

CITY OF PROVIDENCE
ZONING BOARD OF REVIEW
POLICIES AND PROCEDURES

SECTION 1 – GENERAL PROVISIONS

1.1 **AUTHORITY:** These policies and procedures are adopted pursuant to Rhode Island General Laws § 45-24-56(a) of the State of Rhode Island Zoning Enabling Act of 1991 (the “Act”) authorizing the zoning board of review to establish written rules of procedure to carry out its functions.

1.2 **PURPOSE:** To establish written procedures for processing applications for use variances, dimensional variances, special use permits, and administrative appeals, and any other matters subject to the Board’s jurisdiction.

Nothing herein shall be construed to contradict or amend the Act or the Zoning Ordinance of the City of Providence. Nor shall these procedures be construed to contradict the application or interpretation of the laws by Courts of proper jurisdiction.

1.3 **GENERAL RULES:** The Board is governed by the terms of R.I. Gen. Laws § 45-24-27 et seq., and Article IX, of the Providence Zoning Ordinance (Chapter 1994-24, No. 39, as amended) (the “Ordinance”).

1.4 **JURISDICTION:** Under Article IX, Section 902 of the Providence Zoning Ordinance, the Board shall have the following authority:

1.4.1 Variances. To authorize, upon application, in specific cases of hardship, variances in the application of the literal terms of the Ordinance.

1.4.2 Special Use Permits. To authorize, upon application, in specific cases, special use permits under applicable portions of the Ordinance.

1.4.3 Special Conditions. In granting a variance, special use permit, or in making any determination, to apply special conditions that may, in the opinion of the Board, be required to promote the intent and purposes of the City of Providence Comprehensive Plan and the Ordinance. Such conditions may include, but are not limited to, time limitations (“probationary terms”).

1.4.4 Appeals from Decisions by the Director, or Other Authorized Agent. To hear and decide appeals from a party aggrieved by an order, requirement,

decision, or determination made by the Director of the Inspection and Standards, or other authorized agent enforcing or interpreting the Ordinance.

- 1.4.5 Appeals from Decisions by the HDC or Other Authorized Body. To hear and decide appeals from a party aggrieved by a decision of the Historic District Commission, Downtown Review Commission, City Planning Commission, or other authorized body enforcing or interpreting the Ordinance.

SECTION 2 – ORGANIZATION

- 2.1 MEMBERSHIP: The Zoning Board shall be constituted in accordance with R.I. Gen. Laws § 45-24-46 and Ordinance Article IX.

2.1.1 MEMBERS: The Board consists of five (5) regular members and at least one (1) alternate member. The alternate member of the Board sits and may actively participate in hearings, but is only eligible to vote if a member of the Board is unable to serve at a hearing or on a particular matter. The Chair and Vice-Chair are appointed by the Mayor from the regular members.

2.1.2 CHAIR: The Chair shall preside over all Board meetings and hearings and shall decide all points of order and procedure, unless directed otherwise by a majority of the Board in session at the time. The Chair shall administer oaths and may compel the attendance of witnesses.

2.1.3. VICE CHAIR: The Mayor shall appoint a Vice-Chair of the Board. The Vice Chair serves as Acting Chair in the absence of the Chair.

- 2.2 STAFF: The Mayor shall appoint a Secretary to the Board. The Secretary shall have the following duties:

- a. to review applications and to determine completeness, in accordance with his/her ministerial duties;
- b. to refer completed applications to the Department of Planning and Development for the Department's recommendation;
- c. to prepare with the Chair the agenda for all meetings and hearings;
- d. to provide notice of meetings and hearings to Board members;
- e. to arrange the proper notice of hearings to interested parties and the public;
- f. to maintain the minutes of Board meetings;
- g. to maintain the records of the Board;
- h. to attend to correspondence of the Board;
- i. such other duties as are assigned by the Chair.

- 2.3 RECORDS: The Board shall keep minutes of its meetings and shall keep stenographic records of its hearings, deliberations and decisions. Access to the Board's records shall be provided pursuant to the Rhode Island Access to Public Records Act. Requests to view the Board's records shall be made to the Secretary of the Board.
- 2.4 OFFICE: The Office of Board and its Secretary is located at 444 Westminster Street, Providence, Rhode Island. The mailing address is: Providence Zoning Board of Review, 444 Westminster Street, Providence, Rhode Island.
- 2.5 LEGAL COUNSEL: The City Solicitor's office shall be requested by the Board to assist in all legal matters.

