



City of Newport
REQUEST FOR CITY COUNCIL ACTION

To: Mayor Xay R. Khamvoravong & Members of the City Council
From: Laura L. Sitrin, Interim City Manager *Laura L. Sitrin*
Date: February 16, 2024
Subject: Changes to the Zoning Ordinance, proposed for immediate action
Staff Presentation: Planning Department Staff

RECOMMENDATION:

The Department of Planning and Development recommends the Council receive the recommended near-term zoning changes identified by stakeholder input and staff review, and that the Council authorize moving forward with the proposed zoning amendments.

BACKGROUND AND FINDINGS:

In February of 2023, the City Council passed a suite of Resolutions (No. 2-23-09, 2023-10, 2023-11 and 2023-12) all relating to housing affordability and accessibility in the city. Resolution No. 2023-10 specifically calls for changes to the zoning ordinance that can be made in the near term in order to render “the zoning ordinance more objective and affordable for homeowners.”

The proposed ordinance changes were developed with input from members of the City’s Boards and Commissions, community stakeholders, local land use attorneys, members of the preservation community and individual councilors.

PREVIOUS LEGISLATIVE ACTION

City Council Resolution No. 2023-10

FISCAL IMPACT

None

SUPPORTING DOCUMENTS

Resolution
Proposed Zoning Updates, in Response to Resolution No. 2023-10

Finance Dept. Review: _____ Date By: _____ (if applicable)

THE CITY OF NEWPORT

**RESOLUTION
OF THE
COUNCIL**

No.

WHEREAS: the Newport City Council (the "Council"), at its Goal Setting Workshop, identified housing as a top priority and as result passed a group of resolutions addressing issues related to housing affordability and accessibility; and

WHEREAS: Resolution No. 2023-10 addressed potential changes to the City's Zoning Code to update the existing zoning and historical zoning ordinances to be more objective and affordable for homeowners; NOW THEREFORE BE IT

RESOLVED: that the Council authorize the Administration to move forward with the proposed changes to create draft a zoning ordinance amendment, including the proposed changes to the historic chapter; BE IT FURTHER

RESOLVED: that the proposed zoning amendments then be reviewed and formatted by City Solicitor's Office and forwarded to the City Council for consideration at a public hearing.

IN COUNCIL
READ AND PASSED

Laura C. Swistak
City Clerk



PROPOSED ZONING AMENDMENTS

Zoning Ordinance & Historic District Chapter

City Council Resolution No. 2023-10

Newport Planning and Development Department

Proposed Amendments

To the City's Zoning Code & Historic District Zoning Chapter

Date: February 16, 2024

Resolution: No. 2023-10, approved by City Council February 8, 2023

Introduction

In 2023, City Council approved Resolution No. 2023-10, calling for staff to review and identify any updates to the existing zoning and historical zoning ordinances that could be completed in the near term, with the goal of providing a more objective zoning ordinance to increase housing affordability and accessibility.

As part of the process, Staff solicited and received input from individual Council members and community stakeholders, and developed the following proposed immediate changes to the overall zoning ordinance and the Historic District Chapter. These proposed ordinance changes are accompanied by ordinance interpretations, and revised application processes, all intended to streamline and clarify the process.

The proposed timeline to achieve these immediate changes is within the next 3 to 6 months. Longer-term goals are separately addressed in the Proposed Work Plan for a Comprehensive Zoning Ordinance Review and Rewrite, presented to the Council at the January 2024 Council meeting.

Proposed Amendments to the Zoning Ordinance

1. Accessory Uses

Accessory Uses are regulated entirely through Zoning Code chapter 17.100.080, including setback requirements depending on district, and certain specified allowances.

