N
Other																				
	Agricultural and horticultural societies	S-2	S-2	S-2	S-2	S-2	S-2	S-2	S-2	S-2	S-3	S-3	S-3	S-3	N	S-4	S-4	N	N	N
	Farms, truck gardens, nurseries, forestry, excluding the keeping of livestock and poultry for commercial purposes	N	N	N	N	N	N	N	Y	Y	N	N	N	N	N	N	N	N	N	N
	Home occupations	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	Y	N	N	Y	Y	N	N	N
	Residential scale wind energy system	N	Y	Y	Y	Y	Y	N	N	N	N	N	N	N	N	S-4	S-4	S-4	N	N
	Temporary housing for yachting organizations	N	N	N	S-2	Y	N	Y	Y	S-2	N	N	N	N	N	S-4	N	N	N	N

Key to the Table of Permitted Uses	
Y	Use is permitted by right
S-1	Use requires a Special Use Permit (SUP). The number refers to the SUP Category criteria required in Chapter 17.109 SPECIAL USE PERMITS.
N	Use is not permitted

Special use permits – criteria

SUBSECTION 17.109.020 (PAGE 67-69)

SUP Category 3 (S-3)

1. Chapter 17.104 – Parking and Loading Standards for the proposed use
2. Chapter 17.96.020 – Performance standards designated
3. Chapter 17.100. – Development Standards
4. For new construction and alterations exceeding 50% of any building dimension, provision of a minimum of 4 bicycle parking spaces located on site and within 100 ft of the entrance to the primary building.
5. For new construction and alterations exceeding 50% of any building dimension, provision of sidewalks connecting the parking area(s) and building entrance(s), and sidewalks connecting with public sidewalks and bicycle and scooter parking within 100 ft of the property lines.
6. No net increase in stormwater runoff from the site.
7. The proposed development shall not result in the reduction of the level of service (los) for roadways and intersections within 200ft of the property lines.
8. All proposed lighting is Dark-Sky compliant.
9. For new construction or renovations resulting in the upgrading of service, all utilities shall be installed underground.
10. For new construction, parking lots shall be located in the rear or side yard of the property.

Development standards – example

SUBSECTION 17.100 (PAGE 35)

17.100.400. Automobile repair shops.

Automobile repair shops are subject to the following conditions:

- A. All repair, service, and sales operations shall be performed within a fully enclosed building. All equipment and parts shall be stored indoors.
- B. Vehicle services establishments shall provide or preserve a landscape buffer. The buffer shall be a minimum of 6 ft in height and the plants spaced to provide a continuous screen at maturity.
- C. No partially dismantled, wrecked, or unlicensed vehicles shall be stored outdoors on the premises. This standard does not apply to vehicles under repair and/or service.
- D. No motor vehicles shall be stored and no repair and/or service work shall be conducted in the public right-of-way.



Unified development review (UDR)

CHAPTER 17.110 (PAGE 70)

Process, which allows the Planning Board to grant variances and special use permits as part of a subdivision and in the north end, also as part of a land development project.

- Streamlines municipal review process – application can receive planning and zoning approval from one review agency
- Process enabled in state law but adopted only by a few communities so far
- Newport has leveraged unified development review in the Innovation Hub zoning district
- **Now applicable citywide**
- Planning Board is required to make the same findings for granting variances and special use permits as the Zoning Board would
- Enables the same level of public participation

subdivision /
land development project + variance /
special use permit → UDR
by Planning Board

Adaptive reuse

SUBSECTION 17.14.040 (PAGE 30-31)

Adaptive reuse is a process, which encourages housing production by allowing for the conversion of commercial buildings into residential units

Advantages:

1. Permitted in all zoning districts
2. Applies also to mixed use developments as long as residential units make up at least 50% of the gross floor area of the converted building
3. No more than one (1) off-street parking space per dwelling unit required
4. Certain density bonuses
5. Existing dimensional non-conformities may remain



Photo: Congress for New Urbanism

Overview of Zoning Regulations and Process:

Questions