



# **Annual Report of the Newport Zoning Board of Review**

City of Newport, Rhode Island

2023

**Table of Contents**

From the Chair..... 3

Meeting Schedule..... 6

Members of the Board and Attendance..... 6

Attendance..... 6

Applications, appeals and matters decided..... 7

Trainings & Activities..... 8

Staff..... 8

## **From the Chair**

Honorable Mayor Khamsyvoravong & Members of the City Council,

This annual report includes a summary of the Zoning Board's work in 2023, including data on the number of meetings conducted and petitions and appeals filed and decided. Briefly, the Zoning Board conducted more meetings and heard and decided more petitions and appeals than last year. Progress was made in that most new petitions were summarily heard within a month of completion and notice to abutters. Forty-eight (48) petitions were heard and decided after a full hearing and the end of year backlog of completed applications awaiting a full hearing was reduced from twenty-three (23) at the end of 2022 to thirteen (13) at the end of 2023. These petitions consist of matters to which there is objection or questions regarding the relief requested. Comments are also included regarding what lies ahead in 2024.

### **Meetings Scheduled and Conducted**

The Zoning Board scheduled twelve (12) regular and six (6) special meetings in 2023 including three special meetings devoted to the Waites Wharf hotel proposal and three special meetings devoted to the backlog in full hearings. One regular meeting was cancelled because of the elevator malfunction in City Hall. Seventeen (17) meetings were conducted in all, five more than the twelve-monthly meetings referenced in the ordinance. (A schedule of the meetings is included in the next section of the report).

The Waites Wharf petitions involved testimony from over twenty witnesses, many of whom were qualified as expert witnesses, and a score of aggrieved and interested persons. Similar developments may no longer come to the Zoning Board under the 2024 Zoning Code changes, which vest authority for Unified Development Review in the Planning Board to grant special use permits and variances for large developments during its project review.

I would be remiss if I did not call out and thank the Board Members, Zoning Officer Nicholas Armour, and Assistant Solicitors Galvin and Conley for their extra devotion to the Board's business. A lot of work and preparation goes into scheduling and conducting these meetings. Scores of petitions and supporting materials must be reviewed before each meeting, including plans, specifications, and reports of architects, appraisers, zoning and land use and other expert witnesses. Most board members typically spend a half day or more preparing for each regular meeting. Even more time is required for large matters like Waites Wharf and appeals, which are often supported by hundreds of pages of submittals. The required chart showing Board Member attendance is included later in this report.

### **Petitions and Appeals decided and filed.**

The pace of new filings increased dramatically in 2023. 147 new petitions for special use permits and/or dimensional variance were filed in 2023 (~12 per month). This compares with approximately 100 new petitions in 2022 (~8 per month) or **a 50% increase**. The number of petitions heard and decided also increased. The Board decided 152 petitions in 2023 compared with 110 in 2022, or **a 38% increase** in the

number of matters decided. Importantly, the Board conducted **48** full hearings in 2023 over 14 regular and special meetings. While many hearings are resolved in about 30 minutes, some petitions require substantially more time because they are contested by aggrieved neighbors and other interested persons. Often the parties are represented by counsel and testimony is offered from multiple lay and expert witnesses in support and opposition. One such hearing occupied nearly an entire meeting. On other occasions the Board completed two full hearings but only by working until well after 11:00 pm. On average the Board heard and decided ~3.5 full hearings for each of the 14 meetings, notwithstanding efforts to set limits on the allotted time for testimony of witnesses and dispense with attorney's opening and closing comments. The number of contested matters is largely responsible for the inventory of unheard petitions at year end and the time lag between filing and hearing of those matters.

It is beyond this report to categorize the reasons underlying the trend in new petitions. No doubt Newport's vibrant real estate market plays a role and may explain the large lot coverage and setback variances being requested as new owners seek to add living and outdoor space, garages, pools, decks, sheds, and other appurtenances. What is unclear is whether the trend is likely to abate.

The Board's appeal docket is a different tale. The Board heard and decided three (3) of five (5) appeals in 2023, one was withdrawn, and one was carried over for a special setting in January 2024 by consent of counsel. Any delay in hearing an appeal is not attributable to the Board but is owing to the time needed by the parties to produce the record below, including hearing transcripts, and brief the issues. The timeline generally follows a schedule agreed to by the parties.

### **The Road Ahead.**

The question naturally arises whether the Zoning Board can complete its business during the twelve regular meetings called for in the Zoning Code. Clearly, it has not been possible to do so the past two years. While time will tell whether the increases in new and contested petitions will continue or abate and, if so, when, the Board will likely need to conduct more than 12 regular meetings, and probably 16 or more, to eliminate the backlog and stay current, absent a change in these trends. This is notwithstanding the new Zoning Code changes that took effect on January 1, 2024.