Problems:

- a. The code does not differentiate between *Accessory Uses* and *Accessory Structures* or *Buildings*.
- b. The existing setback regulations (typically required at 10 feet from a side and/or rear property line) tend to prohibit a reasonable placement of a garage or shed-type structure on a property, often leading to a Variance to the Zoning Board
- c. No height or size limitations are in the code for accessory structures, so hypothetically, a property owner could propose an accessory structure up to the district maximum (typically 30 or 35 feet in height)

Proposed Solutions:

- a. Establish an "Accessory Use" code section by breaking it out from Chapter 17.100 (Development Standards). Proposed title of "Accessory Uses and Structures"
- b. Define "Accessory Structures" and "Accessory Buildings". The main differentiation between them would be that "structures" are uninhabited (i.e. a shed or garage), where an Accessory Building would be intended for habitation (i.e. a guest room, a home office or workout space, a pool house, or an ADU)
- c. Proposed height limitations suggested to be limited to 12 feet maximum for an Accessory Structure, and 24 feet maximum for an Accessory Building.

- d. Re-define the setbacks, suggested to be reduced (for example, in an R-10 District, reduce to 5 feet from sides and rear for Accessory Structures, and maintain the 10-foot requirement for Accessory Buildings), due to possible (or perceived) impacts from habitation of these buildings.
- e. Place any new ADU ordinance within this Chapter.

2. Architectural Projections

Architectural projections are those features of a building that are permitted to encroach up to three feet into a setback.

Problem:

- a. There is a small list, currently listed in Chapter 17.04.050.C.1 or items that are allowed to project into setbacks. This list does not address certain features that Zoning staff (and stakeholders) believes should be included.

Proposed Solution:

- a. Expand the list of allowable architectural projections (up to 3 feet into a setback) to include:
 - i. Roof eaves
 - ii. Bay windows
 - iii. Stairs
 - iv. Mechanical equipment

3. Number of Residential Structures Allowed on a Lot

Chapter 17.04.050.E – Dwelling Units sets a limit of “No more than one principal residential building shall be permitted on a lot except in the case of transient guest facilities, multifamily dwellings, mixed use development and as otherwise allowed by the provisions of this zoning code.”

Problem:

- a. Even in districts that permit two-family use by-right, applicants are forced to develop these two units within a single structure, or they have to petition the Zoning Board to allow for a second building on the property that would contain the second unit. If the Zoning District allows for two units (and the property size permits it in the Density section of that Zoning District’s code), two units should be allowed either within one building or within two.

Proposed Solution:

- a. Strike the sentence that limits a property to only one principal residential building.

4. “Excepting Proposed Decks”

Chapter 17.72.030.D is a section regarding the ability of a property owner of a non-conforming structure to alter that structure without a zoning variance/special use permit, if that alteration, itself, conforms with the zoning requirements (otherwise, a Special Use Permit is triggered).

Problem:

- a. This section starts with the phrase “Excepting Proposed Decks.” It has been interpreted by the current and former Zoning Officer and Solicitor’s Office that the phrase “excepting proposed decks” means that any decks proposed on a substandard sized property triggers a Special Use Permit for altering a non-conforming aspect of a property.
- b. It is believed this section of the code was added by an earlier Council in order for the Zoning Board to have oversight into the construction of roof decks.
- c. This has meant that many applicants, simply proposing to build a small deck on their property (even just slightly raised off the ground), which otherwise conforms to setbacks and lot coverage, must be granted approval of a Special Use Permit.

Proposed Solution:

- a. Correct the wording of this requirement for a Special Use Permit, to allow for first-level decks, but require a special use permit for the construction of decks, roof decks, or balconies above the first level of a house/building

5. Driveways for Residential Properties

The Zoning Code Section 17.04.050.G.2 establishes regulations around the number of driveways a non-residential property may have, and how far apart they must be spaced.

