

Zoning Ordinance

ARTICLE 17 LOW AND MODERATE INCOME HOUSING - COMPREHENSIVE PERMIT

§ 1700 PURPOSE.

This subchapter is intended to provide for the establishment of housing opportunities for low- and moderate-income individuals and families in order to meet the need for affordable, accessible, safe, and sanitary housing for citizens of low and moderate income in accordance with Middletown's Affordable Housing Plan.

(Ord. passed 10-30-06)

§ 1701 AUTHORITY.

In accordance with R.I. Gen. Laws Title 45, Chapter 53, the "Low- and Moderate-Income Housing Act", the Middletown Planning Board shall have the power to issue a comprehensive permit for a qualifying low-and moderate-income housing project. The comprehensive permit shall include all permits or approvals from any local board or official who would otherwise act with respect to such application including, but not limited to, the power to attach to the permit or approval conditions and requirements with respect to setbacks, height, site plan, size, shape, building materials, landscaping, and parking consistent with the terms of the Act.

(Ord. passed 10-30-06)

§ 1702 ELIGIBILITY.

(A) Any applicant proposing to build low- or moderate-income housing may submit to the local review board a single application for a comprehensive permit to build that housing in lieu of separate applications to the applicable local boards. This procedure is only available for proposals in which at least 25% of the housing is low- or moderate-income housing. **This procedure is not available in cities and towns that have low- or moderate-income housing in excess of ten percent (10%) of its year-round housing units which also have an inclusionary zoning ordinance that complies with RIGL section 45-24-46.1.**

(B) Cities and towns that have low- or moderate-income housing in excess of ten percent (10%) of its year-round housing units:

(1) May provide an applicant with more dwelling units than allowed by right under its zoning ordinance in the form of a density bonus to allow an increase in the allowed dwelling units per acre, as well as other incentives and municipal government subsidies as defined in RIGL section 45-53-3;

(2) May, by council action, limit the annual total number of dwellings units in comprehensive permit applications from for-profit developers to an aggregate of one percent (1%) of the total number of year-round housing units in town, and notwithstanding the timetables set forth in this section, the local review board shall have the authority to consider comprehensive permit applications from for-profit developers,

which are made pursuant to this subsection, sequentially in the order in which they are submitted.

(Ord. passed 10-30-06; Am. Ord. 2024-5, passed 4-1-24)

§ 1703 DEFINITIONS.

For purposes of this subchapter the following definitions shall apply unless the context clearly indicates or requires a different meaning.

ADJUSTMENT(S). Requests by the application to seek relief from the literal use and dimensional requirements of the zoning ordinance and/or the design standards or requirements of the land development and subdivision regulations. The standard for the local view board's consideration of adjustments is set forth in R.I. Gen. Laws § 45-53-4(d)(2)(iii)(E)(II).

ADMINISTRATIVE OFFICER. For purposes of this subchapter, the Town Planner is designated as the Administrative Officer.

AFFORDABLE HOUSING PLAN. The town's Five-Year Affordable Housing Action Plan included in the housing element of the Middletown Comprehensive Community Plan that addresses low- and moderate-income housing needs in the town.

APPROVED AFFORDABLE HOUSING PLAN. Affordable housing plan that is part of the approved and unexpired local comprehensive plan as provided for in RIGL sections 45-22.2-8, 45-22.2-9, or 45-22.2-12.

APPLICANT. An applicant for comprehensive permit approval by the Planning Board, which also includes his/her authorized agents or representatives.

COMPREHENSIVE PLAN. Town of Middletown Comprehensive Community Plan (1992) adopted and approved by the town pursuant to RIGL Chapter 22.2. ; and any amendments thereto as adopted by the Town Council.

CONSISTENT WITH LOCAL NEEDS. Reasonable in view of the state and local need for low- and moderate-income housing, considered with the number of low-income persons in the town affected and the need to protect the health and safety of the occupants of the proposed housing or of the residents of the town, to promote better site and building design in relation to the surroundings, or to preserve open spaces, and if the zoning ordinance, requirements, and regulations are applied as equally as possible to both subsidized and unsubsidized housing.

