

Draft Amendments to the Zoning Ordinance and the Rules and Regulations Regarding the Subdivision and Development of Land per S1034A & S1038A

Proposed amendments are identified below in red type, with text to be removed ~~struck~~ and text to be added underlined.

Regulations Article 2 - DEFINITIONS

As used in these Rules and Regulations, the following definitions shall apply where words or phrases used in this chapter are defined in the definitions section of either the “Rhode Island Comprehensive Planning and Land Use Regulation Act,” section 45-22.2-4, or the “Zoning Enabling Act of 1991,” section 45-24-31, they shall have the meanings stated therein. In addition, the following words or phrases shall have the following meanings.

Abutter. One whose property abuts, that is, adjoins at a border, boundary, or point with no intervening land, or being separated from such a common border by a right-of-way, alley, or easement.

Administrative Officer. ~~The municipal official designated by these rules and regulations to administer the land development and subdivision regulations and to coordinate with local boards and commissions, municipal staff and state agencies. The municipal official(s) designated by the local regulations to administer the land development and subdivision regulations and to review and approve qualified applications and/or coordinate with local boards and commissions, municipal staff and state agencies as set forth herein.~~ The municipal official(s) designated by the local regulations to administer the land development and subdivision regulations and to review and approve qualified applications and/or coordinate with local boards and commissions, municipal staff and state agencies as set forth herein. For purposes of these Rules and Regulations, the Town Planner is designated as the Administrative Officer.

Administrative subdivision. ~~Re-subdivision of existing lots which yields no additional lots for development, and involves no creation or extension of streets. The re-subdivision only involves divisions, mergers, mergers and division, or adjustments of boundaries of existing lots. Subdivision of existing lots which yields no additional lots for development and involves no creation or extension of streets. This subdivision only involves division, mergers, mergers and division, or adjustments of boundaries of existing lots.~~ Subdivision of existing lots which yields no additional lots for development and involves no creation or extension of streets. This subdivision only involves division, mergers, mergers and division, or adjustments of boundaries of existing lots.

Applicant. The applicant for subdivision approval by the Planning Board, which also includes his/her authorized agents or representatives. For purposes of these Rules and Regulations, the terms applicant, subdivider and developer shall be synonymous.

Base Flood Elevation. The water surface elevation of the base flood.

Base Flood. The flood having a one percent chance of being equaled or exceeded in any given year; i.e., flood resulting from a 100-year frequency storm.

Board of appeal. ~~The local review authority for appeals of actions of the Administrative Officer and the Planning Board on matters of land development or subdivision, which is the local Zoning Board of Review constituted as the Board of Appeal. The local review authority for appeals of actions of the administrative officer, which shall be the local zoning board of review constituted as the board of appeal.~~ The local review authority for appeals of actions of the administrative officer, which shall be the local zoning board of review constituted as the board of appeal. See R.I.G.L. 45-23-57.

Bond. See improvement guarantee.

Buildable lot. A lot where construction for the use(s) permitted on the site under the local Zoning Ordinance is considered practicable by the Planning Board, considering the physical constraints to development of the site as well as the requirements of the pertinent federal, state and local regulations. See R.I.G.L. 45-23-60 (4).

Certificate of completeness. ~~A notice issued by the Administrative Officer informing an applicant that the application is complete and meets the requirements of the municipality's regulations, and that the applicant may proceed with the approval process.~~ A notice issued by the administrative officer informing an applicant that the application is complete and meets the requirements of the municipality's regulations, and that the applicant may proceed with the review process.

Concept plan. A drawing with accompanying information showing the basic elements of a proposed land development plan or subdivision as used for pre-application meetings and early discussions, and classification of the project within the approval process.

Conservation Development (CSD). A site planning technique which bases the layout of building lots and structures on the natural characteristics of the land and reduces lot sizes so that the remaining land can be used for recreation, common open space, and/or preservation of environmentally, historically and culturally sensitive features and/or structures. The number of developable lots created and the overall development density is no greater than what is permitted under conventional development.

Conservation Development Design Process. The process used to determine the layout of building lots, development, open space, and other improvements in a Conservation Subdivision/Land Development Project. Consists of five steps: 1) Understanding the site, 2) Evaluating Site Context, 3) Designating the Required Open Space, 4) Locating Development Areas, and 5) Drawing in Lot Lines.

Consistency with the comprehensive plan. A requirement of all local land use regulations which means that all these regulations and subsequent actions are in accordance with the public policies arrived at through detailed study and analysis and adopted by the municipality as the comprehensive community plan as specified in R.I.G.L. 45-22.2-3.

Conventional Development. A subdivision or land development project in which an entire parcel of land is typically converted into privately owned building lots and public street rights-of way. Generally, lots are of equal size and spread evenly throughout the parcel with little or no consideration of the natural setting or environmental and cultural features of the land.

Dedication, fee-in-lieu-of. Payments of cash which are authorized in the local regulations when requirements for mandatory dedication of land are not met because of physical conditions of the site or other reasons. The conditions under which the payments will be allowed and all formulas for calculating the amount shall be specified in advance in the local regulations. See R.I.G.L. 45-23-47.

Development. Any made-made change to improved or unimproved real estate; including but not limited to buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operation.

Development plan review. ~~Design or site plan review of a development of a permitted use. A municipality may utilize development plan review under limited circumstances to encourage development to comply with design and/or performance standards of the community under specific and objective guidelines, for developments including, but not limited to:~~

- (i) Developments specified in Section 306 of the Zoning Ordinance, Chapter 152, or where otherwise called for in the Zoning Ordinance
- (ii) A change in use at the property where no extensive construction of improvements is sought;

- (iii) An adaptive reuse project located in a commercial zone where no extensive exterior construction of improvements is sought;
- (iv) An adaptive reuse project located in a residential zone which results in less than nine (9) residential units;
- (v) Development in a designated urban or growth center;
- (vi) Institutional development design review for educational or hospital facilities; or
- (vii) Development in a historic district.

Development regulation. Zoning, subdivision, land development plan, development plan review, historic district, official map, flood plain regulation, soil erosion control or any other governmental regulation of the use and development of land.

Division of land. A subdivision.

Endorsement. The approval of a final subdivision plat by means of signature on final plat drawings by the Chairman of the Planning Board or, in his absence, the Secretary, allowing the recording of the plat in the land evidence records of the Town.

Environmental constraints. Natural features, resources, or land characteristics that are sensitive to change and may require conservation measures or the application of special development techniques to prevent degradation of the site, or may require limited development, or in certain instances, may preclude development. See also physical constraints to development.

Final plan. The final stage of land development and subdivision review.

Final plat. The final drawing(s) of all or a portion of a subdivision to be recorded after approval by the Planning Board and any accompanying material as described in these regulations and/or required by the Planning Board.

Flood area, gross. See R.I. State Building Code.

Flood Plain. The term “flood plain” means that the land area adjacent to a river, stream, Narragansett Bay or other body of flowing or standing water, which is susceptible to being inundated by water from the base flood (100-year flood).

Floodway. The term “floodway” means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge a 25-year frequency storm without cumulatively increasing the water surface elevation more than a designated height.

Governing body. The Town Council.

Improvement. Any natural or built item which becomes part of, is placed upon, or as affixed to, real estate.

Improvement guarantee. A security instrument accepted by the Town to ensure that all improvements, facilities, or work required by the land development and subdivision regulations, or required by the Town as a condition of approval, will be completed in compliance with the approved plans and specifications of a development.

Land-development project. A project in which one or more lots, tracts, or parcels of land or a portion thereof are developed or redeveloped as a coordinated site for one or more uses, units, or structures, including but not limited to, planned development or cluster development for residential commercial, institutional, recreational, open space, or mixed uses.

Local regulations. The land development and subdivision review regulations adopted under the provisions of R.I.G.L. 45-23. For purposes of clarification, here reference is made to local regulations, it is to be understood as these Rules and Regulations for the Subdivision of Land in the Town Of Middletown, Rhode Island and all related ordinances and rules properly adopted pursuant to R.I.G.L. 45-23.

Maintenance guarantee. Any security instrument which may be required and accepted by the Town to ensure that necessary improvements will function as required for a specific period of time. See improvement guarantee.

~~Major land development plan. Any land development plan not classified as a minor land development plan.~~

~~Major land development project. A land development project which exceeds the thresholds for a minor land development project as set forth in this section.~~

~~Major subdivision. Any subdivision not classified as either an administrative subdivision or a minor subdivision. A subdivision creating ten (10) or more buildable lots.~~

~~Master plan. An overall plan for a proposed project site outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, rather than giving full engineering details. Required in major land development or major subdivision review. An overall plan for a proposed project site outlining general, rather than detailed, development intentions. It describes the basic parameters of a major development proposal, rather than giving full engineering details. Required in major land development or major subdivision review only. It is the first formal review step of the major land development or major subdivision process and the step in the process in which the public hearing is held.~~

~~Minor land development planproject. A development plan for a residential project as defined in these rules and regulations, provided that the development does not require waivers or modifications as specified in these rules and regulations. All non-residential land development projects are considered major land development plans. Minor land development project. A land development project involving any one of the following:~~

- ~~a. Seven thousand five hundred (7,500) gross square feet of floor area of new commercial, manufacturing or industrial development; or less, or~~
- ~~b. An expansion of up to fifty percent (50%) of existing floor area or up to ten thousand (10,000) square feet for commercial, manufacturing, or industrial structures; or~~
- ~~c. Mixed-use development consisting of up to six (6) dwelling units and two thousand five hundred (2,500) gross square feet of commercial space or less.~~
- ~~d. Multi-family residential or residential condominium development of nine (9) units or less.~~
- ~~e. Change in use at the property where no extensive construction of improvements are sought.~~
- ~~f. An adaptive reuse project of up to twenty-five thousand (25,000) square feet of gross floor area located in a commercial zone where no extensive exterior construction of improvements is sought.~~
- ~~a-g. An adaptive reuse project located in a residential zone which results in less than nine (9) residential units.~~

~~Minor subdivision. A plan for subdivision of land consisting of five (5) or fewer units or lots, provided that such subdivision does not require waivers or modifications as specified herein~~
Minor subdivision. A subdivision of land creating nine (9) or fewer buildable lots.

Modification of requirements. See Section 908.

Open Space. Any parcel or area of land or water set aside, dedicated, designated, or reserved for public or private use or enjoyment or for the use and enjoyment of owners and occupants of land adjoining or neighboring

the open space, provided that the area may be improved with only those buildings, structures, streets, and off-street parking, and other improvements that are designed to be incidental to the natural openness of the land.

Parcel. A lot, or contiguous group of lots in single ownership or under single control, and usually considered a unit for purposes of development. Also referred to as a tract.

Parking area or lot. All that portion of a development that is used by vehicles, the total area used for vehicular access, circulation, parking, loading or unloading.

Permitting authority. ~~The local agency of town government specifically empowered by state enabling law and local ordinance to hear and decide on specific matters pertaining to local land use~~ The local agency of government, meaning any board, commission or administrative officer specifically empowered by state enabling law and local regulation or ordinance to hear and decide on specific matters pertaining to local land use.