Problem:

- a. This section only relates to non-residential properties, and nowhere else in the code is there a limit to the number of driveways on a residential property
- b. No real regulations are on the books, besides the width of residential driveways, as established in section 17.104.040.A, including the total number allowed, where they can be located on a property, and the impervious surfaces.
- c. This has led to applications for multiple driveways on a single lot, either as two or more separate driveways, or for circular “half-moon” driveways.
- d. It has led to a lack of understanding as to who the reviewing and approving department (between Zoning and Engineering)
- e. Has led to an increase in impervious surfaces, and a loss of on-street parking when these driveways trigger the need to remove those parking spaces.

Proposed Solution:

- a. Expand chapter 17.104.040 OR 17.04.050 to add clearer regulations regarding residential driveways, including limiting the total number, requiring a certain space between each driveway on one lot, and requiring new driveways to be constructed using pervious pavers/materials

6. Demolitions outside of the Historic District

The Zoning Code Section 17.80 establishes that demolitions of buildings within the Historic District must be approved through the HDC. Outside of the HDC, Chapter 17.86 requires that demolitions be reviewed and approved by the Planning Board.

Problem:

- a. There is no state enabling legislation that supports Planning Board review of demolitions. There are no other communities in the State with Planning Board review of demolitions.
- b. The demolition review process has not been successful in preserving historic properties outside of the historic district, a primary goal as stated in the Intent of 17.80.
- c. The process is frustrating for residents, both as an applicant or as an opponent to the demolition.
- d. The process costs an applicant multiple months of delay because they have to wait to get on a TRC agenda, and then a PB agenda at least another month out (or more when we don't have PB quorum
- e. There is a demolition permit required through the building department prior to demolition.

Proposed Solution:

- a. Eliminate this entire chapter, but continue review of Demolitions outside of the historic district by the Technical Review Committee.

7. Guest House – Maximum Guests per Bedroom

The Zoning Code Section 17.08.010 sets certain limitations on Guest Houses, including “No more than a total of five rooms for sleeping shall be allowed to be rented irrespective of the number of dwelling units or rooms for sleeping that are contained in the building,” and “only one building on a lot or parcel of land shall be allowed a guest house use.”

Problem:

- a. There is no stated limit to the number of guests per bedroom. This has led to confusion amongst applicants about how many guests they can apply to have and advertise.
- b. The interpretation from the last Zoning Officer was that each guest room in a Guest House (or Home Occupation – Guest House) is two guests per bedroom. It is believed this was based on a limit previously placed on transient guest facility (hotel) rooms.

Proposed Solution:

- a. Update the definition section for Guest Houses to officially state the limit of two guests per guest bedroom.

Changes to Current Interpretations of the Zoning Ordinance

8. Lot Coverage

Lot Coverage is defined in the Definitions section of the Zoning Code, Chapter 17.08.

Comments:

- a. Historically, there are a number of structural aspects of properties that have or have not been interpreted as counting towards a property’s Lot Coverage numbers. A bigger review of this is needed, including interpretation and/or clarification from the State to help Newport determine what should be counted.

Solution:

- a. Interpretation that roof eaves up to three feet from the exterior wall of the house shall not count towards lot coverage, though they historically have counted.
- b. We are not ready to re-interpret any other feature without further clarification from the State.

9. Building Height

Comments:

- a. Clarification had been requested of the Zoning Officer on what is and is not exempted from building height, and if roof-top decks/railings should count as building height or not.

Solution:

- a. The Zoning Officer, through consultation with the Solicitor’s Office, determined that the correct interpretation of the existing code is that roof-top decks do count as building height, as the code only exempts features not intended for occupation. As a roof-top deck is intended for occupation, the deck, and any required safety railings, count towards the overall building height.

10. Parking Requirements

Comments:

- a. Clarification on parking space “credits,” and the parking requirement for Guest House uses.

