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LC001769

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES

Introduced By: Senators Lombardi, Archambault, Ciccone, and McCaffrey

Date Introduced: February 27, 2019

Referred To: Senate Environment & Agriculture

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-24-31 of the General Laws in Chapter 45-24 entitled "Zoning  
2 Ordinances" is hereby amended to read as follows:

3 **45-24-31. Definitions. [Effective March 1, 2019.]**

4 Where words or terms used in this chapter are defined in § 45-22.2-4 or 45-23-32, they  
5 have the meanings stated in that section. In addition, the following words have the following  
6 meanings. Additional words and phrases may be used in developing local ordinances under this  
7 chapter; however, the words and phrases defined in this section are controlling in all local  
8 ordinances created under this chapter:

9 (1) Abutter. One whose property abuts, that is, adjoins at a border, boundary, or point  
10 with no intervening land.

11 (2) Accessory dwelling unit. A dwelling unit: (i) Rented to and occupied either by one or  
12 more members of the family of the occupant or occupants of the principal residence; or (ii)  
13 Reserved for rental occupancy by a person or a family where the principal residence is owner  
14 occupied and that meets the following provisions:

15 (A) In zoning districts that allow residential uses, no more than one accessory dwelling  
16 unit may be an accessory to a single-family dwelling.

17 (B) An accessory dwelling unit shall include separate cooking and sanitary facilities, with  
18 its own legal means of ingress and egress, and is a complete, separate dwelling unit. The  
19 accessory dwelling unit shall be within, or attached to, the principal dwelling-unit structure or

1 within an existing structure, such as a garage or barn, and designed so that the appearance of the  
2 principal structure remains that of a one-family residence.

3 (3) Accessory use. A use of land or of a building, or portion thereof, customarily  
4 incidental and subordinate to the principal use of the land or building. An accessory use may be  
5 restricted to the same lot as the principal use. An accessory use shall not be permitted without the  
6 principal use to which it is related.

7 (4) Aggrieved party. An aggrieved party, for purposes of this chapter, shall be:

8 (i) Any person, or persons, or entity, or entities, who or that can demonstrate that his, her,  
9 or its property will be injured by a decision of any officer or agency responsible for administering  
10 the zoning ordinance of a city or town; or

11 (ii) Anyone requiring notice pursuant to this chapter.

12 (5) Agricultural land. "Agricultural land", as defined in § 45-22.2-4.

13 (6) Airport hazard area. "Airport hazard area", as defined in § 1-3-2.

14 (7) Applicant. An owner, or authorized agent of the owner, submitting an application or  
15 appealing an action of any official, board, or agency.

16 (8) Application. The completed form, or forms, and all accompanying documents,  
17 exhibits, and fees required of an applicant by an approving authority for development review,  
18 approval, or permitting purposes.

19 (9) Buffer. Land that is maintained in either a natural or landscaped state, and is used to  
20 screen or mitigate the impacts of development on surrounding areas, properties, or rights-of-way.

21 (10) Building. Any structure used or intended for supporting or sheltering any use or  
22 occupancy.

23 (11) Building envelope. The three-dimensional space within which a structure is  
24 permitted to be built on a lot and that is defined by regulations governing building setbacks,  
25 maximum height, and bulk; by other regulations; or by any combination thereof.

26 (12) Building height. For a vacant parcel of land, building height shall be measured from  
27 the average, existing-grade elevation where the foundation of the structure is proposed. For an  
28 existing structure, building height shall be measured from average grade taken from the outermost  
29 four (4) corners of the existing foundation. In all cases, building height shall be measured to the  
30 top of the highest point of the existing or proposed roof or structure. This distance shall exclude  
31 spires, chimneys, flag poles, and the like. For any property or structure located in a special flood  
32 hazard area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), building height  
33 shall be measured from base flood elevation, and where freeboard, as defined in this section, is  
34 being utilized or proposed, such freeboard area, not to exceed five feet (5'), shall be excluded

1 from the building height calculation; provided, however that the Rhode Island coastal resources  
2 management council design elevation maps may be used by an owner or applicant to establish a  
3 base flood elevation for a property that is higher than the official FEMA FIRMs.