INFEASIBLE. Any condition brought about by any single factor or combination of factors, as a result of limitations imposed on the development by conditions attached to the approval of the comprehensive permit, to the extent that it makes it financially or logistically impracticable for any applicant to proceed in building or operating low- or moderate-income housing, within the limitations set by the subsidizing agency of government or local review [Planning Board], on the size or character of the development, on the amount or nature of the subsidy, or on the tenants, rentals, and income permissible, and without substantially changing the rent levels and unit sizes proposed by the applicant.

LETTER OF ELIGIBILITY. A letter issued by the Rhode Island Housing and Mortgage Finance Corporation in accordance with R.I. Gen. Laws § 42-55-5.3(a).

LOCAL REVIEW BOARD. Middletown Planning Board.

~~—MEETING LOCAL HOUSING NEEDS. As a result of the adoption of the implementation program of an approved affordable housing plan, the absence of unreasonable denial of applications that are made pursuant to an approved affordable housing plan in order to accomplish the purposes and expectations of the approved affordable housing plan, and a showing that at least 20% of the total residential units approved by a local review board or any other municipal board in a calendar year are for low- and moderate-income housing as defined in R.I. Gen. Laws § 42-128-8.1.~~

MONITORING AGENTS. Those monitoring agents appointed by the Rhode Island housing resources commission pursuant to R.I. Gen. Laws § 45-53-3.2 and to provide the monitoring and oversight set forth in this chapter, including, but not limited to, R.I. Gen. Laws §§ 45-53-3.2 and 45-53-4.

MUNICIPAL GOVERNMENT SUBSIDY. Assistance that is made available through a city or town program sufficient to make housing affordable, as affordable housing is defined in R.I. Gen. Laws § 42-128-8.1(d)(1); such assistance shall include a combination of, but is not limited to, direct financial support, abatement of taxes, waiver of fees and charges, and ~~approval of~~ density bonuses and/or internal subsidies, zoning incentives, and adjustments as defined in this section and any combination of forms of assistance.

PROJECT.

(1) *Major project.* A comprehensive permit application involving a major subdivision or land development project.

(2) *Minor project.* A comprehensive permit application involving one or more of the following that is not a **MAJOR PROJECT**:

- (a) Minor subdivision or land development project;
- (b) Request for zoning variance;
- (c) Request for special use permit;
- (d) Request for relief from other local regulations or ordinances not outlined above.

(Ord. passed 10-30-06; Am. Ord. 2024-5, passed 4-1-24)

§ 1704 MUNICIPAL SUBSIDIES.

In order to offset the differential cost of the low- or moderate-income housing units in the section, in cities and towns that do not have low- or moderate-income housing in excess of 10 percent (10%) of its year-round housing units the following municipal subsidies, including adjustments and zoning incentives, shall be provided:

~~(A) Adjustments, meaning a request, or requests by the application to seek relief from the literal use and dimensional requirements of the zoning ordinance and/or the design standards or requirements of the land development and subdivision regulations. The standard for the Planning Board's consideration of adjustments is set forth in this Code and R.I. Gen. Laws § 45-53-4(d)(2)(iii)(E)(II).~~

~~(BA) Density bonus. The town shall provide an applicant with more dwelling units than allowed by right under the zoning ordinance in the form of a density bonus to allow an increase in the allowed dwelling units per acre (DU/A). ~~†~~The following density bonuses shall apply for projects submitted under this section provided that the total land utilized under in the density calculation shall exclude wetlands, ~~wetland buffers,~~ area devoted to roadway infrastructure necessary for development, and easements or rights-of-way of record.~~

(1) For projects connected to public water and sewer, or eligible to be connected to public water and sewer, demonstrated through written confirmation from each respective service provider the following density bonuses are provided:

(a) For projects providing at least 25% low- and moderate- income housing the density bonus shall be five units per acre.

(b) For projects providing at least 50% low- and moderate- income housing the density bonus shall be nine units per acre.

(c) For projects providing at least 100% low- and moderate- income housing the density bonus shall be 12 units per acre.

(2) For properties not connected to either public water or sewer or both, but which provide competent evidence as to the availability of water to service the development and/or a permit for on-site wastewater treatment system to service the dwelling units from the applicable state agency the following density bonuses are provided:

(a) For projects providing at least 25% low- and moderate- income housing the density bonus shall be three units per acre.

(b) For projects providing at least 50% low- and moderate- income housing the density bonus shall be five units per acre.

(c) For projects providing at least 100% low- and moderate- income housing the density bonus shall be eight units per acre.

