

2024-1

ORDINANCE OF THE
TOWN OF MIDDLETOWN, RHODE ISLAND

AN ORDINANCE AMENDING THE TOWN CODE OF THE
TOWN OF MIDDLETOWN
TITLE XV: LAND USAGE
Chapter 152, Zoning Code

NOW THEREFORE, BE IT ORDAINED AS FOLLOWS:

FIRST: That Town Code Title XV, Chapter 152, Entitled “Zoning Code” is amended as follows (language to be deleted is **[stricken]** out within brackets; language to be added is **underlined**):

§ 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**~~ **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. 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.

§ 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.

~~§ 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.~~

~~(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.]~~

~~§ 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.]~~

§ 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.
- C. In granting requests for dimensional and use variances, the planning board shall be bound to the requirements of 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, and shall be required to provide for the recording of findings of fact and written decisions.
- E. Appeals. An appeal from any decision made pursuant to this section may be taken pursuant to Section 317 of this chapter.

SECOND: This ordinance shall take effect upon adoption and its provisions shall supersede any inconsistent or contrary provision in any other ordinance.

January 16, 2024

READ AND ADOPTED IN COUNCIL

Wendy J.W. Marshall

Wendy J.W. Marshall, MMC
Town Clerk