4 (13) Cluster. A site-planning technique that concentrates buildings in specific areas on  
5 the site to allow the remaining land to be used for recreation, common open space, and/or  
6 preservation of environmentally, historically, culturally, or other sensitive features and/or  
7 structures. The techniques used to concentrate buildings shall be specified in the ordinance and  
8 may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk  
9 requirements, with the resultant open land being devoted by deed restrictions for one or more  
10 uses. Under cluster development, there is no increase in the number of lots that would be  
11 permitted under conventional development except where ordinance provisions include incentive  
12 bonuses for certain types or conditions of development.

13 (14) Common ownership. Either:

14 (i) Ownership by one or more individuals or entities in any form of ownership of two (2)  
15 or more contiguous lots; or

16 (ii) Ownership by any association (ownership may also include a municipality) of one or  
17 more lots under specific development techniques.

18 (15) Community residence. A home or residential facility where children and/or adults  
19 reside in a family setting and may or may not receive supervised care. This does not include  
20 halfway houses or substance-use-disorder-treatment facilities. This does include, but is not  
21 limited to, the following:

22 (i) Whenever six (6) or fewer children or adults with intellectual and/or developmental  
23 disability reside in any type of residence in the community, as licensed by the state pursuant to  
24 chapter 24 of title 40.1. All requirements pertaining to local zoning are waived for these  
25 community residences;

26 (ii) A group home providing care or supervision, or both, to not more than eight (8)  
27 persons with disabilities, and licensed by the state pursuant to chapter 24 of title 40.1;

28 (iii) A residence for children providing care or supervision, or both, to not more than  
29 eight (8) children, including those of the caregiver, and licensed by the state pursuant to chapter  
30 72.1 of title 42;

31 (iv) A community transitional residence providing care or assistance, or both, to no more  
32 than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8)  
33 persons, requiring temporary financial assistance, and/or to persons who are victims of crimes,  
34 abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days

1 nor more than two (2) years. Residents will have access to, and use of, all common areas,  
2 including eating areas and living rooms, and will receive appropriate social services for the  
3 purpose of fostering independence, self-sufficiency, and eventual transition to a permanent living  
4 situation.

5 (16) Comprehensive plan. The comprehensive plan adopted and approved pursuant to  
6 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in  
7 compliance.

8 (17) Day care -- Day-care center. Any other day-care center that is not a family day-care  
9 home.

10 (18) Day care -- Family day-care home. Any home, other than the individual's home, in  
11 which day care in lieu of parental care or supervision is offered at the same time to six (6) or less  
12 individuals who are not relatives of the caregiver, but may not contain more than a total of eight  
13 (8) individuals receiving day care.

14 (19) Density, residential. The number of dwelling units per unit of land.

15 (20) Development. The construction, reconstruction, conversion, structural alteration,  
16 relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance;  
17 or any change in use, or alteration or extension of the use, of land.

18 (21) Development plan review. The process whereby authorized, local officials review  
19 the site plans, maps, and other documentation of a development to determine the compliance with  
20 the stated purposes and standards of the ordinance.

21 (22) District. See "zoning-use district".

22 (23) Drainage system. A system for the removal of water from land by drains, grading, or  
23 other appropriate means. These techniques may include runoff controls to minimize erosion and  
24 sedimentation during and after construction or development; the means for preserving surface and  
25 groundwaters; and the prevention and/or alleviation of flooding.

26 (24) Dwelling unit. A structure, or portion of a structure, providing complete,  
27 independent living facilities for one or more persons, including permanent provisions for living,  
28 sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

29 (25) Extractive industry. The extraction of minerals, including: solids, such as coal and  
30 ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes  
31 quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other  
32 preparation customarily done at the extraction site or as a part of the extractive activity.