There are several reasons why the Zoning Code changes affecting the Zoning Board, each of which are a welcome change in the code, are unlikely to allow the Board to complete its work in twelve regular meetings. First, the Zoning Officer's new authority to determine certain petitions will not reduce the number of full hearings because those matters are ordinarily dealt with summarily and take little time. Likewise, the automatic grant of proportional setback and lot coverage relief for non-conforming lots is unlikely to reduce the number of full hearings because of the high number of non-conforming properties that already exceed the proportional increases. More likely, it will also reduce the number of matters decided summarily. Third, the number of full hearings is unlikely to be reduced by the change in responsibility for determining special use permits and variance in large development projects from the Zoning to the Planning Board (and vesting appellate jurisdiction for review of those decisions in a land court) because those matters typically are handled separately at

special meetings. However, the change will free-up three or four special meetings that can be devoted to full hearings but will not itself reduce the regular workload such that all business can be completed in twelve monthly meetings.

Accordingly, if the trends noted above continue unabated, it would be wise to consider increasing the number of alternate board members by two (or more), like some other towns and cities have done. This would allow the Board to distribute the workload of additional meetings among a wider group and still provide applicants, aggrieved and interested persons and the public with five voting-member decisions. The added board members would also improve flexibility in scheduling and reduce the possibility of meeting cancellations for lack of a quorum. It may also make it possible for the Board and Zoning Office to establish a pilot voluntary mediation process to assist applicants and objectors in resolving disputes before a hearing is conducted. State legislative action would be required to change the number of alternates, as other jurisdictions have pursued.

Please advise if there are questions.

Sincerely,

Sam Goldblatt, Chair

## Meeting Schedule

The Zoning Board met on these dates:

- |                        |  |
|------------------------|--|
| 1) January 23, 2023    | Regular Meeting                                    |
| 2) February 13, 2023   | <i>Special Meeting</i>                             |
| 3) February 27, 2023   | Regular Meeting                                    |
| 4) March 27, 2023      | Regular Meeting                                    |
| 5) March 28, 2023      | <i>Special Meeting</i>                             |
| 6) April 24, 2023      | Regular Meeting                                    |
| 7) May 22, 2023        | Regular Meeting                                    |
| 8) June 26, 2023       | Regular Meeting                                    |
| 9) July 24, 2023       | Regular Meeting (Cancelled – Elevator malfunction) |
| 10) August 21, 2023    | <i>Special Meeting</i>                             |
| 11) August 28, 2023    | Regular Meeting                                    |
| 12) September 25, 2023 | Regular Meeting                                    |
| 13) October 16, 2023   | <i>Special Meeting</i> (Waites Wharf)              |
| 14) October 23, 2023   | Regular Meeting                                    |
| 15) November 20, 2023  | <i>Special Meeting</i> (Waites Wharf)              |
| 16) November 27, 2023  | Regular Meeting                                    |
| 17) December 11, 2023  | <i>Special Meeting</i> (Waites Wharf)              |
| 18) December 18, 2023  | Regular Meeting                                    |

## Members of the Board and Attendance

Samuel Goldblatt, Chair

Wick Rudd, Vice-Chair

Russell Jackson, Secretary

Bartholomew Grimes, Member

David Riley, Member

Susan Perkins, 1<sup>st</sup> Alternate

Nicole Shevory, 2<sup>nd</sup> Alternate

## Attendance

Zoning Board Member 2023 Meeting Date	Sam Goldblatt – Chair	Wick Rudd – Vice Chair	Russell Johnson – Secretary	Bart Grimes	David Riley	Susan Perkins (1 <sup>st</sup> alternate)	Nicole Shevory (2 <sup>nd</sup> alternate)
January 24	Present	Present	Present	Present	Present	Present	Present
February 13 – <i>Special Meeting</i>	Present	Present	Present	Present	Present	Absent	Absent
February 27	Present	Present	Present	Present	Present	Present	Absent
March 27	Present	Present	Present	Present	Present	Absent	Absent
March 28 – <i>Special Meeting</i>	Present	Absent	Present	Present	Present	Present	Absent
April 24	Present	Present	Present	Present	Present	Present	Present
May 22	Present	Present	Present	Present	Present	Absent	Present
June 26	Present	Present	Present	Present	Present	Absent	Absent
July 24	<i>Meeting Cancelled</i>						
August 21 – <i>Make-Up Meeting</i>	Present	Absent	Present	Present	Present	Absent	Present
August 28	Present	Present	Absent	Present	Present	Absent	Present
September 25	Present	Present	Present	Present	Present	Absent	Absent
October 16 – <i>Special Meeting</i>	Present	Present	Present	Present	Present	Present	Present
October 23	Present	Present	Absent	Present	Present	Present	Present
November 20 - <i>Special Meeting</i>	Present	Present	Present	Present	Present	Absent	Present
November 27	Present	Present	Absent	Present	Present	Absent	Present
December 11	Present	Present	Present	Present	Present	Absent	Present
December 18*	Present	Present	Present	Present	Present	Absent	Absent

\* Irregularly scheduled meeting due to observed city holiday.

