

**TOWN OF NARRAGANSETT
ZONING BOARD OF REVIEW
RULES OF PROCEDURE**

Pursuant to Sections 27 & 28 of the Zoning Ordinance of the Town of Narragansett (the “Zoning Ordinance”) and Section 45-24-56a of the General Laws of Rhode Island, as amended, the following Rules of Procedure for the Zoning Board of Review have been amended and adopted on January 31, 2023.

1. GENERAL

Unless otherwise stipulated in these rules or in the Zoning Ordinance, all meetings and hearings of Zoning Board of Review (“the Board”) will be conducted in accordance with these Rules of Procedure as interpreted by the Chair of the Board. The provisions of the Zoning Ordinance and these Rules of Procedure, along with the Zoning Enabling Statute (Chapter 45-24 of the General Laws of Rhode Island, as amended), shall govern all actions of the Board.

2. ORGANIZATION

OFFICERS

Pursuant to Section 27.2 of the Zoning Ordinance, the Board shall elect from its regular membership a Chair, a Vice Chair and a Secretary by a majority vote of its then-active members *including alternates* at the regular meeting in the month of January of each year.

In the event of a vacancy of an officer of the Board, at the first meeting thereafter such vacancy shall be filled by a majority 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.

Duties of the Officers

Chair

Meetings - The Chair, or in his /her absence the Vice-Chair, shall preside over all meetings and hearings of the Board, and shall, consistent with these Rules and the Zoning Ordinance, decide all points of order and procedure, administer oaths, compel attendance of witnesses, call special meetings, and make any assignments or undertake any other duty required in discharging the duties of the Board.

Decisions - Either the Chair, or the Vice Chair in the Chair’s absence or recusal, shall certify a decision of the Board by signing a written decision and associated Site Plan and causing the same to be recorded pursuant to Rhode Island law.

Secretary

The Secretary of the Board shall accept all exhibits from the applicant and any

opponents/abutters during the Public Hearing. He/She shall label and number each exhibit, identify who submitted it (applicant/opponent/abutter) and the date when it was submitted. The Secretary, along with the Chair (or Vice Chair as necessary) shall sign each Site Plan that is approved during the Public Hearing.

ADMINISTRATIVE STAFF

The Board is supported by the Building Inspections Office and the Department of Community Development through their administrative staffs. The Zoning Enforcement Officer will identify the necessary relief from the Zoning Ordinance for a project and inform the applicant of the need to seek relief from the Ordinance through the Board. The Community Development Staff will process all applications needing Board relief.

Each staff person in the Community Development office provides some level of assistance to the Board with application review. At a minimum, one member of the Community Development Staff or Building Official's staff, not including the Clerk of the Board, should be in attendance at every meeting of the Board in addition to the Zoning Enforcement Officer.

In addition to the Staff noted above who may directly or indirectly support the Board, the Town Solicitor also supports and advises the Board and Staff as necessary. The Town Solicitor - or his/her designee, shall be in attendance at each Board meeting for which a hearing is scheduled. The Town Solicitor shall also ensure that all aspects of the Board meetings, Public Hearings and decisions are carried out in a manner that is in compliance with the Town of Narragansett Zoning Ordinance (§731), the Rhode Island Open Meetings Act (R.I. Gen. Laws §42-46), and the Rhode Island Zoning Enabling Act (R.I. Gen. Laws §45-24).

AGENDA

The Community Development Department assists the Chair in setting the monthly agenda for the Board. The Agenda consists of applications that are considered to be complete and in conformance with the Comprehensive Plan and have received a review and recommendation from the Planning Board, when necessary.

