

KEY POINTS ON PROCESSES FOR PB RECOMMENDATIONS TO ZB
AND FOR APPEALS OF PB DECISIONS TO ZB

For recommendations

- When a project that requires Development Plan Review approval also requires a special use permit and/or variance from the Zoning Board, the review by the Planning Board, including consideration of any requested waivers, is advisory only to the permitting authority, which is the Zoning Board.
- The documents which the Zoning Board of Review receives when considering the Development Plan Review application are as follows: the written Advisory Opinion/Decision of the Planning Board, the Development Plan Review Application and exhibits thereto, and the comments from the Technical Review Committee. Other materials that are presented to the Planning Board as part of the review process, such as exhibits provided at the public hearing, are not provided to the Zoning Board, unless those materials are also provided to the Zoning Board by the Applicant on their own initiative. As a result, The Planning Board's written decision should be sufficiently detailed so that the rationale for recommending approval or denial of the DPR application is made clear to the Zoning Board.

For appeals

- According to R.I. Gen. Laws § 45-23-70, when a Planning Board decision is appealed to the Zoning Board of Review, the Zoning Board of Review is charged with answering three questions regarding the actions of the Planning Board.

R.I. Gen. Laws § 45-23-70 states

"... the board of appeal shall not substitute its own judgment for that of the planning board or the administrative officer but must consider the issue upon the findings and record of the planning board or administrative officer. The board of appeal shall not reverse a decision of the planning board or 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."

Hence, the Zoning Board of Review cannot reevaluate the merits of the application, but rather must focus only on answering these three questions:

- a. Was prejudicial procedural error involved?
- b. Was a clear error made?
- c. Was there a lack of support by the weight of the evidence in the record?

- Art 3, para 317 of the Subdivision Regulations in the Town Ordinance further states that "notice of the appeal shall also be transmitted to the Planning Board." These notices are currently being provided to the Administrative Officer of the Planning Board.

- Lastly, the entire record of the proceedings before the Planning board, including transcripts of the public hearing, are provided to the Zoning board on appeal.