33 (26) Family. A person, or persons, related by blood, marriage, or other legal means. See  
34 also "household".

1 (27) Floating zone. An unmapped zoning district adopted within the ordinance that is  
2 established on the zoning map only when an application for development, meeting the zone  
3 requirements, is approved.

4 (28) Floodplains, or Flood hazard area. As defined in § 45-22.2-4.

5 (29) Freeboard. A factor of safety expressed in feet above the base flood elevation of a  
6 flood hazard area for purposes of floodplain management. Freeboard compensates for the many  
7 unknown factors that could contribute to flood heights, such as wave action, bridge openings, and  
8 the hydrological effect of urbanization of the watershed.

9 (30) Groundwater. "Groundwater" and associated terms, as defined in § 46-13.1-3.

10 (31) Halfway house. A residential facility for adults or children who have been  
11 institutionalized for criminal conduct and who require a group setting to facilitate the transition to  
12 a functional member of society.

13 (32) Hardship. See § 45-24-41.

14 (33) Historic district or historic site. As defined in § 45-22.2-4.

15 (34) Home occupation. Any activity customarily carried out for gain by a resident,  
16 conducted as an accessory use in the resident's dwelling unit.

17 (35) Household. One or more persons living together in a single-dwelling unit, with  
18 common access to, and common use of, all living and eating areas and all areas and facilities for  
19 the preparation and storage of food within the dwelling unit. The term "household unit" is  
20 synonymous with the term "dwelling unit" for determining the number of units allowed within  
21 any structure on any lot in a zoning district. An individual household shall consist of any one of  
22 the following:

23 (i) A family, which may also include servants and employees living with the family; or

24 (ii) A person or group of unrelated persons living together. The maximum number may  
25 be set by local ordinance, but this maximum shall not be less than three (3).

26 (36) Incentive zoning. The process whereby the local authority may grant additional  
27 development capacity in exchange for the developer's provision of a public benefit or amenity as  
28 specified in local ordinances.

29 (37) Infrastructure. Facilities and services needed to sustain residential, commercial,  
30 industrial, institutional, and other activities.

31 (38) Land-development project. A project in which one or more lots, tracts, or parcels of  
32 land are developed or redeveloped as a coordinated site for one or more uses, units, or structures,  
33 including, but not limited to, planned development or cluster development for residential,  
34 commercial, institutional, recreational, open space, or mixed uses as provided in the zoning

1 ordinance.

2 (39) Lot. Either:

3 (i) The basic development unit for determination of lot area, depth, and other dimensional  
4 regulations; or

5 (ii) A parcel of land whose boundaries have been established by some legal instrument,  
6 such as a recorded deed or recorded map, and that is recognized as a separate legal entity for  
7 purposes of transfer of title.

8 (40) Lot area. The total area within the boundaries of a lot, excluding any street right-of-  
9 way, usually reported in acres or square feet.

10 (41) Lot area, minimum. The smallest land area established by the local zoning ordinance  
11 upon which a use, building, or structure may be located in a particular zoning district.

12 (42) Lot building coverage. That portion of the lot that is, or may be, covered by  
13 buildings and accessory buildings.

14 (43) Lot depth. The distance measured from the front lot line to the rear lot line. For lots  
15 where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

16 (44) Lot frontage. That portion of a lot abutting a street. A zoning ordinance shall specify  
17 how noncontiguous frontage will be considered with regard to minimum frontage requirements.

18 (45) Lot line. A line of record, bounding a lot, that divides one lot from another lot or  
19 from a public or private street or any other public or private space and shall include:

20 (i) Front: the lot line separating a lot from a street right-of-way. A zoning ordinance shall  
21 specify the method to be used to determine the front lot line on lots fronting on more than one  
22 street, for example, corner and through lots;

23 (ii) Rear: the lot line opposite and most distant from the front lot line, or in the case of  
24 triangular or otherwise irregularly shaped lots, an assumed line at least ten feet (10') in length  
25 entirely within the lot, parallel to and at a maximum distance from, the front lot line; and

26 (iii) Side: any lot line other than a front or rear lot line. On a corner lot, a side lot line  
27 may be a street lot line, depending on requirements of the local zoning ordinance.