3. MINUTES

- A. Minutes of each Board meeting shall be taken by the Zoning Clerk or, in his/her absence, a designated appointee. Minutes shall not necessarily constitute a full recitation of proceedings but shall be used to document the following in accordance with the RI Open Meetings Act:
1. The date, time and place of the meeting.
 2. The attendance or absence of each member of the Board.
 3. The individual vote of each member of the Board, including recusals and/or abstentions.
 4. Any other information relevant to the Board's business that any member of the public requests to be included or reflected in the Minutes; and,

5. A general summary of the proceedings and discussions including records of its examinations, findings of fact, and other official actions.
- B. A record of every vote taken at each Board meeting, listing how each member voted on each issue, will be made available to the public at the Community Development Department within two (2) weeks/14 calendar days of the date of the meeting. Unofficial draft minutes will be available by Administrative Staff within thirty-five (35) calendar days of the Board meeting or by the next regularly scheduled Board meeting, whichever is earlier, unless otherwise exempted. Official minutes shall be made available within 24 hours of the approval by the Board.
 - C. The minutes of prior meetings shall be accepted by a majority vote of the Board's then active members, including any alternates who were present for and voting members during the meeting in question. In addition to the minutes drafted by Staff, a full record of each Public Hearing shall be made. Administrative Staff shall arrange for a complete audio recording of each Public Hearing and/or recording of proceedings by a professional stenographer.

4. APPLICATION

- A. Applications for zoning relief or any Appeal for which the Board is authorized to render a decision, shall be filed on the appropriate form provided by the Zoning Enforcement Officer or Community Development Staff. Applications shall be filed in accordance with the provisions of the Zoning Ordinance, the procedures prepared and published by the Zoning Enforcement Officer, these Rules of Procedure, and any other state or local law governing the filing of such application or appeal.
- B. All applications shall be filed with the Office of Community Development and shall be submitted at least forty-five (45) calendar days before the meeting date on which such application may first be scheduled for Public Hearing. This timeframe may be waived for good cause as determined by the Director of Community Development. Applications are accepted for review once all required information has been submitted, and, no application is considered for scheduling until the Staff confirms that all relevant information has been received. The Zoning Officer, or Community Development Staff as authorized in Section 18.2 of the Zoning Ordinance, may waive a requirement for certain information if it is satisfactory to the Staff that the application may be considered without it. Applications that do not comply with submittal procedures will be considered incomplete and the applicant notified in writing by the Zoning Enforcement Officer and/or Community Development Staff.
- C. Periodically, a backlog of applications may occur, therefore complete applications will be taken in chronological order and be placed on the next available agenda. Where Site Plan Review by the Board is required, an application shall not be accepted as complete until it has been certified by the Planning Board or Staff, and a recommendation has been filed

with the Board.

- D.** Additional information/revisions shall be submitted for Staff review at least ten (10) business days prior to the scheduled public hearing in order to ensure Staff comment on the revisions. No information/revisions that may alter the type of relief necessary shall be submitted after the application has been advertised in the newspaper.

When 10 days or fewer remain prior to hearing, the Applicant may submit new/revised information for the file, however, Staff comment may not be available. The Applicant may submit any information at the Public Hearing. In such cases, the Board may choose to defer action to a later date in order to receive Staff advisory comment and/or Planning Board comment, or to provide adequate time for public review.

- E.** The Board shall have the right to require any additional information from the applicant that in their judgment is required for them to render a decision.
- F.** If required, certified mailing receipts must be received by the Clerk of the Board prior to opening the Public Hearing. Should the Applicant fail to provide the receipts, the Public Hearing will be deferred to a minimum of two months ahead on the regular schedule, and the applicant must provide receipts to the Clerk before the day of the Public Hearing.

5. MEETINGS AND HEARINGS

A “meeting” shall mean the convening of the Board for purposes of conducting Public Hearings or Business Meetings, as defined below:

“Public Hearing”: A “Public Hearing” shall mean the convening of the Board for a meeting required by the Open Meetings Act and Ordinance regarding all applications, petitions and appeals to the Board. Hearings shall be scheduled, noticed and conducted in accordance with the requirements of the Act, as described in Section IV herein. Public Hearings are ‘quasi-judicial’ in nature and are considered an avenue in affording “interested parties”, as well as the general public, the right to review the applicant’s proposal and to be heard on matters relevant to the Board’s authority. Hearings for Special Use Permits or Variances shall be conducted under “Robert’s Rules of Order”. The chairman shall recognize one speaker at a time. The Board encourages public participation in the application process and hearing but prohibits any outbursts or disruptions that will compromise the conduct of Public Hearings. Opponents/objectors shall not be allowed to interrupt any presenter or technical expert giving testimony.