Phased development. Development, usually for large-scale projects, where construction of public and/or private improvements proceeds by sections subsequent to approval of a master plan for the entire site. See Section 509 and Section 518.

Physical constraints to development. Characteristics of a site or area, either natural or man-made, which present significant difficulties to construction of the uses permitted on that site, or would require extraordinary construction methods. See also environmental constraints.

Planning Board. The Planning Board of the Town Of Middletown, Rhode Island. Also referred to as the "Board" in these Rules and Regulations.

Plat. A drawing or drawings of a land development or subdivision plan showing the location, boundaries, and lot lines of individual properties, as well as other necessary information as specified in these regulations.

Pre-application conference. An initial meeting between developers and municipal representatives which affords developers the opportunity to present their proposals informally and to receive comments and directions from the municipal officials and others. See Section 402.

Preliminary plan. ~~The required stage of land development and subdivision review which requires detailed engineered drawings and all required state and federal permits. Section 407 C A required stage of land development and subdivision which generally requires engineered drawings.~~

Public improvement. Any street or other roadway, sidewalk, pedestrian way, tree, lawn, off-street parking area, drainage feature, or other facility for which the local government and other governmental entity either is presently responsible, or will ultimately assume the responsibility for maintenance and operation upon municipal acceptance.

Public informational meeting. ~~A meeting for the Planning Board or governing body preceded by a notice, open to the public and at which the public is heard.~~

~~Re-subdivision. Any change of an approved or recorded subdivision plat or in a lot recorded in the municipal land evidence records, or that affects the lot lines of any areas reserved for public use, or that affects any map or plan legally recorded prior to the adoption of the local and development and subdivision regulations. For the purposes of these Rules and Regulations any such action constitutes a subdivision.~~

Riverine. The word “riverine” means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

Significant environmental impacts. Any activity which is likely to permanently or repeatedly degrade or destroy the quality of the air, water, soil, wetlands, or wildlife habitat; or which presents unacceptable risks to the public health.

Site Analysis Map. A map depicting natural, cultural, and recreational resources, as well as topography and infrastructure of the lot or lots being subdivided or developed.

Site Context Map. An aerial photograph showing the area within a one-mile radius of the property and delineating natural, cultural, and recreational resources.

Storm water detention. A provision for storage of storm water runoff and the controlled release of the runoff during and after a flood or storm.

Storm water retention. A provision for storage of storm water runoff.

Street. A public or private thoroughfare used, or intended to be used, for passage or travel by motor vehicles. Streets are further classified by the functions they perform. See street classification.

Street, access to. An adequate and permanent way of entering a lot. All lots of record shall have access to a public street for all vehicles normally associated with the uses permitted for that lot.

Street, alley. A public or private thoroughfare primarily designed to serve as secondary access to the side or rear of those properties whose principal frontage is on some other street.

Street, cul-de-sac. A local street with only one outlet and having an appropriate vehicular turnaround, either temporary or permanent, at the closed end.

Street, limited access highway. A freeway or expressway providing for through traffic. Owners or occupants of abutting property or lands and other persons have no legal right to access, except at the points and in the manner as may be determined by the public authority having jurisdiction over the highway.

Street, private. A thoroughfare established as a separate tract for the benefit of multiple, adjacent properties and meeting specific, municipal improvement standards. This definition does not apply to driveways.

Street, public. All public property reserved or dedicated for street traffic.

Street, stub. A portion of a street reserved to provide access to future development, which may provide for utility connections.

Street classification. A method of roadway organization which identifies a street hierarchy according to function within a road system, that is, types of vehicles served and anticipated volumes, for the purposes of promoting safety, efficient land use and the design character of neighborhoods and districts. Local classifications shall use the following as major categories:

Arterial. A major street that serves as an avenue for the circulation of traffic into, out of, or around the municipality and carries high volumes of traffic.

Collector. A street whose principal function is to carry traffic between local streets and arterial streets but that may also provide direct access to abutting properties.

Local. Streets whose primary function is to provide access to abutting properties.

Subdivider. Any persons who (1) having an interest in land, causes it, directly or indirectly, to be divided into a subdivision or who (2) directly or indirectly sells, leases, or develops, or offers to sell, lease, or develop, or advertises to sell, lease or develop, any interest, lot, parcel, site, unit, or plat in a subdivision, or who (3) engages directly or through an agent in the business of selling, leasing, developing, or offering for sale, lease, or development a subdivision or any interest, lot, parcel, site, unit, or plat in a subdivision.

Subdivision. ~~The division or re-division, of a lot, tract or parcel of land into two or more lots, tracts, or parcels. Any adjustment to existing lot lines of a recorded lot by any means is considered a subdivision. All re-subdivision activity is considered a subdivision. The division of property for purposes of financing constitutes a subdivision. The division of a lot, tract or parcel of land into two or more lots, tracts, or parcels or any adjustment to existing lot lines is considered a subdivision.~~

Technical Review Committee. A committee appointed by the Planning Board for the purpose of reviewing, commenting, and making recommendations to the Planning Board with respect to approval of land development and subdivision applications.

Temporary improvement. Improvements built and maintained by a developer during construction of a development project and prior to release of the improvement guarantee, but not intended to be permanent.

Town. The word "Town" shall mean the Town of Middletown, Rhode Island.

Vested rights. The right to initiate or continue to development of an approved project for a specified period of time, under the regulations that were in effect at the time of approval, even if, after the approval, the regulations change prior to the completion of the project.

Yield Plan. Plan of a conventional subdivision or land development used to demonstrate development potential, including the basic number of lots to be allowed in a conservation subdivision plan, based on the zoning and development requirements of the underlying zoning district.

Regulations Article 4 - PROCEDURES FOR SUBDIVISION AND LAND DEVELOPMENT APPROVAL

Section 401 - General

A. Any person proposing to subdivide or develop any land in the Town Of Middletown shall submit an application to the Planning Board or, in the case of an administrative subdivision, to the Administrative Officer for approval, or for referral to the Planning Board and/or its Technical Review Committee, as appropriate. No plat of a subdivision or development of land in the Town shall be accepted for filing or recording in the land evidence records of the Town until it shall have been approved by the Planning Board or Administrative Officer, and such approval entered in writing on the plat by the Chairman or Secretary of the Board or the Administrative Officer in the case

of an administrative subdivision or of a development requiring Development Plan Review ("DPR").

B. Whenever any subdivision of land is proposed, before any development shall take place thereon, before any permit for the erection of a structure shall be granted, and before any lot within said subdivision shall be sold, the owner of said land, or his designated representative, shall apply for and secure approval of such proposed subdivision in accordance with the following procedures.

C. Classification and Certification of Completeness.

a. Classification. The administrative officer shall advise the applicant as to which category of approval is required for a project. An applicant shall not be required to obtain both land development review and development plan review for the same project. The following categories of applications may be filed:

1. Subdivisions. Administrative subdivisions, minor subdivisions, or major subdivisions;
2. Land development projects. Minor land development or major land development; and
3. Development plan review.

b. Certification of a complete application. An application shall be complete for purposes of commencing the applicable time period for action when so certified by the administrative officer. Every certification of completeness required by this chapter shall be in writing. In the event the certification of the application is not made within the time specified in this chapter for the type of plan, the application is deemed complete for purposes of commencing the review period unless the application lacks information required for these applications as specified in the local regulations and the administrative officer has notified the applicant, in writing, of the deficiencies in the application. Depending on application type, see section 405, 406, 407, or 1005 of these regulations.

Section 406 - Procedures for Minor Land Development and Minor Subdivision Approval

~~A. Review Stages~~

~~Minor plan reviews consists of two stages, preliminary and final, provided that if a street creation or extension is involved, a public hearing is required. The Planning Board may combine the approval stages, provided requirements for both stages have been met by the applicant to the satisfaction of the Administrative Officer. Applications for GSD also require a pre-application meeting.~~

~~B. Submission requirements~~

~~Any applicant requesting approval of a proposed minor subdivision or minor land development, as defined in these Rules and Regulations, shall submit to the Administrative Officer the items~~

~~required by the Minor Subdivision Checklist (Appendix A) at least three weeks prior to the Planning Board meeting at which the applicant desires to be heard.~~

~~If a pre-application meeting is required or requested, the items required by the Pre-application Checklist (Appendix A) shall be submitted prior to the pre-application meeting.~~

~~—C.—Certification~~

~~The application shall be certified complete or incomplete by the Administrative Officer within the timeframe prescribed by R.I.G.L. 45-23-38. The running of the time period set forth in this section will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than the timeframe prescribed by R.I.G.L. 45-23-38 days after its resubmission.~~

~~—D.—Administrative Review~~

~~The Administrative Officer shall review the application and shall comment and make recommendations to the Planning Board. The application shall be referred to the Planning Board for review and approval.~~

~~—E.—Re-assignment to Major Review~~

~~The Planning Board shall re-assign a proposed minor project to major review only when the Planning Board is unable to make the positive findings required in Section 404.~~

~~—F.—Decision~~

~~—1.— If no street creation or extension is required, the Planning Board will approve, deny or approve with conditions the preliminary plan within the timeframe prescribed by R.I.G.L. 45-23-38, or within any further time that is agreed to by the applicant and the board, according to the requirements of Section 903.~~

~~—2.— If a street extension or creation is required, the Planning Board will hold a public hearing prior to approval according to the requirements of Section 408 and will approve, deny or approve with conditions, the preliminary plan within the timeframe prescribed by R.I.G.L. 45-23-38, or within any specified time that is agreed to by the applicant and the Board, according to the requirements of Section 903.~~

~~—G.—Failure to Act~~

~~Failure of the Planning Board to act within the period prescribed shall constitute approval of the preliminary plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.~~

~~—H.—Final Plan~~

~~The Planning Board may delegate final plan review and approval to either the Administrative Officer or the Technical Review Committee. The officer or committee will report its actions to the Planning Board at its next regular meeting, to be made part of the record.~~

~~I. Expiration of approval~~

~~Approval of a minor land development or subdivision plan shall expire after the timeframe prescribed by R.I.G.L. 45-23-38 unless within such period a plat or plan, in conformity with such approval, and as defined in these rules, is submitted for signature and recording as specified in Section 905. Validity may be extended for a longer period, for cause shown, if requested by the applicant in writing, and approved by the Planning Board.~~

~~Minor plan review consists of two (2) stages, preliminary and final; provided, that unless otherwise set forth in this section, if a street creation or extension is involved, or a request for variances and/or special-use permits are submitted pursuant to a unified development application, a public hearing is required by the planning board.~~

a. Application types.

1. Applications requesting relief from the zoning ordinance.

a. Applications under this section which require relief which qualifies only as a modification shall proceed by filing an application under this chapter and a request for a modification to the zoning enforcement officer. If such modification is granted the application shall then proceed to be reviewed by the administrative officer pursuant to the applicable requirements of this section. If the modification is denied or an objection is received, such application shall proceed under unified development plan review. The administrative officer shall not certify the application complete until action is taken by the zoning enforcement officer on the modification request.

b. Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the [planning board] under unified development plan review, and a request for review shall accompany the preliminary plan application.

c. Any application involving a street creation or extension shall be reviewed by the planning board and require a public hearing.

