

SECTION 900.

ZONING BOARD OF REVIEW

901. Establishment.

A zoning board of review, herein called the board, is hereby created. Board members may be remunerated in the performance of official duties, at an amount to be established by the city council. The board, with the approval of the city council, may engage technical assistance to aid in the discharge of its duties. The building official shall serve as staff to the board. The city solicitor or assistant city solicitor shall serve as legal counsel to the board. The board shall establish written rules of procedure within six months of the adoption of this ordinance. Appeals and correspondence to the board shall be sent to the board in care of the building official. The building official shall file all records and decisions of the board.

902. Membership.

902.1. *New members.* The zoning board of review shall consist of five members who are qualified electors of the city, appointed by the mayor and confirmed by the city council, each to hold office for the term of five years; provided, however, that the original appointments shall be made for terms of one, two, three, four, and five years respectively. The board shall also include two alternates, to be appointed by the mayor and confirmed by the city council, to be designated as the first and second alternate members, for terms of five years. These alternate members shall sit and may actively participate in hearings. The first alternate shall vote if a member of the board is unable to serve at a hearing and the second shall vote if two members of the board are unable to serve at a hearing. In the absence of the first alternate member, the second alternate member shall serve in the position of the first alternate. No member or alternate may vote on any matter before the board unless they have attended all hearings concerning such matter. No member or alternate may participate in any way whatsoever on any matter for which they would have a conflict of interest as defined by the Rhode Island law and the Rhode Island ethics commission. Vacancies in unexpired terms of board members shall be filled by the mayor, subject to confirmation by the city council, no more than 90 days following the vacancy. Members may be removed by the mayor with the consent of the city council for due cause and for not attending three consecutive meetings. At least one member of the zoning board of review shall be a member of the minority party.

902.2. *Prior members.* Members of the board serving on the effective date of adoption of this ordinance shall be exempt from provisions of this article respecting terms of originally appointed members until the expiration of their current terms.

903. Procedure and adoption of rules.

903.1. *Chair.* Immediately after any appointment of a member to the zoning board of review, the board shall elect a chairperson, vice-chairperson and secretary from its membership. The chairperson, or in his/her absence, the vice-chairperson, may administer oaths and compel the attendance of witnesses by the issuance of subpoenas.

903.2. *Submission requirements.* The board's administrative rules shall, at a minimum, include application forms for each of the three types of appeals: applications for relief from a decision by the building official, application for variances and applications for special use permits. The following submission requirements shall accompany said applications: seven copies of a site plan drawn by a registered engineer, architect or surveyor at a scale of no more than 100 feet to the inch indicating:

- (A) The parcel or parcels in question, showing existing zoning and use, including existing and proposed location and dimensions of principal and accessory buildings and structures on the site and any other pertinent information to enable the board to understand the nature of the request.
- (B) Neighboring properties within a 200-foot radius, showing existing zoning, uses and ownership.
- (C) Location of existing and proposed roads and sidewalks and the location, dimensions and number of off-street parking and loading spaces including guest parking spaces, if applicable.
- (D) Location, dimensions, and design of existing and proposed signs and exterior illumination of the site, if applicable.
- (E) Location of existing and proposed recreation facilities, open space, easements and/or rights-of-way, and utilities including water supply, sewage disposal, storm drainage, and electrical or gas service, if applicable.
- (F) Soil types and, where regrading is proposed, existing and proposed grade contours at five-foot intervals (to be shown separately if necessary), if applicable.
- (G) Location and type of existing and proposed major tree and shrub areas, flood hazard areas as defined by subsection 302.5 of this ordinance, and location and area of coastal or freshwater wetlands, as defined in section 200, if any.
- (H) Location, dimensions and type of existing and proposed screening, fences, or walls, if appropriate.
- (I) Proposed density, number of bedrooms per dwelling unit, and percentage of lot coverage as defined in section 200 of this ordinance, if applicable.
- (J) General exterior architectural plans and elevations of all proposed structures indicating proposed style and materials, if applicable.
- (K) Title block in the lower righthand corner of the site plan showing names of the property owner and developer, date of original plan and revisions, if any, north arrow, and a blank for the signature of the chairperson of the zoning board of

review.