“Business Meeting”: The Chair may call a “Business Meeting” for the conduct of general business of the Board, including but not limited to, organizational, educational, and other general business purposes. Such meetings shall be scheduled, noticed and conducted in accordance with the requirements of the Open Meetings Act.

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- A.** All meetings of the Board shall be open to the public as required in Title 42, Chapter 46 of the Rhode Island General Laws, as amended.
- B.** The annual schedule of regular meetings of the Board shall be set at the December meeting for the coming year ahead; all other meetings may be scheduled at the Board's discretion. The schedule of meetings will be forwarded to the Rhode Island Secretary of State early in the calendar year.
- C.** Notice of any Public Hearing shall be given by the Board in accordance with the requirements of Section 11.3 of the Narragansett Zoning Ordinance and RIGL §45-24.
- D.** For Public Hearings, four (4) participating members shall constitute a quorum. In the event of the absence/recusal of a regular member, the first alternate member shall actively participate and vote at the hearing. Where two regular Board members are absent, both the first and second alternates shall actively participate and vote. In the absence of four (4) active, voting members, there is no quorum with respect to the Public Hearing and the Public Hearing shall be continued to the next available meeting date for which sufficient membership will convene. No vote of the members shall be required to continue for a lack of quorum. No member or alternate may vote on any matter before the Board unless they have attended all hearings concerning that matter.
- E.** Continuances and Deferrals:
1. Continued Hearings: Once open, a Public Hearing may be continued to a future date, upon a finding of good cause, by a vote of the majority of the members of the Board, and no further public notice shall be required, provided the time, place, and date of the resumption of the hearing or meeting is announced at the time of continuance and is not subsequently changed. The hearing may be continued for as many meetings as may be required for receipt of all testimony.
 2. Deferred Hearings: In the event that an applicant is not prepared to open a hearing on the scheduled date, the scheduled hearing may be deferred to the following month, by permission of the Chair. Any second or subsequent deferral may be granted only for unique circumstances and shall be scheduled no less than two months into the future schedule. *If more than one deferral is authorized, a first class mailing specifying the new date of the hearing shall be sent at the applicant's expense to all property owners within the abutter radius at least 14 days prior to the hearing date. An affidavit certifying to such mailing shall be submitted to the Clerk of the Board prior to the day of the Public Hearing.*
- F.** The order of business of all meetings of the Board shall be as follows:
1. Call to Order/Roll Call/Administrative Matters
 2. Acceptance of minutes of prior meetings
 3. Old business including Public Hearings carried over from earlier meetings

4. New business including Public Hearings on new applications for special use permits and/or variances in the order in which the applications were accepted as complete
5. Reports from Staff/the Board
6. Announcements
7. Adjournment

Notwithstanding the above, the Chair - or in his/her absence the Vice-Chair, shall have the discretion to alter the order of business. Any change to this order shall be described to the public during “Administrative Matters”.

G. Public Hearings on any application for special use permit and/or variance shall be conducted in the following manner:

1. Announcement by the Chair.
2. Presentation of application by owner, applicant and/or authorized representative, including but not limited to any supporting documentation, expert witness testimony, or any other relevant evidence or testimony in support of the application.
3. Presentation by any “interested party” and/or their designated representative, including but not limited to any documentation, expert testimony, or any other relevant evidence or testimony in support or in opposition to the application.
4. Other public comment, both in support and opposition to the application. This may also include questions or concerns about details of the application without expression of support or objection. All questions of expert witnesses shall be directed through the Chair.
5. Review of Staff recommendations to the Board for the application.
6. Response/rebuttal by the applicant, owner, and/or “interested party”.
7. Closure of the Public Hearing.
8. Submission of memoranda of law (at the Board’s discretion).
9. Establishment of Findings of Fact.
10. Deliberation and Decision to approve, approve with conditions, or deny the application.