2. Other applications. The administrative officer shall review and grant, grant with conditions or deny all other applications under this section and may grant waivers of design standards as set forth in the local regulations and zoning ordinance. The administrative officer may utilize the technical review committee for initial review and recommendation. The administrative officer may grant the following waivers:

- Waivers from design standards of Article 5, Section 521 of these Regulations.

b. Submission requirements. Any applicant requesting approval of a proposed minor subdivision or minor land development, as defined in this chapter, shall submit to the administrative officer the items required by the submission checklist contained in Appendix A of these Regulations.

- c. Certification. For each applicable stage of review, the application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days of the submission so long as a completed checklist of the requirements for submission are provided as part of the submission. If no street creation or extension is required, and/or unified development review is not requested, and a completed checklist of the requirements for submission are provided as part of the submission, such application shall be certified, in writing, complete or incomplete by the administrative officer within fifteen (15) days. The running of the time period set forth in this section will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.
- d. Decision on preliminary plan. If no street creation or extension or unified development review is required, the administrative officer shall approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within any further time that is agreed to by the applicant and the board. If a street extension or creation is required, and/or the application is reviewed under the unified development plan review, the planning board will hold a public hearing prior to approval according to the requirements in Section 407.C.d.ii of these regulations and will approve, deny, or approve with conditions, the preliminary plan within ninety-five (95) days of certification of completeness, or within any specified time that is agreed to by the applicant and the board.
- a. Failure to act. Failure of the planning board or administrative officer to act within the period prescribed constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure to act within the required time and the resulting approval will be issued on request of the applicant.
- b. Re-assignment to major review. The planning board may re-assign a proposed minor project to major review only when the planning board is unable to make the positive findings required in Section 404 of these Regulations.
- c. Final plan. Final plans shall be reviewed and approved by the administrative officer. The officer will report its actions, in writing to the planning board at its next regular meeting, to be made part of the record. The administrative officer shall approve, deny, approve with conditions, or refer the application to the planning board based upon a finding that there is a major change within twenty-five (25) days of the certificate of completeness.
- d. Modifications and changes to plans.
- (c) Minor changes to the plans approved at any stage may be approved administratively, by the administrative officer. The changes may be authorized

without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the permitting authority. Denial of the proposed change(s) shall be referred to the applicable permitting authority for review as a major change. Minor changes include the following:

- Changes to address typographical errors.

(d) Major changes to the plans approved at any stage may be approved only by the applicable permitting authority and must follow the same review and hearing process required for approval of preliminary plans, which shall include a public hearing if originally required as part of the application. Major changes include all changes not classified as a minor change.

(e) The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines the change to be a major change.

a. Appeal. Decisions under this section shall be considered an appealable decision pursuant to Section 805 of these Regulations.

b. Expiration of approvals. Approvals of a minor land-development or subdivision plan expires one year from the date of approval unless, within that period, a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and recording. Validity may be extended for a longer period, for cause shown, if requested by the application in writing, and approved by the planning board.

Section 407 - Procedure for Major Land Development and Major Subdivision Approval

~~Prior to the Master Plan Review, one or more pre-application meetings shall be held in accordance with Section 402.~~

~~A. Review Stages~~

~~—1. Major Plan Review is required for all applications for land development and subdivision approval subject to these Rules and Regulations, unless classified as an administrative subdivision or a as minor land development or a minor subdivision.~~

~~—2. Major plan review consists of three stages of review, master plan, preliminary plan and final plan, following the pre-application meeting(s) specified in Section 402(C). Also required is a public informational meeting and a public hearing.~~

~~—3. The Planning Board may vote to combine review stages and to modify and/or waive requirements as specified in Section 908. Review stages may be combined only after the Planning Board determines that all necessary requirements have been met by the applicant.~~

~~—4. Unless waived by the Planning Board consistent with the provisions of Article 3 of these regulations, all major subdivisions must be submitted as Conservation Subdivision Developments.~~

~~—B. Master Plan Review~~

~~—1. Submission requirements~~

~~—(a) At least three weeks prior to the scheduled Planning Board meeting, at which the applicant wishes to be heard, the applicant shall first submit to the Administrative Officer the items required by the Major Subdivision Master Plan Checklist (Appendix A).~~

~~—(b) Requirements for the master plan and supporting material for this phase of review shall include, but not be limited to: information on the natural and built features of the surrounding neighborhood, existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries and floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing, and potential neighborhood impacts.~~

~~—(c) The Administrative Officer shall solicit initial comments from (a) local agencies including, but not limited to, the Planning Department, the department of public works, fire and police departments, the conservation, tree, and recreation commissions; (b) adjacent communities; (c) state agencies, as appropriate, including the Departments of Environmental Management and Transportation, and the Coastal Resources Management Council (CRMC); and (d) federal agencies, as appropriate. The Administrative Officer shall coordinate review and comments by local officials, adjacent communities, and state and federal agencies.~~

~~—2. Certification~~

~~The application must be certified complete or incomplete by the Administrative Officer within the timeframe prescribed by R.I.G.L. 45-23-40, according to the provisions of Section 403. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the Administrative Officer and will recommence upon the resubmission of a corrected application by the applicant. However in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than the timeframe prescribed by R.I.G.L. 45-23-40.~~

~~—3. Informational meeting~~

~~—(a) A public informational meeting shall be held prior to the Planning Board decision on the master plan, unless the master plan and preliminary plan approvals are being combined, in which case the public informational meeting shall be optional, based upon Planning Board determination.~~

~~—(b) Public notice for the informational meeting shall be given at least seven (7) days prior to the date of the meeting in the Newport Daily News. Written notice shall be mailed to the applicant and to all abutting property owners.~~

~~—(c) At the public informational meeting the applicant shall present the proposed development project. The Planning Board shall allow oral and written comments from the general public. All public comments shall be made part of the public record of the project application.~~

~~—4. Decision~~

~~The Planning Board shall, within the timeframe prescribed by R.I.G.L. 45-23-40, or within such further time as may be consented to by the applicant, approve of the master plan as submitted, approve with changes and/or conditions, or deny the application, according to the requirements of Section 903.~~

~~—5. Failure to act~~

~~Failure of the Planning Board to act within the period prescribed shall constitute approval of the master plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.~~

~~—6. Vesting~~

~~—(a) The approved master plan shall be vested for the timeframe prescribed by R.I.G.L. 45-23-40. Vesting may be extended for a longer period, for good cause shown, if requested by the applicant in writing, and approved by the Planning Board. Master plan vesting shall include the zoning requirements, conceptual layout and all conditions shown on the approved master plan drawings and supporting materials.~~

~~—(b) The initial vesting period for the approved master plan shall constitute the vested rights for the development as required in R.I.G.L. 45-24-44.~~

~~—C. Preliminary Review~~

~~—1. Submission Requirements~~

~~—(a) The applicant shall submit to the Administrative Officer the items required by the Major Subdivision Preliminary Review Checklist (Appendix A) at least three (3) weeks prior to the scheduled Planning Board meeting at which the applicant wishes to be heard.~~

~~—(b) Requirements for the preliminary plan and supporting materials for this phase of the review shall include, but not be limited to: engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, a perimeter survey, all permits required by state or federal agencies prior to commencement of construction, including permits related to freshwater wetlands, the coastal zone, floodplains, preliminary suitability for individual septic disposal systems, public water systems, and connections to state roads.~~

~~—(c) Final written comments and/or approvals shall be provided from the Public Works Department, Town Engineer, Town Solicitor, and other local government departments, commissions, or authorities as appropriate.~~

~~—(d) Prior to approval of the preliminary plan, copies of all legal documents describing the property, proposed easements and rights-of-way shall be submitted.~~

~~—(e) In conservation subdivisions/land development projects, proposed arrangements for ownership, use, and maintenance of the required open space shall be reviewed and approved by the Planning Board.~~

~~—2. Certification~~

~~The applications shall be certified as complete or incomplete by the Administrative Officer within the timeframe prescribed by R.I.G.L. 45-23-41. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the Administrative Officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event shall the administrative officer be required to certify a corrected submission as complete or incomplete less than the timeframe prescribed by R.I.G.L. 45-23-41.~~

~~—3. Technical Review Committee~~

~~The Planning Board may request Technical Review Committee review of all Major Subdivision/Land Development Project preliminary plan materials.~~

~~—4. Development Impact Review~~

~~Unless waived by the Planning Board, all Major Subdivision/Development applications shall undergo Development Impact Review, consistent with the provisions of Section 310 of the Zoning Ordinance.~~

~~—5. Public hearing~~

~~Prior to a Planning Board decision on the preliminary plan, a public hearing, which adheres to the requirements for notice described in Section 408, must be held.~~

~~—6. Public Improvement Guarantees~~

~~Proposed arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees, shall be reviewed and approved by the Planning Board, after receiving concurrence from the Town Administrator at preliminary plan approval.~~

~~—7. Decision~~

~~A complete application for major subdivision or development plan shall be approved, approved with changes and/or conditions or denied, within the timeframe prescribed by R.I.G.L. 45-23-41, or within such further time as may be consented to by the applicant.~~

~~—8. Failure to act~~

~~Failure of the Planning Board to act within the period prescribed shall constitute approval of the preliminary plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.~~

~~—9. Vesting~~

~~The approved preliminary plan shall be vested for the timeframe prescribed by R.I.G.L. 45-23-41 and vesting may be extended for a longer period, for good cause shown, if requested in writing by the applicant, and approved by the Planning Board. The vesting for the preliminary plan approval shall include all general and specific conditions as shown on the approved preliminary plan drawings and supporting material.~~

~~—D. Public Hearing and Notice~~

~~A public hearing in accordance with Section 408 of these regulations is required.~~

~~—E. Final Plan Review~~

~~—1. Submission requirements~~

~~—(a) The applicant shall first submit to the Administrative Officer, at least three (3) weeks prior to the scheduled Planning Board meeting at which the applicant wishes to be heard, the items required by the Major Subdivision Final Plan Checklist, as well as all material required by the Planning Board when the application was given preliminary approval.~~

~~—(b) Arrangements for completion of the required public improvements including the construction schedule and/or financial guarantees.~~

~~—(c) Certification by the tax collector that all property taxes are current.~~

~~—(d) For phased projects, the final plan for phases following the first phase shall be accompanied by copies of as-built drawings, not previously submitted, of all existing public improvements for prior phases.~~

~~—(e) For CSDs, an Open Space Management Plan and any other necessary legal documentation relating to ownership and management of open space.~~

~~—2. Certification~~

~~The application for final plan approval shall be certified complete or incomplete by the Administrative Officer within the timeframe prescribed by R.I.G.L. 45-23-43. The time period may be extended as prescribed in R.I.G.L. 45-23-43 by written notice from the Administrative Officer to the applicant where the final plans contain changes to or elements not included in the preliminary plan approval. The running of the time period set forth herein shall be deemed stopped upon the issuance of a certification of incompleteness of the application by the Administrative Officer and shall recommence upon the resubmission of a corrected application by the applicant. However, in no event shall the Administrative Officer be required to certify a corrected submission as complete or incomplete less than the timeframe prescribed in R.I.G.L. 45-23-43. If the Administrative Officer certifies the application as complete and does not require~~