- (L) The zoning board of review may waive any of the above, by majority vote, submittal requirements ([subsections] (A) through (K)) if it determines such are unnecessary.

903.3. *Voting.* The board shall be required to vote as follows:

- (A) Five active members shall be necessary to conduct a hearing. As soon as a conflict occurs for a member, that member shall excuse himself/herself, and shall not sit as an active member and shall take no part in the conduct of the hearing. Only five active members shall be entitled to vote on any issue.
- (B) The concurring vote of three of the five members of the board sitting at a hearing shall be necessary to reverse any order, requirement, decision or determination of the HDC or any zoning administrative officer from whom an appeal was taken.
- (C) The concurring vote of four of the five members of the board sitting at a hearing shall be required to decide in favor of an applicant on any matter within the discretion of the board upon which it is required to pass under this ordinance, including variances and special use permits.

903.4. *Fees.* Reasonable fees may be required, in an amount to be established by the city council, to be paid by the appellant or applicant for the adequate review and hearing of applications, issuance of zoning certificates and the recording of the decisions thereon.

903.5. *Decisions and records of the zoning board of review.*

- (A) Following a public hearing, the board shall render a decision within 20 days. The board shall include in its decision all findings of fact and conditions, showing the vote of each member participating thereon, and the absence of a member or his or her failure to vote.
- (B) Decisions shall be recorded and filed in the office of the building official within 30 working days from the date when the decision was rendered, and shall be a public record. A copy of the decision shall be delivered to the city clerk for posting for 20 days, pursuant to section 908.
- (C) The board shall keep written minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and shall keep records of its examinations, findings of fact, and other official actions, all of which shall be recorded and filed in the office of the building official in an expeditious manner upon completion of the proceeding. For any proceeding in which the right of appeal lies to the superior or supreme court, the board shall have the minutes taken either by a competent stenographer or recorded by a sound-recording device.

- (D) Any decision by the board, including any special conditions attached thereto, shall be mailed to the applicant, to the planning board, and to the associate director of the division of planning of the Rhode Island department of administration. Any decision evidencing the granting of a variance or special use permit shall also be recorded in the land evidence records of the city.

904. Powers of the board.

The board shall have the following powers and duties:

- (A) To hear and decide appeals in a timely fashion where it is alleged there is error in any order, requirement, decision, or determination made by an administrative officer or agency in the enforcement of [or] interpretation of this ordinance.
- (B) To hear and decide appeals from a party aggrieved by a decision of the historic district commission (HDC), pursuant to section 906.4.
- (C) To authorize upon application, in specific cases of hardship, variances in the application of the terms of this ordinance.
- (D) To authorize upon application, where specified in this ordinance, special use permits.
- (E) To refer matters to the planning board, planning department, or to other boards or agencies of the city as the board may deem appropriate, for findings and recommendations.
- (F) To provide for issuance of conditional zoning approvals where a proposed application would otherwise be approved except that one or more state or federal agency approvals which are necessary are pending. A conditional zoning approval shall be revoked, upon motion of the board, after a public hearing with due notice, in the instance where any necessary state or federal agency approvals are not received within a specified time period.
- (G) To hear and decide appeals where the board is appointed as the board of appeals for airport zoning regulations pursuant to G.L. 1956, § 1-3-19.
- (H) To hear and decide such other matters, according to the terms of this ordinance or other statutes, and upon which the board may be authorized to pass under this ordinance or other statutes.

905. Modifications granted by the building official.

The building official is hereby empowered to hear and grant modifications. Submission requirements for applications for such modifications shall be in accordance with subsection

903.2 provided that references to the zoning board shall refer to the building official.

