



MIDDLETOWN
Rhode Island

PLANNING DEPARTMENT

TOWN OF MIDDLETOWN

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MEMORANDUM

To: Paul A. Croce, Chairman
Planning Board Members

From: Ron Wolanski, Town Planner

Date: May 22, 2023

Re: Planning Board Policies Draft Revisions

During recent meetings the Board has discussed a desire to have clear policies in place relative to communicating recommendations to the Zoning Board of Review on DPR applications, and on the procedure for responding to appeals of Planning Board decisions. Chairman Croce provided the Board with draft language to consider, which the staff has been asked to incorporate into the Board's policies.

Please see the attached draft revisions to the Board's adopted policies document. In addition to the items noted above, the revisions also include updates to reflect a change to state law regarding quorum and voting, and a change in the Town's application submission timeframe due to changes to newspaper advertising deadlines. The draft has been sent to the Town Solicitor for review and comment.

Please contact me with any questions.

cc. Town Solicitor

**TOWN OF MIDDLETOWN
PLANNING BOARD**

POLICIES AND RULES OF PROCEDURE

Adopted December 8, 2021, Amended _____, 2023

PREAMBLE

The purpose of these Rules of Procedure is to establish uniform procedures for the transaction of business coming before the Middletown Planning Board. These Rules are adopted pursuant to R.I.G.L. § 45-23-51 and Section 32.46 of the Middletown Code of Ordinances (the “Code”), authorizing the Planning Board to adopt such rules.

Unless otherwise provided herein, all terms used have the definitions assigned by the Code. To the extent a definition is inconsistent with the Code, the definition of the Code shall prevail. Nothing herein shall be construed to contradict or amend the Code, nor shall these procedures be construed to contradict the application or interpretation of any applicable law.

RULES

1. The Board will generally hold its regular meeting on the second Wednesday of each month, or on such other day as the Board may determine. Special meetings shall be held at the call of the Chairman or on the written request of three members of the Board.
2. The Board will post an Agenda prior to any meeting at least forty-eight (48) hours prior to the meeting, in accordance with R.I.G.L. § 42-46-6.
3. Applications for minor and major subdivisions and land development projects, as well as applications for Development Plan Review, must be submitted to the Planning Department by the second Wednesday of the month at least three weeks prior to any meeting in order to be considered for inclusion on the following month’s regular meeting agenda for the said meeting. All such applications must contain all materials required by the applicable submission checklist and must be certified complete by the Administrative Officer in order to be placed on the agenda. Current application forms and checklists can be found on the Town’s website.
4. Applications for administrative subdivisions may be made at any time for review and approval by the Administrative Officer. Applications may be placed on the agenda for the next scheduled Planning Board meeting at the discretion of the Administrative Officer, or if specifically requested by the applicant, provided that a complete application is submitted and received prior to publication of the meeting agenda.
5. Applications will be placed on the agenda in the order in which complete applications are received.
6. Any application included on the agenda and continued at the applicant’s request for a cumulative period totaling at least six (6) months shall be removed from the agenda and

considered tabled until such time as the Board is notified that the applicant is prepared to proceed. Any costs related to the need to readvertise and/or renotify abutters for a public hearing shall be borne by the applicant. Absent good cause shown, any application included on the agenda and continued at the applicant's request or tabled for a cumulative period totaling at least twelve (12) months shall be removed from the agenda and shall be considered withdrawn without prejudice.

7. The Board consists of a Chair, Vice-Chair, Secretary, and four other members. For any meeting to be held, four members of the seven-member Board must be present to constitute a quorum.
8. Any action of the Board must be approved by a majority of the members present and voting, ~~except that approval of an application for subdivision or land development project requires a majority vote of the current Planning Board membership.~~
9. No member may vote on any matter in which said member has an interest or conflict; during the hearing on any item to which a member has an interest or conflict, said member shall recuse and step down from the dais until the hearing on said item is complete.
10. The Board may hear Agenda items in any matter it so chooses.
11. On all applications, including those requiring a public hearing, the Board will hear from the applicant first, and then from any objectors represented by counsel. Applicants and objectors must either be self-represented or represented by an attorney.
12. Following presentations of the applicant and any objectors represented by counsel, the Board will open the hearing for public comment. Any member of the public with standing may be heard.
13. After closing the public hearing, the Board will hold discussion on the application. Following discussion, on motion of any member, duly seconded, a voice-vote for approval of the application with or without conditions, shall be held.
14. The Secretary of the Board will cause minutes of all meetings to be taken and maintained.
15. Robert's Rules of Order shall govern the Board in all instances in which they are applicable and in which they are not inconsistent with these rules, the Code or applicable law.
16. During any meeting, any applications not reached before 9:00 pm will be continued to the next regular monthly Planning Board meeting, or to a special meeting if so scheduled. Any non-application items not reached may be discussed and acted upon after 9:00 pm at the discretion of the Board.

17. Development Plan Review (DPR) Applications

- a. When a Development Plan Review application does not require a special use permit or variance to be issued by the Zoning Board of Review, the Planning Board is the permitting authority and its review results in a final decision on the application.
- b. When a project that requires Development Plan Review approval also requires a special use permit and/or variance from the Zoning Board of Review, the review by the Planning Board, including consideration of any requested waivers, is advisory only to the permitting authority, which is the Zoning Board.
- c. If review by the Zoning Board is required, the documents which the Zoning Board of Review receives when considering the Development Plan Review application are as follows: the written Advisory Opinion/Decision of the Planning Board, the Development Plan Review Application and exhibits thereto, comments from the Technical Review Committee, and comments from the Town's consulting engineer, if applicable. Other materials that are presented to the Planning Board as part of the review process, such as exhibits provided at the public hearing, are not provided to the Zoning Board, unless those materials are also provided to the Zoning Board by the Applicant on their own initiative. As a result, The Planning Board's written decision should be sufficiently detailed so that the rationale for recommending approval or denial of the DPR application is made clear to the Zoning Board of Review.

18. Appeals of Planning Board Decisions

- a. According to R.I. Gen. Laws § 45-23-70, when a Planning Board decision is appealed to the Zoning Board of Review, the Zoning Board of Review, sitting as the Planning Board of Appeals, is charged with answering three questions regarding the actions of the Planning Board. The Zoning Board of Review cannot reevaluate the merits of the application, but rather must focus only on answering these three questions:
 - i. Was prejudicial procedural error involved?
 - ii. Was a clear error made?
 - iii. Was there a lack of support by the weight of the evidence in the record?
- b. Notice of an appeal must be provided to the Planning Board by providing a copy of the Zoning Board of Review's notice of the appeal to the Administrative Officer of the Planning Board.
- a.c. Once the notice of appeal is received, the entire record of the proceedings before the Planning Board are transmitted to the Zoning Board of Review.