Solution:

- a. The Zoning Officer, through consultation with the Planning Director and Solicitor's Office, has interpreted that parking "credits" are when a property changes use (eg. Changes from an office to a restaurant), and the new use must provide the difference in parking between the old use and the new use (example, if the existing use requires 4 spaces, and the new use requires 6 spaces, the property must find a way to provide the difference of 2 parking spaces, on site, or obtain a variance to that number of spaces. The applicant is not required to fully bring the parking into compliance. This is the case even if there are no existing parking spaces for the existing use. Only the difference in parking must be provided or zoning relief be requested.
- b. For Guest Houses, the previous Zoning Officer was incorrectly applying the parking standards, specifically by not requiring a parking space for the required Manager of the Guest House. Managers are a requirement of all Guest House uses, but only required to live on-site in the Limited Business Zone. However, the previous Zoning Officer had not been requiring compliance with the manager parking space on all new guest houses. This is now being consistently applied.

11. Corner Lots

Comments:

- a. Clarification had been requested on how corner lots are treated for setback purposes. The code does not stipulate.

Solution:

- a. The Zoning Officer and Planning Director determined that the interpretation from the previous Zoning Officer should be maintained, which is that there are 2 front and 2 side setbacks, with no rear setbacks. As no challenge has been made to this interpretation by the City in the past, we are comfortable maintaining that interpretation.

Proposed Changes to Historic District Zoning and Commission

12. Commissioner Training

Comments:

- a. More robust training for commissioners would further the goal of objectivity.

Solution:

- a. The State is currently creating a curriculum for all boards and commissions in the form of a 3-hour training program one time within one year of a new appointment and 1-hour annual update each year.

13. Expand Pool of Commissioners

Comments:

- a. Expand the pool for commissioners by allowing one or two experts in historic preservation and architecture to be exempt from the residency requirement.

Solution:

- a. One (or two) of the 'full member' commission seats should be specified for "professionals in a related field" (eg., architect or historic preservationist). Residency requirement for this seat(s) should be removed for these positions. This would require amending zoning ordinance chapters 2.56.010 and 17.80.040.

14. Design Review Committee

Comments:

- a. Increase accessibility by re-engaging the Design Review Committee (DRC) to help applicants build a robust application that has a higher likelihood for faster approval.

Solution:

- a. Re-engaging the DRC is currently in motion. The HDC has engaged the DRC process for 2 applications in 2024.

15. Guidance Documents – Rename

Comments:

- a. The HDC has been naming its guidance documents “Policy Statements.” This has led to confusion between policy and guidelines.

Solution:

- a. Change the name of “Policy Statements” to “Guidance Documents” to avoid confusion.

16. Solar in the Historic District

Comments:

- a. Promote and increase the accessibility of renewable energy in the historic district.

Solution:

- a. Amend zoning ordinance chapter 17.80.100 to allow exceptions for non-contributing homes with roof mounted solar panels that cannot be seen from the street view at any vantage point.
- b. Amend zoning ordinance chapter 17.80.100 to allow exceptions for contributing and non-contributing properties with ground-mounted solar panels that cannot be seen from the street view at any vantage point and are properly screened.

17. In-Kind Roof Replacements

Comments:

- a. Exempting in-kind roof replacements from HDC review would increase the accessibility of home maintenance.

Solution:

- a. Amend zoning ordinance chapter 17.80.100 to allow exceptions for in-kind roof replacements on contributing and non-contributing properties.

18. Tax Credit Program

Comments:

- a. Increase the affordability of owning a home in the historic district.

Solution:

- a. Offer a tax credit for eligible projects/applicants who present financial hardship, and are owner occupied (see examples from Warren, East Greenwich, and North Smithfield).

19. Increase Application Accessibility

Comments:

- a. Increase the accessibility of information about and applying for a certificate of appropriateness.

Solution:

- a. Develop a fully online application for a certificate of appropriateness.
- b. Create a homeowner’s guide to living in the historic district that explains our standards and the process of applying to the HDC.

- c. Publish a GIS layer of contributing and non-contributing properties within the historic district in the citywide GIS map. (Currently in motion.)

20. Engage Preservation Partners

Comments:

- a. Engage preservation partners in community outreach and education.