SECTION 3 –MEETINGS AND HEARINGS

- 3.1 DEFINITIONS: A "meeting" shall mean the convening of the Board for purposes of conducting hearings or business meetings, as defined below.
- 3.1.2 "Hearing": A "hearing" shall mean the convening of the Board for a public hearing required by the Act and Ordinance regarding all applications, petitions and appeals to the Board. Hearings shall be scheduled, noticed and conducted in accordance with the requirements of the Act, as described in Section 5 herein.
- 3.1.3 "Business Meeting": The Chair may call a "meeting" for the conduct of general business of the Board, including but not limited to, organizational, educational, and other general business purposes. Such meetings shall be scheduled, noticed and conducted in accordance with the requirements of the Open Meetings Act.
- 3.2 REGULARLY SCHEDULED MEETINGS: The Board shall give written notice of its regularly scheduled meetings at the beginning of each calendar year. The notice shall include the dates, times, and places of the meetings and shall be provided to the City Clerk, and shall be electronically submitted to the Secretary of State. The annual calendar will be published on the website of the Secretary of State (www.sos.ri.gov/openmeetings). **Meeting dates on the annual calendar are subject to change.**
- 3.3 SPECIAL MEETINGS: Special meetings of the Board may be called at any time by the Chair, provided that the Board shall comply with the notice requirements for hearings and/or business meetings.

- 3.4 EXECUTIVE SESSION: For purposes authorized by the Open Meetings Act, the Board may on a motion duly adopted and for reasons stated on the record, adjourn to executive session at any time during a meeting. The Board may schedule Special Meetings for the purpose of convening in executive session.
- 3.5 CONFLICT OF INTEREST: No member of the Board shall take part in the consideration, deliberation or determination of any matter before the Board in which s/he is a party or has a conflict of interest as defined by the State and/or Municipal Code of Ethics of the City of Providence. The Codes of Ethics shall be liberally construed against participation so as to avoid any appearance of impropriety.
- 3.5.1 It shall be the responsibility of the member of the Board having a potential conflict of interest to disclose such conflict in writing and to recuse him/herself from participation in the discussion or the vote. The minutes will indicate that the member has recused him/herself from consideration of the matter.
- 3.5.2 The Chair shall determine whether the “Rule of Necessity” requires participation of a member, despite a conflict or potential conflict of interest.
- 3.6 QUORUM:
- 3.6.1 For meetings of the Board for purposes of conducting public hearings, a quorum of the Board shall be as defined by the Act and the Ordinance, as more specifically set forth in Section 6.1 below.
- 3.6.2 A majority of the Board shall constitute a quorum for business meetings.

SECTION 4 – APPLICATIONS FOR RELIEF: VARIANCES AND SPECIAL USE PERMITS

- 4.1 APPLICATION REQUIRED: All persons seeking relief from a provision of the Ordinance, including a use variance, dimensional variance and/or special use permit, shall file an application on a form to be issued by the Director. The form shall be available in the Office of the Board. In addition, the form may be found and completed on the City’s website at www.providenceri.com/DIS/zoning-board-of-review.
- 4.2 FILING OF APPLICATIONS: Applications shall be filed with the Secretary of the Board, in full conformance with the instructions provided with the application.

