

Subdivision Regulations

Section 805 - Appeal Procedure

A. Appeals from decision of Administrative Officer.

1. Decisions by the Administrative Officer approving or denying projects under Sections 406 and 1006 of these Regulations (R.I.G.L. §§ 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 R.I.G.L. § 45-23-71.

a. An appeal to the Board of Appeal from a decision or action of the Administrative Officer on administrative matters, interpretations and determinations made pursuant to Section 403 of these regulations may be taken by an aggrieved party ~~to the extent provided in R.I.G.L. § 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.

b. 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.

c. 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.

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

3. Hearing.

a. 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.

b. 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.

c. 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 R.I.G.L. § 45-23-70(d) shall be maintained by the Board of Appeal.

4. Standards of Review.

a. 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.

b. 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.

c. 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.

d. 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.

1. An aggrieved party may appeal a decision of the Board of Appeal, a decision of an Administrative Officer made pursuant to Sections [406](#) and [1006](#) of these Regulations (R.I.G.L. §§ 45- 23-38 or 45-23-50) where authorized to approve or deny any application, a decision of the Technical Review Committee, or a decision of the Planning Board, to the superior court for Newport County by filing a complaint stating the reasons 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.

2. 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.

3. 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 appears 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.

4. 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:

- a. In violation of constitutional, statutory, ordinance or Planning Board regulations provisions;
- b. In excess of the authority granted to the Planning Board by statute or ordinance;
- c. Made upon lawful procedure;
- d. Affected by other error of law;
- e. Clearly erroneous in view of the reliable, probative, and substantial evidence of the whole record;
- f. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.