~~submission to the Planning Board as per Subsection (3) below, the final plan shall be considered approved.~~

~~3. Referral to the Planning Board~~

~~After certifying the final plan, the Administrative Officer shall refer the final plans to the Planning Board for review. The Planning Board shall, within the timeframe prescribed in R.I.G.L. 45-23-43, or within such further time as may be consented to by the applicant, approve, approve with modification and/or conditions or deny the final plan as submitted.~~

~~4. Failure to act~~

~~Failure of the Planning Board to act within the period prescribed shall constitute approval of the final plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.~~

~~5. Recording~~

~~The final approval of a major subdivision or land development project shall expire after the timeframe prescribed in R.I.G.L. 45-23-43 unless, within that period, the plat or plan shall have been submitted for signature and recorded as specified in Section 905 or, if the applicant has chosen to complete the required improvements in lieu of posting a Guarantee of Performance, within the time requirements outlined in Section 907. The Planning Board may, for good cause shown, extend the period for recording for an additional period.~~

~~6. Acceptance of public improvements~~

~~Signature and recording, as specified in Section 905, shall constitute the acceptance by the Town of any street or other public improvement or other land intended for dedication. Final plan approval shall not impose any duty upon the Town to maintain or improve those dedicated areas until the Town Council accepts the completed public improvements as constructed in compliance with the final plans.~~

~~7. Validity of recorded plans~~

~~The approved final plan, once recorded, shall remain valid as the approved plan for the site unless and until an amendment to the plan is approved under the procedure set forth in Section 906, or a new plan is approved by the Planning Board. If construction of the subdivision improvements does not begin within the timeframe prescribed in R.I.G.L. 45-23-43, the developer shall return to the Planning Board to bring the Required Minimum Standards of Design and the Specification for Required Improvements of the approved plans into conformance with any changes which may have been made to these rules and regulations.~~

- ~~A. Stages of review. Major land development and major subdivision review consists of three stages of review, master plan, preliminary plan and final plan, following the pre-application meeting(s). Also required is a public hearing at the master plan stage of review or, if combined at the first stage of review.~~

B. The administrative officer may combine review stages and to modify, but only the planning board may waive submission requirements as specified in Section 407.C.a. Review stages may be combined only after the administrative officer determines that all necessary requirements have been met by the applicant or that the planning board has waived any submission requirements not included by the applicant.

C. Master plan review.

a. Submission requirements.

i. The applicant shall first submit to the administrative officer the items required by the checklist for master plans.

ii. Requirements for the master plan and supporting material for this phase of review include, but are not limited to: information on the natural and built features of the surrounding neighborhood, existing natural and man-made conditions of the development site, including topographic features, the freshwater wetland and coastal zone boundaries, the floodplains, as well as the proposed design concept, proposed public improvements and dedications, tentative construction phasing; and potential neighborhood impacts, as required by the checklist.

iii. Initial comments will be solicited from:

1. Local agencies including, but not limited to, the planning department, the department of public works, fire and police departments, the conservation and recreation commissions;

2. Adjacent communities;

3. State agencies, as appropriate, including the departments of environmental management and transportation and the coastal resources management council; and

4. Federal agencies, as appropriate. The administrative officer shall coordinate review and comments by local officials, adjacent communities, and state and federal agencies.

iv. Applications requesting relief from the zoning ordinance.

1. Applications under this chapter which require relief which qualifies only as a modification under Zoning Ordinance Section 906 shall proceed by filing a master plan application under this section and a request for a modification to the zoning enforcement officer. If such modification is granted, the application shall then proceed to be reviewed by the planning board pursuant to the applicable requirements of this section. If the modification is denied or an objection is received as set forth in Zoning Ordinance Section 906, such application shall proceed under unified development plan review pursuant to Zoning Ordinance Section 323 The administrative officer shall not certify the application complete until

action is taken by the zoning enforcement officer on the modification request.

2. Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning board under unified development plan review pursuant to Zoning Ordinance Section 323.

b. Certification. The application must be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days of the submission, so long as a completed checklist of requirements is provided with the submission. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

c. Technical review committee. The technical review committee shall review the application prior to the first planning board meeting and shall comment and make recommendations to the planning board.

d. Public hearing.

i. A public hearing shall be held prior to the planning board decision on the master plan. If the master plan and preliminary plan review stages are being combined, a public hearing shall be held during the combined stage of review.

ii. Notice for the public hearing is required with notice in accordance with.

1. Where a public hearing is required pursuant to the Regulations, the following requirements shall apply;

a. Notice requirements. Public notice of the hearing shall be given at least fourteen (14) days prior to the date of the hearing in a newspaper of local circulation within the municipality following the municipality's usual and customary practices for this kind of advertising. The same notice shall be posted in the town clerk's office and one other municipal building in the municipality and the municipality must make the notice accessible on their municipal home page of its website at least fourteen (14) days prior to the hearing. Notice shall be sent to the applicant and to each owner within the notice area, by first class mail, of the time and place of the hearing not less than ten (10) days prior to the date of the hearing. Notice shall also be sent to any individual or entity holding a recorded conservation or preservation restriction on the property that

is the subject of the application at least fourteen (14) days prior to the hearing. The notice shall also include the street address of the subject property, or if no street address is available, the distance from the nearest existing intersection in tenths (1/10's) of a mile.¹

b. Notice area.

c. The distance(s) for notice of the public hearing shall be 200 feet from project site.²

d. Watersheds. Additional notice within watersheds shall also be sent as required in RIGL §45-23-53(b) and (c).

e. Adjacent municipalities. Notice of the public hearing shall be sent by the administrative officer to the administrative officer of an adjacent municipality if (1) the notice area extends into the adjacent municipality, or (2) the development site extends into the adjacent municipality, or (3) there is a potential for significant negative impact on the adjacent municipality.

f. Notice cost. The cost of all newspaper and mailing notices shall be borne by the applicant.

iii. At the public hearing, the applicant will present the proposed development project. The planning board must allow oral and written comments from the general public. All public comments are to be made part of the public record of the project application.

e. Decision. The planning board shall, within ninety (90) days of certification of completeness, or within a further amount of time that may be consented to by the applicant through the submission of a written waiver, approve of the master plan as submitted, approve with changes and/or conditions, or deny the application.

f. Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the master plan, and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval will be issued on request of the applicant.

g. Vesting.

i. The approved master plan is vested for a period of two (2) years, with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for the annual

¹ RIGL §45-23-42 may require “a supplemental notice that an application for development approval is under consideration be posted at the location in question. The posting is for informational purposes only and does not constitute required notice of a public hearing.”

² The legislation further states that the distance may differ by zoning district and scale of development. At a minimum, all abutting property owners to the proposed development’s property boundary shall receive notice.

review. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested by the applicant, in writing, and approved by the planning board or commission. Master plan vesting includes the zoning requirements, conceptual layout, and all conditions shown on the approved master plan drawings and supporting materials.

- ii. The initial four (4) year vesting for the approved master plan constitutes the vested rights for the development as required in RIGL § 45-24-44.

D. Preliminary plan review.

a. Submission requirements.

- i. The applicant shall first submit to the administrative officer the items required by the checklist for preliminary plans contained in Appendix A of these regulations.
- ii. Requirements for the preliminary plan and supporting materials for this phase of the review include, but are not limited to: engineering plans depicting the existing site conditions, engineering plans depicting the proposed development project, and a perimeter survey, as included on the checklist.
- iii. At the preliminary plan review phase, the administrative officer shall solicit final, written comments and/or approvals of the department of public works, the town engineer, the town solicitor, other local government departments, commissions, or authorities as appropriate.
- iv. Prior to approval of the preliminary plan, copies of all legal documents describing the property, proposed easements, and rights-of-way.
- v. Prior to approval of the preliminary plan, an applicant must submit all permits required by state or federal agencies, including permits related to freshwater wetlands, the coastal zone, floodplains, preliminary suitability for individual septic disposal systems, public water systems, and connections to state roads. For a state permit from the Rhode Island department of transportation, a letter evidencing the issuance of such a permit upon the submission of a bond and insurance is sufficient, but such actual permit shall be required prior to the issuance of a building permit.
- vi. If the applicant is requesting alteration of any variances and/or special-use permits granted by the planning board at the master plan stage of review pursuant to adopted unified development review provisions, and/or any new variances and/or special-use permits, such requests and all supporting documentation shall be included as part of the preliminary plan application materials.

- b. Certification. The application will be certified as complete or incomplete by the administrative officer within twenty-five (25) days so long as a completed checklist of requirements are provided with the submission. The running of the time period set forth herein will be deemed stopped upon the issuance of a certificate of

incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event shall the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.

- c. Technical review committee. The technical review committee shall review the application prior to the first planning board meeting and shall comment and make recommendations to the planning board.
- d. Public notice. Prior to the first planning board meeting on the preliminary plan, public notice shall be sent to abutters only at least fourteen (14) days before the hearing.
- e. Public improvement guarantees. Proposed arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees, shall be reviewed and approved by the planning board at preliminary plan approval.
- f. Decision. A complete application for a major subdivision or development plan shall be approved, approved with conditions, or denied, within ninety (90) days of the date when it is certified complete, or within a further amount of time that may be consented to by the developer through the submission of a written waiver. Provided that, the timeframe for decision is automatically extended if evidence of state permits has not been provided, or otherwise waived in accordance with this section.
- g. Failure to act. Failure of the planning board to act within the prescribed period constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure of the planning board to act within the required time and the resulting approval shall be issued on request of the applicant.
- h. Vesting. The approved preliminary plan is vested for a period of two (2) years with the right to extend for two (2), one-year extensions upon written request by the applicant, who must appear before the planning board for each annual review and provide proof of valid state or federal permits as applicable. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the planning board. The vesting for the preliminary plan approval includes all general and specific conditions shown on the approved preliminary plan drawings and supporting material.

E. Final plan.

a. Submission requirements.

- i. The applicant shall submit to the administrative officer the items required by the checklist for the final plan, as well as all material required by the planning board when the application was given preliminary approval.
- ii. Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees.