- 4.3 ACCEPTANCE OF APPLICATIONS: The Secretary shall review all applications for completeness of documentation. Incomplete applications will not be scheduled for a hearing. No application shall be deemed complete without submission of the filing fee and clearance by the appropriate financial institution.
- 4.4 LIMITATIONS ON SECRETARY'S AUTHORITY. The Secretary's authority is limited to ministerial duties. The Secretary is not authorized to provide legal advice concerning the filing of an application, the Act or the Ordinance, or any other matter concerning the application and hearing process. Information that may be provided by the Secretary shall not be binding on the Board if inconsistent with the Act, the Ordinance or the Board's exercise of its authority.
- 4.5 BOARD'S AUTHORITY TO REQUEST FURTHER INFORMATION. The Secretary's acceptance of an application does not preclude the Board from requesting any additional information it determines to be necessary to make a decision on the application. Such request may be issued before or during a hearing on the application.
- 4.6 MODIFICATIONS TO AN APPLICATION: An applicant may request to modify an application either before or during a hearing. Such request must be made prior to the Board's vote.
- 4.6.1 A pending application may be modified by a written request from the applicant to the Board. Such request shall include a description of the proposed change(s) and shall be accompanied by all supporting documents required to reflect the modification. The application must be re-noticed in accordance with the Act and the Ordinance.
- 4.6.2 Modifications at hearing: An applicant may modify its application at hearing, without the necessity of a new notice, for the following reasons:
- 4.6.2.1 to withdraw a request for relief;
- 4.6.2.2 to request relief that is **less** than that requested in the original application.
- 4.6.3 Any request for relief greater than that sought in an original application shall require a new application that must be re-noticed and rescheduled for a new hearing.
- 4.7 SUBSEQUENT PETITIONS/APPLICATIONS:
- 4.7.1 The Secretary shall not accept an application for a variance or special use permit if an application seeking the variance or special use permit has been

denied or the petitioner granted leave to withdraw within the preceding twelve (12) months.

4.7.1.1 Such a petition or application may be accepted at any time with the consent of the majority of the members of the Board, if it includes an affidavit which, in the opinion of the Board, sets forth facts indicating that a "substantial material change of circumstances has occurred in the time intervening between the first application and the subsequent application. A mere change of ownership shall not constitute a substantial change of circumstances.

4.7.1.2 Where the Secretary accepts a subsequent petition with an affidavit, the Board shall first make a determination as to whether the applicant has established a substantial material change of circumstances to justify a new hearing. Upon the vote of a majority of the Board in favor of a new hearing, the Board may then consider the application itself.

4.7.1.3 Any subsequent application shall be considered a new application, subject to the provisions of these procedures.

SECTION 5 – HEARINGS: NOTICE AND AGENDA

5.1 HEARINGS: The Board shall hold a public hearing on all applications, petitions, and appeals. No hearing shall be scheduled on an application that is not complete.

5.2 NOTICE OF HEARINGS: Notice of public hearings shall be given in accordance with the Act and the Ordinance.

5.2.1 Notification by Mail. Notice of public hearings shall be given by first class mail, at least fourteen (14) days prior to the hearing, to the applicant and the property owner and to the following "**interested parties**," as defined by R.I. Gen. Laws § 45-24-53(d):

- a. all owners, as they appear in the current records of the City Assessor, of real property located within two hundred feet (200') of the perimeter of the lot(s) proposed for variance or special use permit (regardless of whether within the City or within an adjacent city or town);
- b. the City Council representative of the applicable ward;
- c. the office of the superintendent of schools;
- d. the city or town council of any city or town which is located in or within two hundred feet (200') of the boundary of the area proposed for variance or special use permit;

- e. water authorities, or where there is a public or quasi-public water source, or private water source that is used or is suitable for use as a public water source, within two thousand feet (2,000') of any real property that is the subject of a proposed variance or special use permit, (regardless of municipal boundaries); and
 - f. any neighborhood group that registers the name of the organization, its officers and mailing address with the Secretary, provided such organization has renewed its registration by the previous July 1 of each year.
- 5.2.2 Notification by Publication. The Board shall publish notice of the hearing in a newspaper of general circulation at least fourteen (14) days prior to the date of hearing .
- 5.2.3 Notification by Posting. The Board shall post notice of the hearing in the office of the Clerk and such additional locations as may be required by the Open Meetings Act.
- 5.3 AGENDA: The Chair, in his/her discretion, determines the number of matters to be heard at each public hearing and the date and time of such hearings. Typically, the Board schedules eight (8) applications for each meeting.
- 5.3.1 The agenda may provide for the convening of two separate "calls." The "first call" generally occurs at 5:30 p.m. The "second call" generally occurs at approximately 7:00 p.m.
- 5.3.2 The order of business shall be as follows:
- a. Roll call/call to Order
 - b. Requests for continuances (to occur at each call)
 - c. Matters continued from previous hearings
 - d. New Matters
 - e. Adjournment
 - f. Reconvening as Zoning Board of Review sitting as Board of Appeals, if required (See Section VII below).
- 5.3.3 Applications will be heard in the order in which they are listed on the Agenda. Persons interested in matters noticed for the "second call" need not appear until the time noticed for the second call.
- 5.3.4 The Chair, in her/her discretion may hear a matter out of order. However, the Board may not hear a matter scheduled for the second call until the time noticed for such call.