28 (46) Lot size, minimum. Shall have the same meaning as "minimum lot area" defined  
29 herein.

30 (47) Lot, through. A lot that fronts upon two (2) parallel streets, or that fronts upon two  
31 (2) streets that do not intersect at the boundaries of the lot.

32 (48) Lot width. The horizontal distance between the side lines of a lot measured at right  
33 angles to its depth along a straight line parallel to the front lot line at the minimum front setback  
34 line.

1 (49) Mere inconvenience. See § 45-24-41.

2 (50) Mixed use. A mixture of land uses within a single development, building, or tract.

3 (51) Modification. Permission granted and administered by the zoning enforcement  
4 officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional  
5 variance other than lot area requirements from the zoning ordinance to a limited degree as  
6 determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent  
7 (25%) of each of the applicable dimensional requirements.

8 (52) Nonconformance. A building, structure, or parcel of land, or use thereof, lawfully  
9 existing at the time of the adoption or amendment of a zoning ordinance and not in conformity  
10 with the provisions of that ordinance or amendment. Nonconformance is of only two (2) types:

11 (i) Nonconforming by use: a lawfully established use of land, building, or structure that is  
12 not a permitted use in that zoning district. A building or structure containing more dwelling units  
13 than are permitted by the use regulations of a zoning ordinance is nonconformity by use; or

14 (ii) Nonconforming by dimension: a building, structure, or parcel of land not in  
15 compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations  
16 include all regulations of the zoning ordinance, other than those pertaining to the permitted uses.  
17 A building or structure containing more dwelling units than are permitted by the use regulations  
18 of a zoning ordinance is nonconforming by use; a building or structure containing a permitted  
19 number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot  
20 area per dwelling unit regulations, is nonconforming by dimension.

21 (53) Overlay district. A district established in a zoning ordinance that is superimposed on  
22 one or more districts or parts of districts. The standards and requirements associated with an  
23 overlay district may be more or less restrictive than those in the underlying districts consistent  
24 with other applicable state and federal laws.

25 (54) Performance standards. A set of criteria or limits relating to elements that a  
26 particular use or process must either meet or may not exceed.

27 (55) Permitted use. A use by right that is specifically authorized in a particular zoning  
28 district.

29 (56) Planned development. A "land-development project", as defined in subsection (38),  
30 and developed according to plan as a single entity and containing one or more structures or uses  
31 with appurtenant common areas.

32 (57) Plant agriculture. The growing of plants for food or fiber, to sell or consume.

33 (58) Preapplication conference. A review meeting of a proposed development held  
34 between applicants and reviewing agencies as permitted by law and municipal ordinance, before

1 formal submission of an application for a permit or for development approval.

2 (59) Setback line or lines. A line, or lines, parallel to a lot line at the minimum distance of  
3 the required setback for the zoning district in which the lot is located that establishes the area  
4 within which the principal structure must be erected or placed.

5 (60) Site plan. The development plan for one or more lots on which is shown the existing  
6 and/or the proposed conditions of the lot.

7 (61) Slope of land. The grade, pitch, rise, or incline of the topographic landform or  
8 surface of the ground.

9 (62) Special use. A regulated use that is permitted pursuant to the special-use permit  
10 issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to as a  
11 special exception.

12 (63) Structure. A combination of materials to form a construction for use, occupancy, or  
13 ornamentation, whether installed on, above, or below the surface of land or water.

14 (64) Substandard lot of record. Any lot lawfully existing at the time of adoption or  
15 amendment of a zoning ordinance and not in conformance with the dimensional or area  
16 provisions of that ordinance.