(Ord. 2024-5, passed 4-1-24)

§ 1705 REQUIREMENTS.

(A) *Parking.* For comprehensive permit applications one off-street parking space per dwelling unit is required for units up to and including two bedrooms.

(B) *Bedrooms.* The bedroom count of units for a comprehensive permit are not limited to any ~~count~~ less than three bedrooms for single- family dwelling units.

~~(C) Floor Area~~. There are no floor area limitations for comprehensive permit applications other than those provided by R.I. Gen. Laws § 45-24.3-11.

(Ord. 2024-5, passed 4-1-24)

§ 1706 PROCEDURE.

Any applicant proposing to build low- or moderate-income housing may submit to the local review board a single application for a comprehensive permit to build that housing in lieu of separate applications to the applicable local boards. This procedure is only available for proposals in which at least 25% of the housing is low- or moderate-income housing. The application and review process for a comprehensive permit shall be as follows.

(A) *Pre-application conference.* A pre-application conference may be required by the Administrative Officer or Planning Board or requested by ~~the~~ applicant not electing to have master plan review. The pre-application conference may be with the Planning Board, technical review committee, or Administrative Officer as determined appropriate by the Administrative Officer.

(1) In advance of the pre-application conference, the applicant shall submit a short, written description of the project including the number of units, type of housing, density analysis, preliminary list of adjustments requested, a location map, and a conceptual site plan.

(2) Upon request of the applicant for a pre-application conference, such conference will be scheduled and held within 30 days of the request, unless a different timeframe is agreed to by the applicant in writing.

(3) If 30 days has elapsed from the filing of the pre-application submission, and no pre-application submission has taken place, nothing shall be deemed to preclude the applicant from thereafter filing and proceeding with an application for preliminary plan review.

(B) Optional master plan. An applicant may elect to apply for and be heard on master plan review prior to preliminary plan submission. If a master plan review is elected by the applicant the following shall apply:

(1) Submission requirements. Submission requirements for master plan review shall be limited to the following:

(a) An application form and fee;

(b) A short description of the project in writing including the number of units, type of housing, density analysis, list of adjustments needed, as well as a location map, and preliminary determinations as to site constraints;

(c) Conceptual site plans showing infrastructure locations for roadways, preliminary locations and design of conceptual stormwater facilities, location of sewer and water

lines and/or wells and on-site wastewater treatment systems, locations of housing units, estimated locations of site constraints and wetlands;

(d) A preliminary traffic opinion for projects of over thirty (30) dwelling units;

(e) A letter of eligibility issued by the Rhode Island Housing and Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed for a municipal government subsidy;

(f) If the applicant submits any requests for adjustments at master plan, a public hearing shall be held in the same manner as during preliminary plan review as set forth in this section and the applicant shall be responsible for providing the list of abutters and all advertising costs.

(2) Certification of completeness. The master plan application must be certified complete or incomplete by the administrative officer according to the provisions of § 45-23-36; provided, however, that the certificate shall be granted within twenty-five (25) days of submission of the application. The running of the time period set forth herein 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. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(3) Review of applications. A master plan application filed in accordance with this chapter shall be reviewed in accordance with the following provisions:

(a) Timeframe for review. The local review board shall render a decision on the master plan application within sixty (60) days of the date the application is certified complete, or within a further amount of time that may be consented to by the applicant through the submission of a written consent.

(b) Failure to act. Failure of the local review 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 local review board to act within the required time and the resulting approval shall be issued on request of the applicant.

(c) Required findings. In voting on an application, the local review board shall make findings, supported by legally competent evidence on the record that discloses the nature and character of the observations upon which the fact finders acted, on the standards required for preliminary plan review in this section, to the extent applicable at the master plan. The failure to provide information which is required later at preliminary plan review shall not form a basis for denial. If the board votes to defer a finding to preliminary plan it shall do so on the record during the proceedings and in the written decision and specify what items are necessary for review at the preliminary plan stage in order to address that finding.

(4) Vesting. 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 each annual review. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the local review board. The vesting for the master plan approval includes all ordinance provisions and regulations at the time of the approval, general and specific conditions shown on the approved master plan drawings and supporting material.

(BC) Preliminary plan.