5.3.5 Posting of Agenda. The Agenda for each meeting shall be posted on the website of the Secretary of State. The Agenda may be amended up to 48-hours prior to a meeting for the following purposes:

- a. to add Executive Sessions or business meetings of the Board;
- b. to remove from the Agenda matters that have been withdrawn or continued to a later hearing date, subject to the conditions for continuances under Sections 6.8.1 and 6.8.2 below.
- c. for such other reasons as may be permitted by the Open Meeting Act, but not inconsistent with the notice requirements of the Zoning Enabling Act and the Ordinance.

SECTION 6 – CONDUCT OF HEARING ON APPLICATION

6.1. QUORUM: No application, petition or appeal shall be heard by less than five (5) members of the Board.

6.1.1 If a member is absent or is recused from a matter as a result of a conflict of interest (see Section 3.5 above), then an alternate will be counted as an active, voting member.

6.1.2 In the absence of five (5) members qualified to hear a matter, there is no quorum with respect to that matter. The matter shall be continued until the next meeting date on which a qualified quorum will be convened. No vote is required to continue a matter for a lack of quorum.

6.2. APPEARANCES REQUIRED:

6.2.1 The applicant and the owner shall appear at the hearing on his/her application for a variance or special use permit.

6.2.2 An applicant and/or owner or applicant may designate an agent to represent the applicant and/or owner's interests. Unless the agent is an attorney of law admitted to practice in the State of Rhode, the applicant and/or owner must appoint a designee in writing signed under oath.

6.2.3 The Board shall consider any written comments provided by any person other than an owner or applicant (whether by e-mail, letter, or any other written document), and shall make such written comments a part of the record. Written comments may be sent to the Secretary of the Board at: 444 Westminster Street, Providence, R.I. and/or by e-mail to:

pcarnevale@providenceri.com.

6.3 TESTIMONY: All testimony shall be sworn under oath administered by the Chair. An attorney need not be sworn under oath when acting in his/her capacity as the authorized representative of an owner, applicant or “interested party.”

6.4 ORDER OF PRESENTATION: Each application shall be heard in a manner that permits the Board to obtain and consider the evidence in an orderly and meaningful manner, taking into consideration the due process rights of the owner, applicant, “interested parties,” and the public. Unless otherwise permitted in the discretion of the chair, the following order of presentation shall apply:

6.4.1 Presentation of application

6.4.1.1 Presentation by the applicant and owner (or authorized representative) of a complete application, including all supporting documentation, current photographs of the property, expert witness testimony; and such other relevant evidence in support of the application.

6.4.1.2 Testimony of “interested persons,” (see section 5.2.1) in support of the application.

6.4.2 Opposition to Application

6.4.2.1 Any formal presentation of “interested parties” (or authorized representative) opposing the application, including documents, expert witness(es), testimony by other “interested parties”

6.4.2.2 Testimony of “interested parties” opposed to the application

6.4.3 Chair’s reading of the recommendation of the Department of Planning and Development.

6.4.4 Testimony of members of the public

6.4.5 Response/rebuttal by applicant and/or owner

6.4.6. Closing of the hearing

6.4.7. Deliberations and vote

6.5 The Board may question any party or witness at any point before deliberations.

- No person shall be heard after the closing of the hearing
- 6.6 Hearings on applications for a variance and/or special use permit are quasi-judicial in nature. The purpose of the public hearing is to afford “interested parties” and the public with a right to be heard on matters relevant to the Board’s decision on an application. The Board encourages public participation in the application process.
- 6.7 All testimony and comments shall be directed to the Chair and the Board. No person shall direct questions to the parties or to any person testifying.
- 6.8 The Chair, in his/her discretion, may allow presentation or testimony out of order, limit duplicative or irrelevant testimony, set reasonable time limits on testimony, and may take other actions necessary for the appropriate conduct of the hearing.