The July 24<sup>th</sup> regular meeting was rescheduled to August 21<sup>st</sup> due to the elevator malfunctioning.

### Staff Attendance:

Nick Armour, Zoning Officer was present at all meetings.

Girard Galvin or Dylan Conley, Assistant City Solicitors were present at all meetings.

## Applications, appeals and matters decided

The Zoning Board had 32 applications from previous years (2019-2022) still on the docket during 2023, including 31 Full Hearing items and 1 appeal. In 2023, the Zoning Board received 147 new petitions for special use permits, dimensional and parking variances, and other forms of relief, and 3 appeals.

The Zoning Board heard and decided 3 of the 4 appeals, as the applicants for 48 Everett Street withdrew their appeal. Of the 147 new petitions received in 2023, 108 petitions were approved by the Zoning Board and 2 petitions were denied. One of the denied petitions, 75 Bridge Street, submitted a new application, revising their project the next month, which was approved. 12 petitions were withdrawn and 9 applications were deemed incomplete. 13 petitions are awaiting a full hearing and three are inactive or awaiting action by other boards and will be heard in 2024.

Previous Years' Applications Heard in 2023					
Year Received	2019	2020	2021	2022	Totals
Approved	0	0	0	19	<b>19</b>
Denied	1	0	1	1	<b>3</b>
Withdrawn	0	0	0	8	<b>8</b>
On 2024 Agenda	0	0	0	1	<b>1</b>
Appeals	0	1	0	0	<b>1</b>
<i>Total</i>	<i>1</i>	<i>1</i>	<i>1</i>	<i>29</i>	<b><i>32</i></b>

Zoning Applications Received in 2023													
Month Received	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Totals
Approved	8	8	14	7	13	11	12	6	4	9	6	10	<b>108</b>
Denied	1	1	0	0	0	0	0	0	0	0	0	0	<b>2</b>
Withdrawn	0	1	2	0	1	0	2	0	2	1	3	0	<b>12</b>
On 2024 Agenda	0	0	0	1	0	1	2	0	3	3	3	3	<b>16</b>
Appeals	1	1	0	0	0	0	0	0	0	0	1	0	<b>3</b>
Incomplete	0	0	0	0	0	1	1	1	2	0	1	3	<b>9</b>
<i>Total</i>	<i>10</i>	<i>11</i>	<i>16</i>	<i>8</i>	<i>14</i>	<i>13</i>	<i>17</i>	<i>7</i>	<i>11</i>	<i>13</i>	<i>14</i>	<i>16</i>	<b><i>150</i></b>

### 2023 Summary Statistics:

- 152 complete applications considered
- 127 petitions approved
- 5 petitions denied
- 4 appeals heard
- 13 petitions and 1 appeal awaiting a full hearing in 2024
- 3 inactive petitions or petitions pending other Boards
- 9 incomplete petitions awaiting corrections
- 12.5 applications/month received on average

## **Trainings & Activities**

None

## **Staff**

The Zoning Officer, Nick Armour, participated in the substantial undertaking of re-writing over 75 pages of the Zoning Ordinance in response to the new State legislation related to Planning and Zoning laws. This included new code sections to visualize all by-right and special uses in each zoning district, create objective standards for all special use permits, update the Variance chapter to incorporate revised standards for approval and the new Modification process, and update the Substandard Lots Chapter to respond to the new “proportionality” requirements implemented by the State. Further, he created a one-of-a-kind calculator for proportionality to allow easy understanding for homeowners for their revised development requirements for setbacks and lot coverage.

Additionally, the Zoning Officer led an effort to create an updated Zoning Application form, draft a new Zoning Application Submittal Requirements packet, and create sample and guidance documents to help applicants understand how to create site plans, building elevations, landscape plans, understand new State Law changes, and more. These materials will be implemented in January 2024 to coincide with the implementation of the new Zoning Ordinance updates.

The Planning and Development Office has been approved for two new planning positions, and is in the recruitment process for a new Assistant Planner that will split time between the Historic Preservation Planner and the Zoning Officer. This position is expected to be hired in early 2024.