- iii. Certification by the tax collector that all property taxes are current.
- iv. For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.
- b. Certification. The application for final plan approval shall be certified complete or incomplete by the administrative officer in writing, within fifteen (15) days, so long as a completed checklist of requirements are provided with the submission. This time period may be extended to twenty-five (25) days by written notice from the administrative officer to the applicant where the final plans contain changes to or elements not included in the preliminary plan approval. The running of the time period set forth herein shall be deemed stopped upon the issuance of a certificate of incompleteness of the application by the administrative officer and shall recommence upon the resubmission of a corrected application by the applicant. However, in no event shall the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as complete and does not require submission to the planning [board or commission], the final plan shall be considered approved.
- c. Decision. The administrative officer, or, if referred to it, the planning board, shall review, grant, grant with conditions or deny final plan approval. A decision shall be issued within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, approve or deny the final plan as submitted.
- d. Failure to act. Failure of the administrative officer or, if referred to it, the planning board to act within the prescribed period constitutes approval of the final plan and a certificate of the administrative officer as to the failure of the to act within the required time and the resulting approval shall be issued on request of the applicant.
- e. Expiration of approval. The final approval of a major subdivision or land development project expires one year from the date of approval with the right to extend for one year upon written request by the applicant, who must appear before the planning board for the annual review, unless, within that period, the plat or plan has been submitted for signature and recording. Thereafter, the planning board may, for good cause shown, extend the period for recording.
- f. Acceptance of public improvements. Signature and recording constitute the acceptance by the municipality of any street or other public improvement or other land intended for dedication. Final plan approval shall not impose any duty upon the municipality to maintain or improve those dedicated areas until the Town Council accepts the completed public improvements as constructed in compliance with the final plans.
- g. Validity of recorded plans. The approved final plan, once recorded, remains valid as the approved plan for the site unless and until an amendment to the plan is approved, or a new plan is approved by the planning board.

F. Modifications and changes to plans.

a. Minor changes to the plans approved at any stage may be approved administratively, by the administrative officer. The changes may be authorized without an additional planning board meeting, to the extent applicable, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the planning board. Denial of the proposed change(s) shall be referred to the planning board for review as a major change. Minor changes include the following:

i. Changes to address typographical errors.

b. Major changes to the plans approved at any stage may be approved only by the planning board and must include a public hearing. Major changes include any change not classified as a minor change.

c. The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines the change to be a major change of the approved plans.

G. Appeal. Decisions under this section shall be considered an appealable decision pursuant to 805 of these Regulations.

Regulations Article 8

Section 805 - Appeal Procedure

~~—A.— An appeal to the Board of Appeals may be taken by any person whose plat has been rejected by the Planning Board. The appellant shall file, with the secretary of the Zoning Board of Review, a statement of his/her appeal, a copy of his/her plat and a copy of the list of the abutting owners furnished therewith and of the grounds of disapproval of the Planning Board, together with the names and addresses of other persons who appeared before said Planning Board in opposition to his/her application for approval of this plat. Such appeal shall be filed with said secretary of the Zoning Board of Review within twenty (20) days after the final action of said Planning Board on said application.~~

~~—B.— The Zoning Board of Review shall fix a reasonable time for the hearing of the appeal, give public notice thereof as well as due notice to the parties in interest including the applicant, abutting owners and any other persons who entered appearance before the Planning Board and shall decide the same, within a reasonable time. Upon the hearing, any party in interest may appear in person or by agent, or by attorney.~~

A. Appeals from decision of administrative officer.

a. Decisions by the administrative officer approving or denying projects under Sections 406 and 1006 of these Regulations (RIGL §§45-23-38 or 45-23-50) shall not be subject to this section and shall proceed directly to Superior Court as set forth in RIGL §45-23-71.

1. An appeal to the board of appeal from a decision or action of the administrative officer may be taken by an aggrieved party to the extent provided in RIGL §45-23-66. The appeal must be taken within twenty (20) days after the decision has been recorded in the Town's land evidence records and posted in the office of the Town Clerk.
2. The appeal shall be in writing and state clearly and unambiguously the issue or decision that 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 be hand-delivered to the board of appeal. The Town Clerk shall accept delivery of an appeal on behalf of the board of appeal, if the local regulations governing land development and subdivision review so provide.
3. Upon receipt of an appeal, the board of appeal shall require the administrative officer to immediately transmit 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.

b. Stay. An appeal stays all proceedings in furtherance of the action being appealed.

c. Hearing

1. The board of appeal shall hold a hearing on the appeal within forty-five (45) days of the receipt of the appeal, give public notice of the hearing, as well as due notice to the parties of interest. At the hearing the parties may appear in person, or be represented by an agent or attorney. The board 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 applicant.
2. The board of appeal shall only hear appeals of the actions of an administrative officer at a meeting called especially for the purpose of hearing the appeals and which has been so advertised.
3. 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 as required by RIGL §45-23-70(d) shall be maintained by the board of appeal.

d. Standards of Review.

1. As established by this chapter, in instances of a board of appeal's review of an administrative officer's decision on matters subject to this chapter, the board of appeal shall not substitute its own judgment for that of the administrative officer but must consider the issue upon the findings and record of the administrative officer. The board of appeal shall not reverse a decision of 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.
2. The concurring vote of three (3) of the five (5) members of the board of appeal sitting at a hearing, is necessary to reverse any decision of the administrative officer.
3. In the instance where the board of appeal overturns a decision of the administrative officer, the proposed project application is remanded to the administrative officer, at

the stage of processing from which the appeal was taken, for further proceedings before the administrative officer and/or for the final disposition, which shall be consistent with the board of appeal's decision.

4. 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.

B. Appeals to the superior court

- a. An aggrieved party may appeal a decision of the board of appeal, a decision of an administrative officer made pursuant to ~~INSERT LOCAL SECTION REFERENCE~~ Sections 406 and 1006 of these Regulations (RIGL §§45-23-38 or §45-23-50) where authorized to approve or deny an application, a decision of the technical review committee, where authorized to approve or deny an application, or a decision of the Planning Board, to the superior court for Newport County by filing a complaint stating the reasons of for the appeal within twenty (20) days after the decision has been recorded and posted in the office of the Town Clerk. Recommendations by any public body or officer under this chapter are not appealable under this section. The authorized permitting authority shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies of the original documents, together with any other facts that 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 planning board shall be made parties to the proceedings. No responsive pleading is required for an appeal filed pursuant to this section. The appeal does not stay proceedings upon the decision appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make any other orders that it deems necessary for an equitable disposition of the appeal.
- b. Appeals from a decision granting or denying approval of a final plan shall be limited to elements of the approval or disapproval not contained in the decision reached by the [planning board] at the preliminary stage; providing that, a public hearing has been held on the plan, if required pursuant to this chapter.
- c. The review shall be conducted by the superior court without a jury. The court shall consider the record of the hearing before the [planning board] and, if it 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 evidence in open court, which evidence, along with the report, shall constitute the record upon which the determination of the court shall be made.
- d. The court shall not substitute its judgment for that of the planning board 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:
 1. In violation of constitutional, statutory, ordinance or [planning board] regulations provisions;
 2. In excess of the authority granted to the [planning board] by statute or ordinance;

3. Made upon unlawful procedure;
4. Affected by other error of law;
5. Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record; or
6. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion

Regulations Article 9 - SUPPLEMENTARY REGULATIONS

Section 901 - Administrative Officer

The Town Planner shall act as the Administrative Officer and shall have responsibility to:

- A. Administer these Rules and Regulations for the subdivision and development of land.
- B. Oversee and coordinate the review, approval, recording and enforcement provisions of these Rules and Regulations.
- C. Review and approve/disapprove Administrative Subdivisions.
- D. Serve as the chair of the Technical Review Committee, should one be established.
- E. Coordinate site plan reviews of proposed development projects referred by the Zoning Board of Review.
- F. Coordinate reviews of proposed land development projects and subdivisions with adjacent municipalities, as necessary, to be consistent with federal, state and local laws, as directed by the Planning Board.

Section 902 - Administrative Fees

In addition to the fees required for the review stages for subdivision approval, fees in an amount not to exceed actual costs incurred for consultants or other assistance for the adequate review and hearings of applications, issuance of permits and the recording of decisions shall be paid by the applicant. In the case of reviews conducted in response to the Zoning Board of Review, costs associated with each review shall be paid by the applicant.

Section 903 - Meetings, Votes, Decisions and Records

- A. All records of the Planning Board proceedings and decisions shall be written and kept permanently available for public review. Completed applications for proposed land development and subdivision projects, under review by the Planning Board, shall be available for public review.
- B. 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.
- C. All final written comments to the Planning Board, from the Administrative Officer, municipal departments, the Technical Review Committee, state and federal agencies, and local commissions shall be part of the permanent record of the development application.
- D. Votes. 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 land development or subdivision application shall require a vote for approval by a majority of the current Planning Board membership.

E. Modification of Final Approval. If the Planning Board, in its review of the final subdivision plat, modifies and approves a final plat, the Board shall notify the applicant of such action by certified or registered mail, of such modification and approval. If the applicant shall, within sixty (60) days of the receipt of such notice, comply with such modification and file an amended plat, such plat shall be deemed to be approved, subject to the requirements and responsibilities as further set forth in these Rules and Regulations.

F. The date of completion of final review shall be construed as the date of the satisfactory filing of the amended plat.

Section 904 - Precedence of approvals between Planning Board and other local permitting authorities

A. Zoning Board

~~1. Where an applicant requires both a variance from the local Zoning Ordinance 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 project, which may be simultaneous, then obtain conditional Zoning Board 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 local Zoning Ordinance 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 of the proposed project, which may be simultaneous, then obtain conditional Zoning Board relief, and then return to the Planning Board for subsequent required approval(s).~~

B. Town Council

Where an applicant requires both Planning Board approval and Council approval for a Zoning Ordinance or Zoning map change, the applicant shall first obtain an advisory recommendation from the Planning Board, as well as conditional Planning Board approval for the first approval stage of the proposed project, which may be simultaneous, then obtain conditional Zoning Board relief, and then return to the Planning Board for subsequent required approval(s).

Section 905 - Signing and Recording of Plats and Plans

A. All approved final plans and plats for land development and subdivision projects shall be signed by the appropriate Planning Board official with the date of approval. Plans and plats for major land developments and subdivisions shall be signed by the Planning Board chairperson or secretary of the Planning Board attesting to the approval by the Planning Board. All minor land development or subdivision plans and plats and administrative plats shall be signed by the Planning Board chairperson or secretary or the Board's designated agent.

B. Upon signature, all plans and plats shall be submitted to the Administrative Officer prior to recording and filing in the appropriate municipal departments. The material to be recorded for all plans and plats shall include all pertinent plans with notes, thereon, concerning all the essential aspects of the approved project design, implementation schedule, special conditions placed on the development by the

municipality, permits and agreements with state and federal reviewing agencies, and other information, as required by the Planning Board.

C. Other parts of the applications record for subdivisions and land development projects, including all meeting records, approved master plan and preliminary plans, site analyses, impact analyses, all legal agreements, records of the public hearing and the entire final approval set of drawings shall be kept permanently by the municipal departments responsible for implementation and enforcement.

D. The Administrative Officer shall coordinate with the Fire Chief to ensure notification of the statewide "911" emergency authority and the police department servicing the new plat with the information required by each of the authorities.

Section 906 - Changes to Recorded Plat and Plans

A. For all changes to the approved plans of land development projects or subdivisions subject to this act, an amendment of the final development plans is required prior to the issuance of any building permits. Any changes approved in the final plan shall be recorded as amendments to the final plan in accordance with the procedure established for recording of plats in Section 905.

B. Minor changes to a land development or subdivision plan may be approved administratively, by the Administrative Officer, whereupon a permit may be issued. Such changes may be authorized, without additional public hearings, at the discretion of the Administrative Officer. All such changes shall be made part of the permanent record of the project application. This provision shall not prohibit the Administrative Officer from requesting a recommendation from the Planning Board. Denial of the proposed change(s) shall be referred to the Planning Board for review as a major change.