- (A) A modification may be requested for adjustments or deviations not exceeding 25 percent of any of the requirements of table 2, Dimensional Regulations, or dimensional or quantitative requirements of parking, signs, landscaping and other similar requirements of this ordinance (but excluding the moving of lot lines and lot area and density which are subject to the requirements [of] this ordinance).
- (B) Prior to ruling on a modification, the building official shall give notice in the same manner as would be given for a variance application, pursuant to sections 906.2(B)(1) and 906.2(B)(2), by certified mail, to all property owners within a 200-foot radius and publish in a newspaper having general circulation in the City of Warwick that he/she is considering such modification, the location of property in question, the nature of the proposed modification, a statement that such modification may be granted by the building official if no objection is received within 30 days, and an invitation to allow any member of the public to inspect plot plans and application forms during normal working hours at the city hall.
- (C) If one or more written objections are received by the building official within 20 days of the date of such public notice, the modification shall forthwith be filed with the zoning board of review if the applicant so desires, as a request for a dimensional variance in accordance with the provisions of section 906 and the building official shall have no further role in deciding the case.
- (D) If there are no objections within the specified time period as provided in subpart [subsection] (B) above, the building official shall render a decision no later than 30 days after the date of the public notice. The following determinations shall be made by the building official:
 - (1) The modification requested is reasonably necessary for the full enjoyment of the permitted use;
 - (2) If the modification is granted, neighboring property will neither be substantially injured nor its appropriate use substantially impaired;
 - (3) The modification requested is in harmony with the purposes and intent of the comprehensive plan and zoning ordinance of the city or town; and
 - (4) The modification requested does not require a variance of a flood hazard requirement.
- (E) If the petitioner is aggrieved by a decision of the building official, said petitioner may file an application for a dimensional variance to the zoning board of review in accordance with section 906.

906. Variances, special use permits, and appeals.

906.1. *Application.* An application for relief from the literal requirements of a zoning ordinance because of hardship or an application for a special use permit may be made by any person, group, agency or corporation, provided that the owner or owners of the subject property must join in any application, by filing with the building official an application as described in section 903.2, above. An application from a corporation must be signed by its attorney or duly authorized officer of the corporation. The building official shall immediately transmit such application received to the board and shall transmit a copy of each application to the director of the department of city plan (hereafter known as the director).

906.2. *Hearing and notice.*

- (A) The zoning board shall, immediately upon receipt of an application, request that the director shall report his findings and recommendations, including a statement on the general consistency of the application with the goals and purposes of the comprehensive plan of the city, in writing to the board within 30 days. Prior to rendering a decision, the zoning board of review shall consider, but not necessarily be bound by an advisory opinion of the director, provided that such advisory opinion is delivered in writing no later than the date of the required public hearing for the petition in question.
- (B) The board shall hold a public hearing on any application for variance or special use permit in an expeditious manner, after receipt, in proper form, of an application, and shall give public notice thereof at least 14 days prior to the date of the hearing, which notice shall include the precise location of the subject property, including the street address, and a description of the relief sought, as follows:
 - (1) In a newspaper of general circulation in the city; and
 - (2) By first class mail to:
 - (i) All owners of the subject property in question; and
 - (ii) All property owners of record of land within 200 feet of the property, which is the subject of the application, whether within the city or within an adjacent city or town, provided however, if the subject property is zoned Residential A-40 or if more than 50 percent of the number of parcels which are residentially zoned land within the 200 foot radius of the subject property are zoned Residential A-40, then notice shall be sent to all property owners of record within 400 feet of the property; provided further however, if the only relief sought in the application is a dimensional variance for a single-family house lot, then notice shall only be sent to property owners of record within 200 feet of the property, without regard to the percent of A-40 parcels within

the 200 foot radius; and

- (iii) The member of the Warwick City Council in such ward as the subject property is located; and
- (iv) The city or town council of any city or town to which one or more of the following pertain:
 - (a) Which is located in or within not less than 200 feet of the boundary of the subject property; and
 - (b) Where there is a public or quasipublic water source, or private water source that is used or is suitable for use as a public water source, within 2,000 feet of the subject property, regardless of municipal boundaries; and
- (v) The governing body of any state or municipal water department or agency, special water district, or private water company that has riparian rights to a surface water resource and/or surface watershed that is used or is suitable for use as a public water source and that is within 2,000 feet of the subject property, provided, however, that the governing body of any state or municipal water department or agency, special water district, or private water company has filed with the building official a map survey, which shall be kept as public record, showing areas of surface water resources and/or watersheds and parcels of land within 2,000 feet thereof.