(1) *Submission requirements.* Applications for preliminary plan under this section shall include:

(a) Unless already submitted at master plan stage, Aa letter of eligibility issued by the Rhode Island Housing Mortgage Finance Corporation, or in the case of projects primarily funded by the U.S. Department of Housing and Urban Development or other state or federal agencies, an award letter indicating the subsidy, or application in such form as may be prescribed for a municipal government subsidy;

(b) A letter signed by the authorized representative of the applicant, setting forth the specific sections and provisions of applicable local ordinances and regulations from which the applicant is seeking adjustments;

(c) A proposed timetable for the commencement of construction and completion of the project;

(d) Those items included in the checklist for preliminary plan review with the exception of evidence of state or federal permits; and

(e) Notwithstanding the submission requirements set forth above, the Planning Board may request additional, reasonable documentation throughout the public hearing,

including, but not limited to, opinions of experts, credible evidence of application for necessary federal and/or state permits, and advice from other local boards and officials.

(2) *Certification of completeness.* The preliminary plan must be certified complete or incomplete by the Administrative Officer within 25 days of submission of an application. The running of the time period set forth herein 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 correct 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 days after its resubmission. If the Administrative Officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(3) *Public hearing.* A public hearing shall be noticed and held as soon as practicable after the issuance of a certificate of completeness.

(4) *Notice.* Public notice for the public hearing will be the same notice required under local regulations for a public hearing for a master plan. The cost of notice shall be paid by the applicant.

(5) *Timeframe for review.* The Planning Board shall render a decision on the preliminary plan application within 90 days of the date the application is certified complete, or within a further amount of time that may be consented to by the applicant through the submission of written consent.

(6) *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. Further, if the public hearing is not convened or a decision is not rendered within the time allowed, the application is deemed to have been allowed and the preliminary plan approval shall be issued immediately.

~~(G7)~~ Required findings.

(1) Required findings for approval. In approving voting on an preliminary plan application for a comprehensive permit, the local review board shall make positive findings, supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted, on each of the following standards provisions, where applicable:

(a) Whether ~~T~~the proposed development is consistent with local needs as identified in the community's comprehensive plan with particular emphasis on the affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies. If the local board finds that the proposed development is inconsistent with the community's affordable housing plan, it must also find that the municipality has made significant progress in implementing its housing plan.

(b) Whether ~~if~~ the proposed development is in compliance with the standards and provisions of the zoning ordinance and subdivision regulations, and/or where adjustments are requested by the applicant, ~~that~~ whether local concerns that have been affected by the relief granted do not outweigh the state and local need for low- and moderate-income housing. For cities and towns that have low- moderate-income housing in excess of ten percent (10%) of its year-round housing units, where adjustments are requested, in addition to the above-showing, the proposed development must show it has mitigated any impact of the proposed development on the general character of the surrounding area.

(c) ~~All~~ Whether the low- and moderate-income housing units proposed are integrated throughout the development; are compatible in scale, meaning that (1) The size of the low- and moderate-income units shall not be less than seventy-five percent (75%) of the size of the market rate units, unless otherwise allowed by the Planning Board; (2) The affordable units are of similar ~~and~~ architectural style to the market rate units within the project so that the exterior of the units look like an integrated neighborhood with similar rooflines, window patterns, materials and colors; and (3) The affordable units will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units, in a proportional manner with the construction and occupancy of the market rate units. Except that for housing units that are intended to be occupied by persons fifty-five (55) years of age or older, or sixty-two (62) years of age or older, as permitted by the federal Fair Housing Act pursuant to 42 U.S.C.A. section 3607(b) and 24 CFR section 100.300-308 and the Rhode Island fair housing practices act pursuant to section 34-37-4.1, such units need not be integrated in any building or phase within the development that contains housing units that are not age-restricted, and neither age-restricted housing units nor any building or phase containing age-restricted must be compatible in scale and architectural style to other housing unit types to the extent the age-restricted housing units are designed to meet the physical or social needs of older persons or necessary to provide housing opportunities for older persons.

(d) Whether ~~if~~ there will be ~~no~~ significant negative impacts on the health and safety of current or future residents of the community, in areas including but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability of potable water, adequate surface water runoff, and the preservation of natural, historical, or cultural features that contribute to the attractiveness of the community.