Notwithstanding the above, the Board, as recognized by the Chair, may question any party, agent, or witness at any time. Questions and cross-examination of witnesses shall be at the discretion of the Chair. The Chair, in his or her sole discretion, may limit each witness to a specific time period to assure opportunity for all interested parties to participate. Once recognized, each speaker will be given the right to complete his/her presentation/comment without interruption.

H. Public Hearings on appeals from decisions of the Planning Board, Historic District Commission or other public body may be represented by a member of that respective board or committee against which the appeal is filed. At no point in the Public Hearing for the appeal shall new evidence or exhibits be entered; the appeal is based only upon

the record created at the time of the original hearing. All other provisions of Section 4 above may apply.

- I. Public Hearings on appeals from decisions of the Zoning Officer, Administrative Officer or Building Official shall be announced by the Chair and the Zoning Officer/Building Official shall make an opening statement on the basis for the decision. The Appellant shall then make an opening statement as to why they disagree with the Officer and how they intend to prove that the decision was erroneous. The presentation of new evidence shall be allowed. All direct and cross examination of witnesses shall be at the discretion of the Chair. The Board may ask questions of the Appellant, the Zoning Officer, or any parties presenting argument to the Board at any time. All other provisions of Section 4 above may apply.

6. WITNESSES

- A. All witnesses shall be sworn by the Chair, or stenographer as directed by the Chair, prior to testifying.
- B. Any person can appear on his/her own behalf or be represented by an agent or attorney. However, if not an attorney, such agent should present written authorization to the Board signed by the property owner granting permission to represent.
- C. The Chair will accept an expert witness; however that decision may be overturned by the majority vote of the sitting Board members.
- D. All witnesses shall confine their testimony to issues relevant to the pending application or appeal. The Chair shall determine whether testimony is relevant and helpful to the Board in making its decision.

7. CONFLICT OF INTEREST

No member of the Board shall take part in the consideration, deliberation or determination of any matter before the Board in which he/she is a party or has a conflict of interest as defined by the State and/or Municipal Code of Ethics of the Town of Narragansett. The Codes of Ethics shall be liberally construed against participation so as to avoid any appearance of impropriety.

It shall be the responsibility of each member of the Board having a potential conflict of interest to disclose such conflict by verbally announcing their recusal and reasoning for the record of proceedings, and also by immediately thereafter completing a recusal form. The completed recusal form will be filed in the Zoning file associated with the subject application and a copy of the same will be mailed to the Rhode Island Ethics Commission by Administrative Staff as soon as possible. The minutes will indicate that the member has recused him/herself from consideration of the matter. A Board member who has recused him/herself shall leave the

Board's area and shall have all the rights of any citizen to address the Board, but must do so from the floor.

The Chair shall determine whether the "Rule of Necessity" requires participation of a member, despite a conflict or potential conflict of interest.

8. FINDING OF FACT

Upon closure of each Public Hearing, the Board shall establish Findings of Fact. These Findings may incorporate background information relevant to the site in question, but must include with specificity those facts that address the requested relief and their relationship to the relevant standards of review.

9. DECISION

Upon closure of any Public Hearing and establishment of Findings of Fact, the Board shall deliberate and articulate their determinations, noting the appropriate standards of review. Board Members are encouraged to express their opinions based on their Findings and in conveying their vote in favor or in dissent of an application. The Chair shall distinctly state and put to vote all motions verbally. When a verbal vote is not unanimous, a poll vote of each member shall be required for the record.

Should the Board approve a project with the requirement of a revised Site Plan, the Board grants the Community Development Staff authority to sign the revised Site Plan once it has been submitted and verified to adhere to the Board decision.