C. Major changes, as defined in the local regulations, to land development or subdivision plan may be approved, only by the Planning Board and must follow the same review and public hearing process required for approval of preliminary plans as described in Section 407.

Section 907 - ~~Time Requirements between Review Stages, Endorsement and Recording of Plans, Commencement and Completion of Land Development or Subdivision Improvements~~

The following ~~time~~ requirements shall be adhered to when completing the process of subdivision plan review through subdivision completion.

~~A. Interval Between Review Stages~~

~~The applicant shall have one (1) year, from preliminary plat approval, to submit final plat plans, unless an extension of time is granted by the Planning Board. In the event final plat plans are not submitted within the required time frame, the applicant shall be required to reapply to the Planning Board for preliminary review and approval based on the latest revision of these rules and regulations. Subdivisions in the review process, on the adoption date of these rules and regulations, shall be updated to conform to these rules and regulations within six (6) months of the adoption date, after which the applicant shall be required to reapply for preliminary plat review and approval.~~

A. Endorsement of Final Plat Plans

Mylars and associate materials ~~may shall~~ be submitted, to the administrator officer, ~~within one (1) year of final approval~~ for endorsement by the appropriate official. The Administrative Officer shall advise the applicant when the plans have been endorsed after which the applicant shall ~~have seven (7) days in which to~~ record the plat and associated material. In those instances where an applicant chooses to complete the actual construction of required improvements prior to recording the subdivision, the mylar and associated material shall be submitted for endorsement within thirty (30) days of approval of the improvements (by the Town) ~~and recorded within seven (7) days of endorsement.~~

C. Construction Commencement

Subdivision construction shall commence within one (1) year of final plat approval by the Planning Board. If subdivision construction is not commenced within the year, the applicant shall be required to reapply, to the Planning Board, for final plat plan review and approval.

D. Construction Completion

Subdivision improvements construction shall be completed within two (2) years of final plat approval by the Planning Board. If, due to circumstances beyond the control of the applicant, construction cannot be completed on time, the Planning Board may grant an extension of time. (See Section 704 -"Extension of Time")

~~Section 908 – Waivers, Modifications and Reinstatement of Plans~~

~~A. Waiver of development plan approval~~

~~The Planning Board may waive requirements for development plan approval where there is a change in use of occupancy and no extensive construction of improvements is sought. The waiver may be granted only by a decision of 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.~~

~~B. Documentation~~

~~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.~~

~~C. Grounds for waiver~~

~~The Planning Board shall have the power to grant such waivers and/or modifications from the requirements for land development and subdivision approval, as may be reasonable, and within the general purposes and intents of the provisions for local regulations. The only grounds for such waivers and/or modifications shall be where the literal enforcement of one (1) or more provisions of the regulations is impracticable and will exact undue hardship, because of the 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 municipality's comprehensive plan and Zoning Ordinance.~~

~~D. Decision~~

~~The Planning Board shall approve, approve with conditions, or deny the request for either a waiver or modifications, as described in subsection (A) or (B) above, according to the requirements of Section 903~~

Section 908 Technical Review Committee

- a. There is hereby established a technical review committee (TRC) in accordance with RIGL §45-23-56, the members of which are appointed by the Town Council. The TRC is responsible for conducting technical reviews of all applications subject to the jurisdiction delegated under ~~INSERT LOCAL SECTION REFERENCE~~ zoning ordinance section 304.
- b. The TRC shall consist of four (4) members, including Administrative Officer, Building/Zoning Official, Town Engineer, and Director of Public Works.
- c. The planning board shall adopt written procedures establishing the committee's responsibilities.
- d. The administrative officer shall serve as chair of the TRC.
- e. Recommendations of the TRC to the permitting authority shall be in writing and kept as part of the permanent record of the development application. In no case shall the recommendations of the technical review committee be binding on the planning board in its activities or decisions. The recommendation of the TRC shall be made available to the applicant prior to a decision by the permitting authority.

Section 909 Unified development review.

- a. Review of projects submitted under this section shall adhere to the procedures, timeframes and standards of the underlying category of the project as listed in ~~INSERT LOCAL SECTION REFERENCE TO REGULATIONS; see § 45-23-36~~ Sections 406, 407 and Article 10 of these regulations, but shall also include the following procedures:
 1. Minor subdivisions and land-development projects. Except for dimensional relief granted by modification, requests for variances and/or for the issuance of special-use permits related to minor subdivisions and land-development projects shall be submitted as part of the application materials for the preliminary plan stage of review or if combined, for the first stage of reviews. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection [(5)] of this section shall be held prior to consideration of the preliminary plan by the planning board. The planning board shall conditionally approve or deny the request(s) for the variance(s) and/or special-use permit(s) before considering the preliminary plan application for the minor subdivision or land-development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the minor subdivision or land-development project.
 2. Development plan review. Except for dimensional relief granted by modification, requests for relief from the literal requirements of the zoning ordinance and/or for the issuance of special-use permits related to development plan review projects shall be submitted as part of the application materials for first stage of review. A public hearing on the application, including any variance and special-use permit

requests that meets the requirements of subsection [(5)] of this section shall be held prior to consideration of the preliminary plan by the [planning board]; see RIGL §45-23-50(d)(1)(ii). The planning board shall conditionally approve or deny the request(s) for the variance(s) and/or special-use permit(s) before considering the preliminary plan application for the development plan review project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final stage of review of the development plan review project.

3. Major subdivisions and land-development projects.

- i. Master plan. Except for dimensional relief granted by modification, requests for variances for relief from the literal requirements of the zoning ordinance and/or for the issuance of a special-use permit related to major subdivisions and land-development projects shall be submitted as part of the application materials for the master plan stage of review, or if combined, the first stage of review. A public hearing on the application, including any variance and special-use permit requests that meets the requirements of subsection (e) of this section, shall be held prior to consideration of the master plan by the [planning board]. The planning board shall conditionally approve or deny the requests for the variance(s) and/or special-use permit(s) before considering the master plan application for the major subdivision or land-development project. Approval of the variance(s) and/or special-use permit(s) shall be conditioned on approval of the final plan of the major subdivision or land-development project.
- ii. Preliminary plan. During the preliminary plan stage of review, applicants shall have the ability to request alteration of any variance(s) and/or special-use permit(s) granted by the planning board during the master plan stage of review, and/or to request new variance(s) and/or special-use permit(s), based on the outcomes of the more detailed planning and design necessary for the preliminary plan. If necessary, the applicant shall submit such requests and all supporting documentation along with the preliminary plan application materials. If the applicant requests new or additional zoning relief at this stage a public hearing on the application, that meets the requirements of subsection [(5)] of this section, shall be held prior to consideration of the preliminary plan by the planning board. The [planning board] shall conditionally approve, amend, or deny the requests for alteration(s), new variance(s) and/or new special-use permit(s), before considering the preliminary plan application for the major subdivision or land-development project. Approval of the alteration(s), new variance(s), and/or new special-use permit(s) shall be conditioned on approval of the final plan of the major subdivision or land-development project. If the planning board denies the request for alteration(s), new variance(s), and/or new special-use permit(s), the [planning board] shall have the option of remanding the application back to the master plan stage of review. Alternatively, if the [planning board] denies the request for alteration(s), new variance(s), and/or new special-use permit(s), the applicant may consent to an extension of the decision period

mandated by ~~INSERT LOCAL SECTION REFERENCE RELATING TO TIMING OF DECISION FOR MAJOR LDPS AND SUBDIVISIONS~~ Section 407 of these regulations so that additional information can be provided and reviewed by the planning board.

4. Decision. The time periods by which the [planning board] must approve or deny applications for variances and special-use permits under the unified development review provisions of the local regulations shall be the same as the time periods by which the [board] must make a decision on the applicable review stage of the category of project under review.
5. Unless otherwise provided in this chapter all under this section shall require a single public hearing, held pursuant to subsection [(a)(1)] of this section. The public hearing must meet the following requirements:
 - i. Public hearing notice shall adhere to the requirements found in RIGL §45-23-42(b).
 - ii. The notice area for notice of the public hearing shall include all property located in or within not less than two hundred feet (200') of the perimeter of the area included in the subdivision and/or land-development project,³ and notice of the public hearing shall be sent by the administrative officer to the administrative officer of an adjacent municipality if: (1) the notice area extends into the adjacent municipality; or (2) the development site extends into the adjacent municipality; or (3) there is a potential for significant negative impact on the adjacent municipality. Additional notice within watersheds shall also be sent as required in RIGL §45-23-53(b) and (c).
 - iii. Public notice shall indicate that dimensional variance(s), use variance(s) and/or special-use permit(s) are to be considered for the subdivision and/or land-development project.
 - iv. The cost of all public notice is to be borne by the applicant.
6. The time periods by which the permitting authority must approve, approve with conditions or deny requests for variances and special-use permits under the unified development review provisions of a zoning ordinance shall be the same as the time periods by which the [planning board] must make a decision on the applicable review stage of the underlying type of project under review.
7. The expirations period of an approval of a variance or special use permit granted under this section shall be the same as those set forth in the statute for the underlying type of project under review.

³ RIGL §45-45-23-50.12(d)(2) requires that the notice area shall, at a minimum, include all property located in or within not less than two hundred feet (200') of the perimeter of the area included in the subdivision and/or land-development project.

8. Decisions under this section, including requests for the variance(s) and/or special-use permits that are denied by the [planning board] may be appealed pursuant to RIGL §45-23-71.

Regulations Article 10 - DEVELOPMENT PLAN REVIEW

Section 1001 – ~~General~~ Applicability

~~When Development Plan Review, as set forth in Article 3 of the Middletown Zoning Ordinance, is required, such review shall be conducted pursuant to the procedures and time periods set forth below.~~

The following categories of projects shall be subject to the provisions of this chapter:

1. Developments specified in Section 306 of the Zoning Ordinance, Chapter 152, or where otherwise called for in the Zoning Ordinance.
 2. A change in use at the property where no extensive construction of improvements is sought.
 3. An adaptive reuse project located in a commercial zone where no extensive exterior construction of improvements is sought.
 4. An adaptive reuse project located in a residential zone which results in less than nine (9) residential units.
 5. Development in a designated urban or growth center.
 6. Institutional development design review for educational or hospital facilities.
- a. Permitting authority. The administrative officer shall approve administrative projects submitted, and the planning board shall approve formal projects as described herein.
 - b. Development plan review consists of two review processes, administrative and formal.
 1. Administrative development plan review consists of one stage of review and the authorized permitting authority is the administrative officer. The following activities are subject to administrative development plan review:
 - i. Developments specified in Section 306.A.(4) of the Zoning Ordinance.
 - ii. A change in use at the property where no extensive construction of improvements is sought.
 - iii. ~~LIST ALLOWABLE ACTIVITIES FROM STATE LAW HERE. CONSIDER THE SIZE OF THE STRUCTURE OR DEVELOPMENT WHEN CATEGORIZING ACTIVITIES FROM ITEMS 1 THROUGH 6 ABOVE OR~~

~~ANY ADDITIONAL ITEMS ADDED BY THE MUNICIPALITY] Need to identify projects that will be approved administratively.~~

2. Formal development plan review consists of the preliminary stage and final stage of review. The authorized permitting authority is the planning board. The following activities are subject to formal development plan review:

- i. All items under Zoning Ordinance Section 306.A. not identified for administrative review.
- ii. An adaptive reuse project located in a commercial zone where no extensive exterior construction of improvements is sought.
- iii. An adaptive reuse project located in a residential zone which results in less than nine (9) residential units.
- iv. Development in a designated urban or growth center.
- v. Institutional development design review for educational or hospital facilities.