Solution:

- a. Hold educational workshops on specific preservation topics such as windows and resilience.
- b. Hold events that highlight successful preservation projects.

Longer-Term Zoning Amendments

The following are zoning amendments that were considered as a part of the proposed immediate amendments, but were determined to require further study and community input. These should be considered in the comprehensive zoning ordinance review and rewrite, when undertaken.

1. Zoning Districts

- a. Consider re-zoning certain neighborhoods, due to the fact that a vast majority of the residentially-zoned properties do not meet the minimum lot sizes.

2. Parking Requirements

- a. Consider reducing parking requirements for certain uses and/or in certain districts/neighborhoods. The amount of parking variances that are sought by business owners in the Upper/Lower Thames areas are significant, and these are historically small properties with no ability to add parking when they make changes or expansions to their uses.

3. Lot Coverage and Impervious Surface Limits

- a. Review, with the State, what should and should not be counted for Lot Coverage. If, as suspected, we may be undercounting what should be counted as lot coverage, we will need to consider raising the allowable lot coverage limits.
- b. Simultaneously, we should consider reducing the limit on impervious surfaces on a single property (this is the amount of land that can be paved or covered by any and all features, such as walkways, driveways, patios, all structures, and buildings). On Residential properties, property owners are allowed to have 80% of their property impervious, which is believed to be much too high.

4. Historic District Chapter

- a. As part of an overarching zoning rewrite, a separate group should be put together to address potential improvements to Chapter 17.80 Historic District Zoning.

THE CITY OF NEWPORT

RESOLUTION

OF THE

COUNCIL

No.2023-10

WHEREAS, the Newport City Council (the "Council"), at its Goal Setting Workshop, identified housing as a top priority; AND

WHEREAS, the City of Newport (the "City") is facing an unprecedented housing crisis that has made average mortgage and rent prices unaffordable for families who remain in the community; AND

WHEREAS, median gross rents in the City have increased thirty-five percent (35.7%) since 2015, a rate nearly double the State's average, according to the US Census Bureau; AND

WHEREAS, the average cost of owning a home in the City has increased by over sixty-four percent (64.5%) since 2015, according to the US Census Bureau data; AND

WHEREAS, much of the City's housing stock is historic, with over sixty percent (60.3%) built before 1939, requiring ongoing maintenance and modification to meet basic quality of life standards and therefore imposing substantial burdens on both homeowners and City staff, the Historic District Commission, Planning Board, and Zoning Board of Review; AND

WHEREAS, with the passage of time, substantial changes in circumstances may cause outdated, inconsistent, ambiguous and vague provisions in the zoning and historical zoning ordinances;

WHEREAS, the State of Rhode Island General Assembly and Governor Daniel J. McKee have made housing a priority; NOW, THEREFORE BE IT

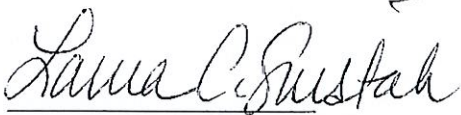
RESOLVED: that the City seize this opportunity to pursue comprehensive efforts to increase housing accessibility and affordability in Newport; BE IT FURTHER

RESOLVED: that the Council by resolutions adopted or through input provided by individual Council members and community stakeholders, provide policy directives to support the staff's review and update of existing zoning and historical zoning ordinances to be more objective and affordable for homeowners; AND BE IT FURTHER

RESOLVED: that the Council and staff work to deliver initial proposals for ordinance revisions by June 30, 2023.

Mark Aramli
Xay Khamsyvoravong
Charles M. Holder, Jr.
David Carlin

IN COUNCIL
READ AND PASSED
FEBRUARY 8, 2023

A handwritten signature in cursive script that reads "Laura C. Swistak". The signature is written in black ink and is positioned above the printed name and title.

LAURA C. SWISTAK
CITY CLERK