VARIANCES & SPECIAL USE PERMITS

In deciding an application for Variance(s) and/or Special Use Permit(s), the concurring vote of at least three (3) of the four (4) or (5) members of the Board sitting at a Hearing shall be required for approval.

ADMINISTRATIVE APPEALS

In deciding on an application brought forth as an Appeal, the concurring vote of three (3) of the four (4) or five (5) members of the Board sitting at a Hearing shall be required to reverse any order, requirement, decision or determination of the official or agency from whom the Appeal was taken.

PLATTING BOARD OF APPEALS

- A. When sitting as the Platting Board of Appeals in deciding on an application brought forth as an Appeal of a Decision of the Planning Board or Administrative Officer, the Board

shall hold a Public Hearing on the Appeal within a reasonable time of the receipt of the Appeal. The Hearing, which may be held on the same date and at the same place as a regular 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 taken and maintained as done with any other Public Hearing before the Board.

- B. Appeals to the Platting Board are not considered a de-novo hearing – they are based upon the documented record of the Planning Board’s hearing and actions.
- C. In deciding an appeal, the concurring vote of three (3) of the five (5) members of the Board sitting at a Hearing shall be required to reverse any order, requirement, decision or determination of the Planning Board or Administrative Officer.
- D. Findings and decisions of the Platting Board will be made in accordance with Section XII of the Subdivision and Land Development Regulations and Sections 45-23-66 through 45-23-70 of the Rhode Island General Laws, as amended.
- E. The decision shall include how each member voted, the recusal of any member, specific findings of fact and any special conditions imposed by the Board in deciding an application.
- F. Any decision may be modified without reapplication or Public Hearing in order to correct typographical or other clerical errors, upon approval by the Chair when such modification does not change the substance of the decision.

10. REPETITIVE OR INCOMPLETE APPLICATIONS AND WITHDRAWALS

- A. When findings cannot be made to support an approval, the Board shall deny an application with prejudice, or allow the withdrawal of an application with prejudice on other than procedural grounds. Where the Board denies, or allows withdrawal of an application with prejudice, the Board may not consider another application requesting the same relief for a period of one year from the date of such denial or withdrawal or from the date of final court action if the decision has been appealed. The only exceptions to the above are i) where there is an order to do so on remand by a court of competent jurisdiction, or ii) where the application is accompanied by an affidavit setting forth facts, to the satisfaction of a majority of the Board sitting at a prior hearing, showing a substantial change of circumstances justifying a rehearing.
- B. When an application has been filed with the Community Development Department, the applicant shall have 12 months from the filing of the original application to perfect any defects with the submittal. Should the applicant not perfect the application, or file for a withdrawal, the application will be deemed incomplete and will be removed from docketing. Notification will be sent to the applicant indicating the application has been closed and that no application will be accepted for the same project within one year of the

closing. The application fee will not be returned.

- C. Upon good cause shown by the applicant, the Board may grant leave to withdraw an application without prejudice. A petition by the applicant to withdraw an application without prejudice shall be submitted to the Board in writing prior to the close of the Public Hearing. A withdrawal without prejudice does not bar an applicant from filing the same application within the one-year limitations period.

11. AMENDMENT OR WAIVER OF PROCEDURAL RULES AND APPLICATION REQUIREMENTS

- A. These procedural rules and all application requirements may be amended by an affirmative vote of a majority of the members of the Board provided that public notice has been given that the Board intends to take such action at least fourteen (14) days prior to the Public Hearing at which the amendments shall be adopted.
- B. Any provision of the procedural rules or application requirements may be waived by a concurring vote of four out of five members of the Board 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, as amended.
- C. All provisions of these rules of procedure, when adopted or amended, shall be provided to the Narragansett Town Council for receipt and placement of file.

12. EFFECTIVE DATE

These Rules of Procedure have been adopted by the Zoning Board of Review and shall be effective on [April 20, 2017], and as amended January 31, 2023 & August 17, 2023