~~[LIST ALLOWABLE ACTIVITIES FROM STATE LAW HERE. CONSIDER THE SIZE OF THE STRUCTURE OR DEVELOPMENT WHEN CATEGORIZING ACTIVITIES]~~

3. The administrative officer may combine the stages of review for formal development plan review, providing that the submission requirements of both stages of review are met by the applicant to the satisfaction of the administrative officer.

Section 1002 - Failure to Act Waivers

~~The time periods specified herein are maximum time periods only, and are not meant to indicate the time expected to be necessary to review the average application. These time periods may be extended by mutual consent between either the Technical Review Committee or the Planning Board and the applicant. However, in cases where approval by the Zoning Board of Review is not required, failure of the Planning Board to act within the periods prescribed herein shall constitute approval of the Development Plan and a certificate of the Administrative Officer as to the failure of the Planning Board to act within the required time and the resulting approval shall be issued on request of the applicant.~~

- a. Requirements for development plan approval may be waived 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 permitting authority identified in this article, 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.

- b. The application for a waiver of development plan approval review shall include documentation on prior use of the site, the proposed use, and its impact.
- c. The permitting authority may grant waivers of design standards. ~~Waivers may include [LIST OF WAIVERS].~~³ Or See section 1009.

Section 1003 - ~~Pre-application Meeting Required~~ Application requesting relief from the zoning ordinance

~~Once it is determined that development plan review is required pursuant to Zoning Ordinance § 306, prior to submitting the development plan review application the applicant shall first meet with the Administrative Officer in order to review the procedure and required application materials.~~

1. Applications under this article which require relief which qualifies only as a modification shall proceed by filing an application and a request for a modification to the zoning enforcement officer. If such modification is granted the application shall then proceed to be reviewed by the administrative officer as determined in this article. If the modification is denied or an objection is received as set forth in ~~[INSERT LOCAL REFERENCE SECTION]~~ Zoning Ordinance Section 906, such application shall proceed under unified development review and be reviewed by the planning board.
2. Applications under this section which require relief from the literal provisions of the zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning board under unified development review, and a request for review shall accompany the preliminary plan application.

1.1. ~~Section 1004 - Required Submissions and Design Guidelines~~ Submission requirements.

~~Any applicant requesting development plan review approval shall file with the Zoning Board of Review, by submission to the Zoning Officer, a complete application package, including the items and plans as set forth in the checklist provided in Appendix A of these Regulations. Development plan review applications shall meet the design and construction requirements in Article 5 of these Regulations, although an application not meeting all such requirements may be submitted with a request for one or more waivers.~~

³-Amended RIGL §45-23-50(c) allows for the permitting authority to grant waivers of design standards that are specifically set forth in the local regulations and zoning ordinance. In order to enable the ability for the permitting authority to grant waivers, the municipality needs to provide a list of permissible waivers.

- a. Any applicant requesting approval of a proposed development under this chapter, shall submit to the administrative officer the items required by the checklist ~~[INSERT CHECKLIST NUMBER OR NAME]~~ contained in Appendix A of these Regulations.
- b. Requests for relief from the literal requirements of the zoning ordinance and/or for the issuance of special-use permits or use variances related to projects qualifying for development plan review shall be submitted and reviewed under unified development review.

Section 1005 - Certification

~~The application shall be certified complete or incomplete by the Zoning Officer within 14 days. Failure to provide required materials shall cause an application to be certified incomplete. The running of the time period set forth in this section will be deemed stopped upon the issuance of a certificate of incompleteness of the application by the Zoning Officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the Zoning Officer be required to certify a corrected submission as complete or incomplete less than fourteen (14) days after its resubmission. In the event such certification of the application is not made by the Zoning Officer within the time specified, the application shall be deemed complete for purposes of commencing the review period. Review shall be completed in accordance with the provisions of Zoning Ordinance § 307 and § 308.~~

- a. The application shall be certified, in writing, complete or incomplete by the administrative officer within twenty-five (25) days. If no street creation or extension is required, and/or unified development review is not required, the application shall be certified complete or incomplete by the administrative officer within fifteen (15) days.
- b. The running of the time period set forth in this section will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission.
- c. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

Section 1006 - ~~Review by the Technical Review Committee~~ Application review and decision

~~Within 30 days of formal referral by the Zoning Board of Review, the Technical Review Committee shall review the application and refer it to the Planning Board with an advisory recommendation. All development plan review applications shall also be forwarded to the Roads and Utilities Advisory Committee for review. Comments received from the Roads and Utilities Advisory Committee shall be forwarded to the Planning Board with the Technical Review Committee's recommendation.~~

- a. Administrative development plan review. An application shall be approved, denied, or approved with conditions within twenty-five (25) days of the certificate of completeness or within any further time that is agreed to in writing by the applicant and administrative

officer. The administrative officer may refer the application to the Technical Review Committee for review and recommendation.

b. *Formal development plan review.*

Preliminary plan. Unless the application is reviewed under unified development review, the planning board will approve, deny, or approve with conditions, the preliminary plan within sixty-five (65) days of certification of completeness, or within any further time that is agreed to by the applicant and the permitting authority. The Planning Board shall hold a public hearing consistent with the notice requirements of § 320(A) of chapter 152. The administrative officer shall refer the application to the Technical Review Committee for review and recommendation.

1. *Final Plan.* For formal development plan approval, the permitting authority shall delegate final plan review and approval to the administrative officer. The officer will report its actions in writing to the planning board at its next regular meeting, to be made part of the record. Final plan shall be approved or denied within forty-five (45) days after the certification of completeness, or within a further amount of time that may be consented to by the applicant, in writing.

c. *Failure to act.* Failure of the permitting authority to act within the period prescribed constitutes approval of the preliminary plan and a certificate of the administrative officer as to the failure to act within the required time and the resulting approval shall be issued on request of the application.

d. *Vested rights.* Approval of development plan review shall expire two (2) years from the date of approval unless, within that period, a plat or plan, in conformity with approval, and as defined in this act, is submitted for signature and recording. Validity may be extended for an additional period upon application to the administrative officer or permitting authority, whichever entity approved the application, upon a showing of good cause.

e. *Modifications and changes to plans.*

1. Minor changes to the plans approved at any stage may be approved administratively, by the administrative officer, whereupon final plan approval may be issued. The changes may be authorized without an additional planning board meeting, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting recommendation from either the technical review committee or the [permitting authority]. Minor changes shall include:

i. *Changes to correct typographical errors*

2. Denial of the proposed change(s) shall be referred to the [permitting authority] for review as a major change.

3. Major changes to the plans approved at any stage may be approved only by the permitting authority and must follow the same review and hearing process required for approval of preliminary plans, which shall include a public hearing. Major changes shall include any change not classified as a minor change.

4. The administrative officer shall notify the applicant in writing within fourteen (14) days of submission of the final plan application if the administrative officer determines that there has been a major change to the approved plans.

f. Appeal. A decision under this section shall be considered an appealable decision.

Section 1007 – Review by Planning Board

~~Once referred to the Planning Board by the Technical Review Committee, the Planning Board shall consider the application, and shall either approve, approve with conditions, or deny the application within a maximum of 60 days from the date of referral. For projects requiring zoning relief, the development plan review by the Planning Board shall be advisory only to the permitting authority, being the Zoning Board. Said recommendation shall be forwarded to the Zoning Board of Review within a maximum of 60 days of referral by the Technical Review Committee. Such decision or advisory opinion shall be in writing and shall comply with all requirements of the Regulations, including those for filing of records and decisions.~~

Section 1008 – Expiration of Approval

~~Approval of a development plan shall expire 180 days from the date of approval unless an application for a building permit or certificate of occupancy has been filed within such period, or, in the case of a use permitted by variance or special use permit, within such period application is made to and diligently pursued before the Zoning Board. Denial of such building permit or certificate of occupancy, on grounds unrelated to the development plan review, shall not affect the validity of the development plan review approval, provided that a building permit or certificate of occupancy is eventually issued no later than 180 days from the date of development plan review approval.~~

Section 1009~~7~~ - Scope of Review

~~There shall be two review procedures, one for those uses that are permitted as of right and one for those uses that require a variance or special use permit. For uses that are permitted by right, ¶The decision by the Planning Board shall be binding upon the permitting authority, specifically that officer responsible for issuing the building permit or certificate of occupancy. Such decision shall be in writing and shall comply with all requirements of these Regulations, including those for filing of records and decisions.~~

The permitting authority may not issue a permit contrary to the decision of the Planning Board, but such decision may be considered an appealable decision, appealable to the Zoning Board of Review, pursuant to the procedures set forth for the review of a decision of the Planning Board.

~~For those uses that are permitted by variance or special use permit, the review by the Planning Board shall be advisory only to the permitting authority, being the Zoning Board.~~

~~Such advisory opinion shall be in writing and shall comply with all requirements of the Regulations, including those for filing of records and decisions. The permitting authority may reject the advisory opinion of the Planning Board, but only by written findings and decision, specifically setting forth the reasons for rejection.~~

Section 101008 - Specific and Objective Guidelines for Review

The design standards against which development plan applications are reviewed are those applicable to the subject application as set forth in [Article 5](#) of these Regulations.

Section 101109 - Waivers from the design standards of Article 5

The Planning Board may consider requests for waivers from the design standards in [Article 5](#) of these Regulations, subject to § [307](#) of the Zoning Ordinance and Section [908](#) of these Regulations, if the standard or standards to be waived are neither specifically referenced as a requirement by, nor substantially similar to a requirement in, the Zoning Ordinance. For all waiver requests the Planning Board shall hold a public hearing preceded by notice consistent with the requirements of Zoning Ordinance, § [320\(A\)](#).

~~For developments permitted by right, the Planning Board has final authority to grant or deny requested waivers. For applications that require zoning relief, the review of waiver requests by the Planning Board is merely advisory to the permitting authority, which is the Zoning Board of Review.~~

Article 3 Administration, Enforcement and Procedures

Zoning Ordinance § 305 DEVELOPMENT PLAN REVIEW (DPR).

Development Plan Review (DPR) is a procedure for the review of new commercial development and substantial alteration to existing development in order to ensure a basic standard of building, site and landscape design. DPR shall be required for certain new development and redevelopment as specified in this subchapter. Projects exempt from DPR are set forth in § [306](#). The rules and regulations for the development of land in the town are contained in the Middletown Rules and Regulations Regarding the Subdivision and Development of Land (the "Regulations").