906.3. *Standards for relief.*

- (A) *All variances.* In granting a variance, the board shall require that evidence to the satisfaction of the following standards be entered into the record of the proceedings:
 - (1) That the hardship from which the applicant seeks relief is due to the unique characteristics of the subject land or structure and not the general characteristics of the surrounding area, and is not due to the physical or economic disability of the applicant (For handicapped access. See section 304.10)
 - (2) That said hardship is not the result of any prior action of the applicant and does not result primarily from the desire of the applicant to realize greater financial gain;
 - (3) That the granting of the requested variance will not alter the general characteristic of the surrounding area or impair the intent or purpose of this zoning ordinance or the comprehensive plan of the city;

- (4) That the relief to be granted is the least relief necessary.
- (B) *Different standards for use and dimensional variances.* The board shall, in addition to the above standards, require that evidence be entered into the record of the proceedings showing that:
- (1) In granting a use variance, the subject land or structure cannot yield any beneficial use if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of neighboring land or structures in the same district and permitted use of land or structures in an adjacent district shall not be considered grounds for granting a use variance; and
 - (2) In granting a dimensional variance, that the hardship that will be suffered by the owner of the subject property if the dimensional variance is not granted shall amount to more than a mere inconvenience, which shall mean that there is no other reasonable alternative to enjoy a legally permitted beneficial use of one's property. The fact that a use may be more profitable or that a structure may be more valuable after the relief is granted shall not be grounds for relief.
- (C) *Special use permit.* In granting a special use permit, the board shall require that evidence to [of] the satisfaction of the following standards be entered into the record of the proceedings:
- (1) That the special use is specifically authorized by this ordinance, and setting forth the exact subsection of this ordinance containing the jurisdictional authorization;
 - (2) That the special use meets all of the criteria set forth in the subsection of this ordinance authorizing such special use; and
 - (3) That the granting of the special use permit will not alter the general character of the surrounding area or impair the intent or purpose of this ordinance or the comprehensive plan of the city.
- (D) *Special conditions.* In granting a variance or special use permit, or in making any determination upon which it is required to pass after public hearing under this ordinance, the board may apply such special conditions that may, in the opinion of the board, be required to promote the intent and purposes of the comprehensive plan of the city and this ordinance. Failure to abide by any special conditions attached to a grant shall constitute a zoning violation. Such special conditions shall be based on competent credible evidence on the record, be incorporated into the decision, and may include, but are not limited to, provisions for:
- (1) Minimizing adverse impact of the development upon other land, including

- the type, intensity, design, and performance of activities;
- (2) Controlling the sequence of development, including when it must be commenced and completed;
 - (3) Controlling the duration of use or development and the time within which any temporary structure must be removed;
 - (4) Assuring satisfactory installation and maintenance of required public improvements;
 - (5) Designating the exact location and nature of development; and
 - (6) Establishing detailed records by submission of drawings, maps, plats, or specifications.

906.4. *Appeals to the zoning board.*

- (A) *Procedure.* An appeal to the board from a decision of any other zoning enforcement agency or officer, the planning board or of the HDC, may be taken by an aggrieved party. Such appeal shall be taken within 30 days of the date of the recording of the decision of the officer or agency, or within 30 days of the time when the aggrieved party knew or should have known of the action or decision of such officer or agency. The appeal shall be commenced by filing an application with the board, with a copy to the officer or agency from whom the appeal is taken, specifying the ground thereof. The officer or agency from whom the appeal is taken shall forthwith transmit to the board all papers, including any transcript or audiotapes, constituting the record upon which the action appealed from was taken. Notice of the appeal shall also be transmitted to the planning board.
- (B) *Stay of proceedings.* An appeal shall stay all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board, after the appeal shall have been duly filed, that by reason of facts stated in the certificate, a stay would in the officer's opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed other than by a restraining order which may be granted by a court of competent jurisdiction on application thereof and upon notice to the officer from whom the appeal is taken on due cause shown.
- (C) *Public hearing.* The board shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties of interest, as required in R.I.G.L. 45-23-69 and decide the same within 20 days of the hearing. The hearing of any appeals shall be at a separate meeting from the hearing of any variance or special use permit applications, although such hearings may be held on the same day or night. At the hearing, any party may appear in person or by agent or by attorney. The officer or a designated individual of the

agency, commission, or board from whom the appeal is taken shall appear before the zoning board at the hearing to represent such agency, commission or board. Other members of the agency, commission or board may appear and be heard, but shall not represent the agency, commission or board. The cost of any notice required for the hearing shall be borne by the appellant.