(e) Whether ~~the~~ ~~All~~ proposed land development and ~~all~~ or subdivision lots will have adequate and permanent physical access to a public street, or the local review board has approved other access, such as a private road.

(f) Whether ~~if~~ the proposed development will ~~not~~ result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable, unless created only as permanent open space or permanently reserved for a public purpose on the approved, recorded plans.

(7) *Vesting*. The approved preliminary plan is vested for a period of two years with the right to extend for two, 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 ordinances and provisions and regulations at the time of the approval, general and specific conditions shown on the approved preliminary plan drawings and support material.

(GD) *Final plan*. The ~~second and~~ final stage of review for the comprehensive permit project shall be done administratively, unless an applicant has requested and been granted any waivers from the submission of checklist items for preliminary plan review, and then, at the Planning Board's discretion, it may vote to require the applicant to return for final plan review and approval.

(1) The following items shall be submitted as part of the final plan submission:

(a) All required state and federal permits must be obtained prior to the final plan approval.

(b) A draft monitoring agreement which identifies an approved entity that will monitor the long-term affordability of the low- and moderate-income units pursuant to R.I. Gen. Laws § 45-53-3.2.

(c) A sample land lease or deed restriction with affordability liens that will restrict use as low- and moderate-income housing in conformance with the guidelines of the agency providing the subsidy for the low- and moderate-income housing, but for a period of not less than 30 years.

(d) Those items included in the checklist for final plan review.

(e) Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees.

(f) Certification by the tax collector that all property taxes are current.

(g) 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.

(2) *Certificate of completeness*. The final plan application must be certified complete or incomplete by the Administrative Officer according to the provisions of R.I. Gen. Laws § 45-23-36; provided however, that, the certificate shall be granted within 25 days of submission of the application. The running of the time period set forth herein 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 days after its resubmission. If the Administrative Officer certifies the application

as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(3) *Timeframe for review.* The reviewing authority shall render a decision on the final plan application within 45 days of the date the application is certified complete.

(4) *Decision on final plan.* An application filed in accordance with this article shall be approved by the Administrative Officer unless such application does not satisfy conditions set forth in the preliminary plan approval decision or such application does not have the requisite state and/or federal approval or other required submissions, does not post the required improvement bonds, or such application is a major modification of the plans approved at preliminary plan.

(5) *Failure to act.* Failure of the reviewing authority to act within the prescribed period constitutes approval of the final 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 applicant.

(DE) *Vesting.* The approved final plan decision is vested for a period of two years with the right to extend for one one-year extension upon written request by the applicant, who must appear before the Planning Board for the extension request, unless within that period, the plat or plan has been submitted for signature and recording as specified in RIGL section 45-23-64. Thereafter, vesting may be extended for a longer period, for good cause shown, if requested, in writing by the applicant, and approved by the local review board.

(EF) *Fees.* Fees shall be consistent with fees that would otherwise be assessed for a project of the same scope and type but not proceeding under this subchapter, provided, however, that the imposition of such fees shall not preclude a showing by a non-profit applicant that the fees make the project financially infeasible. Applications shall include fees as follows:

Low- and Moderate-Income Housing Application Fees	
For applications requiring:	Fees as established by:
Zoning variance or special use permit	Zoning Board - Fee schedule
Subdivision of land	Subdivision and Land Use Regulations - Appendix A
Development impact review	Zoning Ordinance development impact review

(FG) *Modifications and changes to plans.*

(1) Minor changes, as defined in the local regulations, to the approved plans approved at preliminary plan may be approved administratively, by the Administrative Officer, whereupon final plan approval may be issued. 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 a recommendation from either the technical review committee or the local review board. Denial of the proposed change(s) shall be referred to the local review board for review as a major change.

(2) Major changes, as defined in the local regulations, to the plans ~~approved at preliminary plan~~ may be approved only by the local review board and must follow the same review and public.