(A) *Jurisdiction and purpose.* DPR shall be conducted by the ~~administrative office or~~ Planning Board pursuant to R.I. Gen. Laws §§ 45-23-50 and 45-24-49, as amended. The purpose of such review shall be the reasonable application of the police power of the town to protect the public from possible detrimental impacts of certain types of development and certain large scale development, while at the same time reasonably accommodating the goal of economic development within the town.

(B) *Subdivision and land development plans; combined review.* Any subdivision or land development plan (LDP) that is subject to Planning Board review under the Regulations shall be subject to only one combined review.

(C) The review shall be conducted pursuant to R.I. Gen. Laws §§ 45-23-32 and 45-23-56, as established and set forth in this chapter, as part of the overall approval process. ~~The Planning Board shall hold a public hearing consistent with the notice requirements of § 320(A) of this chapter.~~

(D) All applications for DPR shall be filed with the ~~Zoning Board of Review~~ Administrative Officer. ~~Upon referral of the application by the Zoning Board of Review, the~~ Administrative Officer, Planning Board and the Technical Review Committee (TRC), as applicable, shall have

the administrative power and duty, in accordance with the requirements of this chapter and the Regulations, to review all plans for the proposed development.

(E) Permitting authority. In the case of an administrative application the permitting authority shall be the Administrative Officer. In the case of a formal application the permitting authority shall be the Planning Board.

(F) Specific and objective guidelines. Design of all projects shall be consistent with the provisions of design standards contained in Article 5 of the regulations.

(G) Waivers. The Planning Board may grant waivers of design standards as set forth in the regulations. ~~(B) Waiver requests.~~ The Planning Board shall have the sole authority to waive any of the development standards contained in Rules and Regulations Regarding the Development of Land, § 521 - Commercial Development, subject to the provisions of § 908 of the Regulations, and provided that the standard is not specifically referenced as a requirement by this chapter and is not substantially similar to a requirement in this chapter. Prior to the granting of waivers the Planning Board shall hold a public hearing consistent with the notice requirements of § 320(A) of this chapter.

(H) Appeal. A rejection of the decision shall be an appealable decision pursuant to RIGL §45-23-71

(Ord. passed 10-30-06; Am. Ord. 2013-11, passed 8-19-13)

Zoning Ordinance § 306 USES SUBJECT TO AND EXEMPT FROM DEVELOPMENT PLAN REVIEW.

When a building permit or zoning relief is requested, the Building/Zoning Official shall confer with the ~~Town Planner~~administrative officer, who shall determine whether or not development plan review is required based on the criteria below. Whether or not development plan review is required, all development, except single-family and two-family residential development, must meet the design standards of [Article 5](#) of the Regulations, unless a waiver is granted by the Planning Board. For development where the ~~Town Planner~~administrative officer determines that development plan review is not required, compliance with the design standards of the Regulations, [Article 5](#) shall be determined by the ~~Town Planner~~administrative officer in consultation with the Building/Zoning Official. In cases where it is determined that development plan review is not required, but one or more waivers from the design standards of the regulations is requested, the waiver request(s) shall be forwarded by the ~~Town Planner~~administrative officer to the Planning Board for consideration.

(A) *Development subject to development plan review.* Any use where this chapter specifically requires development plan review, and any development which proposes one or more of the following is subject to development plan review, except that applications involving only single-family or two-family residential development are not subject to development plan review:

- (1) A new principal building;
- (2) The addition of new floor area greater than 1,000 square feet to an existing building;

(3) A new parking area or addition to an existing parking area which in either case results in greater than 5,000 square feet of new parking surface; or

(4) Any alteration of a building façade visible from a public street, except for alterations that include only painting, repair or replacement of exterior siding or trim, or replacement of existing windows. Except for minor repair of existing materials, use of exterior building materials or windows not in compliance with the design standards of the Regulations requires the granting of a waiver from the Regulations by the Planning Board.

(B) *Residential use.* Development plan review shall not be required for one- and two-family residences located in any zoning district. DPR shall be required for any other residential development, including the expansion of existing structures and the demolition of existing structures in coordination with or anticipation of new construction, in any zoning district.

(C) *Screening of rooftop equipment.* When a building permit is requested for exterior renovation or other alteration to an existing building, except for minor repair of existing materials, the Building/Zoning Official shall confer with the Town Planner to confirm that any existing or proposed rooftop equipment, such as HVAC equipment, is screened from view from the public street. If necessary, installation of such screening shall be completed in conjunction with the work for which the building permit was initially requested. The style and appearance of new screening shall be consistent with the overall building design, and shall be approved by the Town Planner prior to issuance of the building permit.

(Ord. passed 10-30-06; Am. Ord. 2013-11, passed 8-19-13; Am. Ord. 2021-5, passed 5-17-21)

~~Zoning Ordinance § 307 DEVELOPMENT PLAN REVIEW FOR USES PERMITTED BY RIGHT.~~

~~—As set forth in § 306, any use which is permitted by right and subject to development plan review:~~

~~—(A) *Review procedure.* The development plan review application shall be filed with the Zoning Board of Review by submitting a complete application to the Zoning Official. Upon certification of the receipt of a complete application the Zoning Official shall immediately forward a copy of the application to the Technical Review Committee. Notice satisfying the requirements of § 320(A) shall be given for the meeting of the Technical Review Committee that will consider the application. Such notice shall be given as soon as possible after referral by the Zoning Official. Once referred by the Zoning Official, development plan review shall begin with a review of the application conducted by the TRC, pursuant to the procedures and time periods set forth in Article 10 of the Regulations. The review by the Technical Review Committee shall be advisory to the Planning Board, which shall complete the development plan review.~~

~~—(B) *Waiver requests.* The Planning Board shall have the sole authority to waive any of the development standards contained in Rules and Regulations Regarding the Development of Land, § 521 Commercial Development, subject to the provisions of § 908 of the Regulations, and provided that the standard is not specifically referenced as a requirement by this chapter and is not substantially similar to a requirement in this chapter. Prior to the granting of waivers the Planning Board shall hold a public hearing consistent with the notice requirements of § 320(A) of this chapter.~~

~~—(C) *Scope of review.* The decision by the Planning Board shall be binding upon the permitting authority. The permitting authority is the officer responsible for issuing the building permit and/or certificate of occupancy. Such decision shall be in writing and shall comply with all requirements of the Regulations, including those for filing of records and decisions. The permitting authority may not issue a permit contrary to the decision of the Planning Board, but such decision may be considered an appealable decision, appealable to the Zoning Board of Review, pursuant to the procedures set forth for the review of a decision of the Planning Board, as set forth in § 317.~~

(Ord. passed 10-30-06; Am. Ord. 2013-11, passed 8-19-13; Am. Ord. 2018-3, passed 3-5-18)

~~Zoning Ordinance § 308 DEVELOPMENT PLAN REVIEW FOR USES REQUIRING A VARIANCE OR SPECIAL USE PERMIT.~~

~~—A use specified in § 602, that is subject to development plan review, as set forth above, and which also requires a variance or special use permit, shall be subject to development plan review prior to the hearing by the Zoning Board.~~

~~—(A) *Review procedure.* The development plan review application shall be filed with the Zoning Board of Review by submitting a complete application to the Zoning Official. Upon certification of the receipt of a complete application the Zoning Official shall immediately forward a copy of the application to the Technical Review Committee. Notice satisfying the requirements of § 320(A) shall be given for the meeting of the Technical Review Committee that will consider the application. Such notice shall be given as soon as possible after referral by the Zoning Officer. The TRC shall review the application and provide a recommendation to the Planning Board, pursuant to the procedures and time periods set forth in Article 10 of the Regulations. The Planning Board shall complete the review of the application, including consideration of any waiver requests in accordance with § 307(B), upon receipt of the recommendation from the Technical Review Committee.~~

~~—(B) *Scope of review.* The review by the Planning Board, including consideration of any requested waivers from the development standards contained in Rules and Regulations Regarding the Development of Land, § 521—Commercial Development, shall be advisory only to the permitting authority, being the Zoning Board. Such advisory opinion shall be in writing and shall comply with all requirements of the Regulations, including those for filing of records and decisions. When a Zoning Board decision differs from a Planning Board recommendation, as part of the decision, the reasons for the difference shall be clearly stated in writing.~~

(Ord. passed 10-30-06; Am. Ord. 2013-11, passed 8-19-13; Am. Ord. 2018-3, passed 3-5-18)

Zoning Ordinance § 309 REQUIRED GUIDELINES, FINDINGS AND IMPROVEMENTS.

(A) *Specific and objective guidelines.* Recommendations by the Technical Review Committee and decisions and recommendations by the Planning Board shall be based upon the specific standards as set forth in Article 5 of the Regulations.

(B) *General findings.* Prior to granting any development plan review approval, or issuing a recommendation in favor of approval to the Zoning Board of Review, the Planning Board shall find that:

(1) The granting of approval will not result in conditions inimical to the public health, safety and welfare;

- (2) The granting of such approval will not substantially or permanently injure the appropriate use of the property in the surrounding area or zoning district;
- (3) The plans for such project comply with all the requirements of this chapter and the Regulations, or that necessary waivers from the requirements of the Regulations have been granted;
- (4) The plans for such project are consistent with the Comprehensive Plan; and
- (5) Any conditions or restrictions that are necessary to ensure that these guidelines have been met have been incorporated into the written approval or recommendation.

(Ord. passed 10-30-06; Am. Ord. 2013-11, passed 8-19-13)

Zoning Ordinance § 323 UNIFIED DEVELOPMENT REVIEW

- A. Unified development review established. There shall be unified development review for the issuance of variances and special use permits for properties undergoing review by development plan review and/or land development or subdivision review.
- B. Public hearing. All land development and subdivision applications, and development plan review applications that include requests for variances and/or special-use permits submitted pursuant to this section, shall require a public hearing that meets the requirements of Section 320 of this chapter. ~~INSERT LOCAL SECTION REFERENCE ON PUBLIC HEARING REQUIREMENTS~~.
- C. In granting requests for dimensional and use variances, the planning board shall be bound to the requirements of ~~INSERT LOCAL SECTION REFERENCE TO DIMENSIONAL AND USE VARIANCE STANDARDS~~ Section 903 of this chapter relative to entering evidence into the record in satisfaction of the applicable standards.
- D. In reviewing requests for special use permits the planning board shall be bound to the conditions and procedures under which a special use permit may be issued and the criteria for the issuance of such permits, as found within the zoning ordinance, Section 902 ~~INSERT LOCAL SECTION REFERENCE~~, and shall be required to provide for the recording of findings of fact and written decisions. ~~as described in the zoning ordinance pursuant to INSERT LOCAL SECTION REFERENCE~~.
- Appeals. An appeal from any decision made pursuant to this section may be taken pursuant to Section 317 of this chapter. ~~INSERT LOCAL SECTION REFERENCE ON APPEAL TO SUPERIOR COURT~~⁵

⁵~~RIGL §45-24-46.4(g) references 45-24-71 for appeals; we believe this reference should be to §45-23-71 (as shown in this template). Municipalities should confer with their solicitor on this issue.~~