- (D) *Decisions and records of the board.* In exercising its powers in ruling, the board may, in conformity with the provisions of this ordinance, reverse or affirm wholly or partly and may modify the order, requirement, decision, or determination appealed from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have the powers of the officer or agency from whom the appeal was taken. All decisions and records of the board respecting appeals shall conform to the provisions of section 903.5 of this ordinance.
- (E) [*Findings of fact.*] The zoning board of review in its decisions on any matter coming before it under this ordinance shall record in its minutes the pertinent and material facts and the reason upon which its decisions are based.
- (F) *Appeals of decisions of historic district commission.* Notwithstanding subsection (D) above, when hearing appeals from the commission decisions, the zoning board of review shall not substitute its own judgment for that of the commission, but must consider the issue upon the finding and the record of the commission. The zoning board of review shall not reverse a commission decision except on a finding of prejudicial procedural error, clear error or lack of support by the weight of the evidence in the record. The zoning board of review shall put all decisions on appeal in writing. The zoning board of review shall articulate and explain the reasons and basis of each decision on the record, and the zoning board of review shall send a copy of the decision to the applicant and to the historic district commission.

(Ord. No. 0-95-42, § I, 12-11-95; Ord. No. O-98-13, § I, 5-18-98; Ord. No. O-00-3, § I, 1-24-00; Ord. No. O-02-15, § I, 7-23-02)

907. Expiration of variances and special use permits.

(A) Any variance or special use permit shall expire one year after the date of the filing of the resolution with the city clerk unless the applicant shall, within one year, obtain a legal building permit and proceed with the construction; or obtain a certificate of occupancy when no legal building permit is required. The board may, upon written request and for cause shown prior to the expiration of the initial one-year period, renew the variance or special use permit for a second one-year period. Said request for an extension need not be advertised.

(B) Should an applicant fail to begin construction with a legal building permit, or obtain a certificate of occupancy within the second one-year period, the board may upon written request prior to the expiration of the second one-year period, renew the variance or special use permit for a third one-year period provided that the applicant can demonstrate due diligence in

proceeding and substantial financial commitment in promoting the subject of the variance or special use permit since the date of the filing of the resolution, and notice shall be given in accordance with section 906.2(B) and a hearing shall be held on the request.

(C) None of the year periods set forth in subsections (A) and (B) above shall run during the pendency of any superior court actions seeking to overturn the grant.

908. Appeals to superior court.

An aggrieved party may appeal a decision of the board to the superior court for Kent County by filing a complaint setting forth the reasons of appeal within 20 days after such decision has been filed and posted with the city clerk. The decision shall be posted in a location visible to the public in the city hall for a period of 20 days following the recording of the decision. The board shall file the original documents acted upon by it and constituting the record of the case appealed from, or certified copies thereof, together with such other facts as may be pertinent, with the clerk of the court within 30 days after being served with a copy of the complaint. Further, the board shall cause to be placed a notice of such appealed decision in a newspaper of general circulation in the City of Warwick. Such notice shall include the original date the board heard the petition, the name(s) of the petitioner(s), the court to which the board's decision was appealed, including the court's address and telephone number, and any other information the board deems necessary to inform the general public of such appeal. Said notice shall be submitted to the member of the Warwick city council in a timely manner. When the complaint is filed by someone other than the original applicant or appellant, such original applicant or appellant and the members of the board shall be made parties to such proceedings. The appeal shall not stay proceedings upon the decision appealed from, but the court may, at its discretion, grant a stay on appropriate terms and make such other orders as it deems necessary for an equitable disposition of the appeal.

(Ord. No. O-95-36, § I, 10-16-95)