~~(G) Required findings.~~

~~(1) Required findings for approval. In approving a preliminary plan application for a comprehensive permit, the local review board shall make positive findings, supported by legally competent evidence on the record which discloses the nature and character of the observations upon which the fact finders acted, on each of the following standard provisions, where applicable:~~

~~(a) The proposed development is consistent with local needs as identified in the comprehensive plan with particular emphasis on the affordable housing plan and/or has satisfactorily addressed the issues where there may be inconsistencies.~~

~~(b) The proposed development is in compliance with the standards and provisions of the zoning ordinance and subdivision regulations, and/or where adjustments are requested by the applicant, that local concerns that have been affected by the relief granted do not outweigh the state and local need for low and moderate income housing.~~

~~(c) All low and moderate income housing units proposed are integrated throughout the development; are compatible in scale and architectural style to the market rate units within the project; and will be built and occupied prior to, or simultaneous with the construction and occupancy of any market rate units.~~

~~(d) There will be no significant negative impacts on the health and safety of current or future residents of the community, in areas including but not limited to, safe circulation of pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability of potable water, adequate surface water runoff, and the preservation of natural, historical, or cultural features that contribute to the attractiveness of the community.~~

~~(e) All proposed land development and all subdivision lots will have adequate and permanent physical access to a public street.~~

~~(f) The proposed development will not result in the creation of individual lots with any physical constraints to development that building on those lots according to pertinent regulations and building standards would be impracticable, unless created only as permanent open space or permanently reserved for a public purpose on the approved, recorded plans.~~

~~(2) Required findings for denial. In reviewing the comprehensive permit request, the local review board may deny the request for any of the following reasons:~~

~~—(a) The town has an approved affordable housing plan and is meeting housing needs, and the proposal is inconsistent with the affordable housing plan; provided that, the local review board also finds that the municipality has made significant progress in implementing the housing plan;~~

~~—(b) The proposal is not consistent with local needs, including, but not limited to, the needs identified in an approved comprehensive plan, and/or local zoning ordinance and procedures promulgated in conformance with the comprehensive plan;~~

~~—(c) The proposal is not in conformance with the comprehensive plan;~~

~~—(d) The community has met or has plans to meet the goal of 10% of the year-round units, provided that, the local review board also finds that the community has achieved or has made significant progress towards meeting the goals of the affordable housing plan; or~~

~~—(e) Concerns for the environment and the health and safety of current residents have not been adequately addressed.~~

(3) *Infeasibility of conditions of approval.* The burden is on the applicant to show, by competent evidence before the local review board, that proposed conditions of approval are infeasible, as defined in R.I. Gen. Laws § 45-53-3. Upon request, the applicant shall be provided a reasonable opportunity to respond to such proposed conditions prior to a final vote on the application.

(H) *Recording of written decisions.* All written decisions on applications under this chapter shall be recorded in the land evidence records within 20 days after the local review board's vote or the Administrative Officer's decision, as applicable. A copy of the recorded decision shall be mailed within one business day of recording, by any method that provides confirmation of receipt, to the applicant and to any objector who has filed a written request for notice with the Administrative Officer.

(I) *Local review board powers.* The local review board has the same power to issue permits or approvals that any local board or official who would otherwise act with respect to the application, including, but not limited to, the power to attach to the permit or approval, conditions, and requirements with respect to height, site plan, size or shape, or building materials, as are consistent with the terms of this section.

(J) *Majority vote required.* All local review board decisions on comprehensive permits shall be by majority vote of the members present at the proceeding; provided that, there is at least a quorum of the local review board present and voting at the proceeding.

(K) *Construction timetable.* A comprehensive permit shall expire unless construction is started within 12 months and completed within 60 months of the recording of the final plan approval unless a longer and/or phased period for development is agreed to by the local review board and the applicant. Low- and moderate-income housing units shall be built and occupied prior to, or simultaneous with the construction and occupancy of market rate units.

(L) *Appeal.*

(1) A decision of a local review board may be appealed by the applicant or an aggrieved party, as defined by R.I. Gen. Laws § 45-24-31 to the superior court for the county in which the property is situated. The appeal shall be taken within 20 days after the date of the recording and posting of the decision by the local review board by filing with the superior court, a complaint which contains a statement of the prior proceedings and the reasons upon which the appeal is based. The complaint shall name the local review board as the appellee and serve the local review board with the appeal within 20 days of filing of the appeal. If an aggrieved party who is not the applicant files an appeal, the original applicant shall be named as a party and served in the same manner as the local review board.

(2) The local review board shall not be required to answer the complaint, but it shall submit the complete local review board record to superior court within 30 days of receiving service of the complaint. Should the local review board fail to file the record within 30 days, the applicant may move for default.

(Ord. passed 10-30-06; Am. Ord. 2024-5, passed 4-1-24)