6.8 CONTINUANCES

6.8.1 **At the Request of the Applicant and/or Owner.** Prior to the commencement of presentation of evidence, the Board may grant a continuance of the hearing on an application, upon a vote of the majority of the members, provided that:

- a. the applicant or owner (or respective representative) is unable to appear as a result of an emergency occurring within forty-eight (48) hours of the date and time of the hearing; or
- b. the applicant or owner (or respective representative) appears at the hearing and demonstrates that notice has been given to all “interested persons” within forty-eight (48) hours of the date and time of the hearing; or
- c. there are no “interested parties” or members of the public requesting to be heard; or
- d. upon the applicant’s representation that it intends to modify its application, and the majority of the Board determines that such modification justifies a continuance; or
- e. upon a vote of a majority of the members of the Board, for good cause shown.

6.8.2 When the Board grants a continuance under Section 6.8.1(b), (d) or (e) above, the Board will take testimony from “interested persons” and/or members of the public, provided that:

- a. the same five (5) members of the Board will be present at the continued hearing; and
- b. if the application is modified or amended, the testimony shall be considered only to the extent it is relevant to the amended or modified application.

6.8.3 At the Request of a Member of the Board. The Board may, by a majority vote of the members, exercise its discretion to continue a hearing on an application:

- a. during or after presentation of the application, but prior to the vote, where the Board determines that further information is necessary or desirable; or
- b. after the close of the evidence, for deliberations and vote; or
- c. for other good cause found by the Board.

6.8.4 Applicant's failure to appear without prior notice to the Board. Where an applicant/owner fails to appear to pursue an application, and fails to provide notice to the Board, the Board will continue the application until its next regularly scheduled meeting. If the applicant/owner fails to appear for the subsequently scheduled meeting, then the application shall be denied. The Board may, upon a vote of four (4) members, waive this denial for "good cause" shown.

6.9 REVIEW CRITERIA: The Board's decision on each application will be based on the criteria for granting relief set forth in the Act and the Ordinance.

6.9.1 Criteria for variances. In reviewing applications for a variance, the Board shall use the criteria set forth in R.I. Gen. Laws § 45-24-41(c) and 45-24-41(d) and Article IX, Section 902.3 of the Ordinance. The Board may impose special conditions on the proposed use as it deems appropriate to meet the goals of the State Enabling Act of 1991, and the City's Comprehensive Plan and Zoning Ordinance. The Board may also consider applicable decisions of a court of competent jurisdiction.

6.9.2 Criteria for special use permits. In reviewing applications for a special use permit, the Board shall apply the criteria in Section 902.4 of the Ordinance. The Board may impose special conditions on the proposed use as it deems appropriate to meet the goals of the State Enabling Act of 1991, and the City's Comprehensive Plan and Zoning Ordinance.

- 6.9.3 Special use permit and dimensional variance together. The Board may issue a dimensional variance in conjunction with a special use permit. If the special use could not exist without the dimensional variance, the Board will consider them together to determine if granting the special use is appropriate based on both the special use criteria and the dimensional variance evidentiary standards.
- 6.10 SPECIAL CONDITIONS: In making any determination, the Board may apply special conditions that may, in the opinion of the Board, be required to promote the intent and purposes of the Comprehensive Plan and the Ordinance. Such special conditions may include time period limitations. The special conditions shall be incorporated into the Board's Decision.

SECTION 7 – APPEALS TO THE BOARD FROM DECISIONS OF THE DIRECTOR OR HISTORIC DISTRICT COMMISSION, OR OTHER AUTHORIZED AGENTS [Ordinance Section 901.1 and 902.2]

- 7.1 FILING OF APPEAL. All persons appealing a decision to the Board shall file an application on a form provided by the Director, which shall require, at a minimum, specification of the decision (or portion thereof) being appealed, and a summary of the legal and/or factual bases for appeal. The form shall be available in the Office of the Board, and will contain instructions. In addition, the form may be found and completed on the City's website at www.providenceri.com/DIS/zoning-board-of-review.
- 7.2 HEARINGS BEFORE THE BOARD OF APPEALS. Hearing on appeals will be scheduled in a timely manner, to be held before the Zoning Board of Review sitting as the Zoning Board of Appeals. The Zoning Board of Appeals may convene immediately following a regular meeting of the Zoning Board of Review, or may schedule a special meeting for hearings on appeals.
- 7.3 NOTICE OF HEARINGS. Notice of all hearings on appeals shall be open to the public. Hearings shall be noticed in the same manner set forth in Section 5.2 herein.
- 7.4 SUBMISSIONS BY THE PARTIES. No later than five (5) business days prior to the hearing, all parties to an appeal shall submit a written memorandum and shall serve a copy of the memorandum on all other parties. The memorandum shall contain a summary of the facts and of the arguments to be made at the hearing, and any applicable law. Memoranda will be made part of the full record of the Board.
- 7.5 CONDUCT OF HEARING.

7.5.1 The order of business for hearings on appeals will be as follows:

- a. Roll call
- b. Calendar call
- c. Oral argument/presentation by Appellant
- d. Oral argument/presentation by Appellee
- e. Rebuttal by Appellant (if requested by Appellant)
- f. Closing of the hearing
- g. Deliberation
- h. Vote

7.5.2 Sur-rebuttal may be permitted only in the discretion of the Chair.

7.5.3 The Board may question either party at any point before deliberations. No party may be heard after the closing of the hearing.

7.5.4 Hearings on appeals are administrative in nature. While open to the public, the hearing is limited to the Board's review of the record concerning the decision being appealed. No public comment or testimony is provided for in administrative appeals.

7.6 CONTINUANCES. Once a hearing on appeal has been noticed, no continuance will be granted without good cause shown. The Board, in its discretion, upon a vote of the majority of the members, may continue the date for deliberations and decision on the appeal, but only after hearing argument by all parties to the appeal.

7.7 DECISION. In deciding an appeal, the Board may reverse or affirm, wholly or partly, and may modify an order, requirement, decision or determination appealed from.

SECTION 8 – VOTING

8.1 Five (5) active members must vote on each application or appeal. An alternate may vote when the alternate and only four (4) other active members have heard the presentation of the application or appeal.

8.2 No member (or alternate) may vote on any matter unless he or she has attended all hearings concerning the matter.

8.3 The concurring vote of four (4) members of the Board is required to decide in favor of an application for a **variance or a special use permit**.

8.4 The concurring vote of three (3) members of the Board is required to reverse or modify any order, requirement, decision, or determination of the Director or other

authorized administrative officer, or to decide an **appeal** from any Commission or other authorized body.

SECTION 9 – DECISIONS

- 9.1 **WRITTEN DECISIONS:** The decisions of the Board on every application and appeal shall be in writing and shall include: the findings of fact and conclusions of law, based on the criteria for the relief sought; the reasons for the decision; any special conditions attached to the decision; the members present and voting at the hearing, and a record of how each member voted on each motion and/or decision.
- 9.2 **FILING OF DECISIONS:** All decisions on every application, petition or appeal shall be filed in the office of the Board and of the Director of Inspection and Standards within forty-five (45) days of the Board's vote, and shall be open to public inspection.
- 9.3 **POSTING:** All decisions shall be posted in the Office of the City Clerk for a period of twenty (20) calendar days.
- 9.4 **NOTICE TO PARTIES:** Notice of a decision shall be sent by first class mail to each party, including the owner and the applicant, and the Associate Director of the Division of Planning of the Rhode Island Department of Administration.
- 9.5 **RECORDING OF DECISION.** Any decision evidencing the granting of a variance or special use permit shall also be recorded in the Land Evidence Records of the City.
- 9.6 **APPEALS OF BOARD DECISIONS.** Any person(s) aggrieved by a decision of the Board may appeal said decision to the Superior Court for Providence County within twenty (20) calendar days after such decision is recorded and posted in the office of the city clerk.

SECTION 10 – MISCELLANEOUS

- 10.1 **DEFINITIONS:** All terms used herein have the definitions assigned by the Ordinance. To the extent a definition in these policies is inconsistent, then the definition of the Ordinance shall prevail.
- 10.2 **AMENDMENTS:** These rules may be amended at any time by an affirmative vote of a majority of the members of the Board.
- 10.3 **SEVERABILITY:** The provisions of these rules and regulations are severable; if any such provision or provisions shall be held invalid or unconstitutional by any decision

of any court of competent jurisdiction, such decision shall not impair or otherwise affect any other provision of these rules and regulations.

DRAFT - CONFIDENTIAL