17 (65) Use. The purpose or activity for which land or buildings are designed, arranged, or  
18 intended, or for which land or buildings are occupied or maintained.

19 (66) Variance. Permission to depart from the literal requirements of a zoning ordinance.  
20 An authorization for the construction or maintenance of a building or structure, or for the  
21 establishment or maintenance of a use of land, that is prohibited by a zoning ordinance. There are  
22 only two (2) categories of variance, a use variance or a dimensional variance.

23 (i) Use variance. Permission to depart from the use requirements of a zoning ordinance  
24 where the applicant for the requested variance has shown by evidence upon the record that the  
25 subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the  
26 zoning ordinance.

27 (ii) Dimensional variance. Permission to depart from the dimensional requirements of a  
28 zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the  
29 record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use  
30 of the subject property unless granted the requested relief from the dimensional regulations.  
31 However, the fact that a use may be more profitable or that a structure may be more valuable after  
32 the relief is granted are not grounds for relief.

33 (67) Waters. As defined in § 46-12-1(23).

34 (68) Wetland, coastal. As defined in § 45-22.2-4.



1 (69) Wetland, freshwater. As defined in § 2-1-20.

2 (70) Wind energy system, large. A vertical device, greater than two hundred feet (200') in  
3 height from the average, existing-grade elevation where the foundation of the structure is  
4 proposed, or a system that generates more than one hundred kilowatts (100 kw), that converts the  
5 wind's kinetic energy into electrical energy.

6 (71) Wind energy system, residential. Small, free standing or roof mounted systems that  
7 converts the wind's kinetic energy into electrical energy.

8 (72) Wind energy system, small. A vertical device, less than two hundred feet (200') in  
9 height from the average, existing-grade elevation where the foundation of the structure is  
10 proposed, or a system that generates less than one hundred kilowatts (100 kw), that converts the  
11 wind's kinetic energy into electrical energy.

12 ~~(70)~~(73) Zoning certificate. A document signed by the zoning-enforcement officer, as  
13 required in the zoning ordinance, that acknowledges that a use, structure, building, or lot either  
14 complies with, or is legally nonconforming to, the provisions of the municipal zoning ordinance  
15 or is an authorized variance or modification therefrom.

16 ~~(71)~~(74) Zoning map. The map, or maps, that are a part of the zoning ordinance and that  
17 delineate the boundaries of all mapped zoning districts within the physical boundary of the city or  
18 town.

19 ~~(72)~~(75) Zoning ordinance. An ordinance enacted by the legislative body of the city or  
20 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the  
21 city or town's legislative or home rule charter, if any, that establish regulations and standards  
22 relating to the nature and extent of uses of land and structures; that is consistent with the  
23 comprehensive plan of the city or town as defined in chapter 22.2 of this title; that includes a  
24 zoning map; and that complies with the provisions of this chapter.

25 ~~(73)~~(76) Zoning-use district. The basic unit in zoning, either mapped or unmapped, to  
26 which a uniform set of regulations applies, or a uniform set of regulations for a specified use.  
27 Zoning-use districts include, but are not limited to: agricultural, commercial, industrial,  
28 institutional, open space, and residential. Each district may include sub-districts. Districts may be  
29 combined.

30 SECTION 2. Chapter 45-24 of the General Laws entitled "Zoning Ordinances" is hereby  
31 amended by adding thereto the following section:

32 **45-24-46.5. Special provisions. Wind energy systems.**

33 (a) Wind energy systems reduce reliance on fossil fuels, and are included in the Rhode  
34 Island Division of Planning State Guide Plan Element Report #120, entitled "Energy 2035: Rhode

1 Island State Energy Plan".

2 (b) A zoning ordinance may provide for review and approval of dimensional variances,  
3 use variances, and special-use permits for wind energy systems, large, wind energy systems,  
4 small and wind energy systems, residential, as defined in § 45-24-31; provided, the ordinance  
5 establishes requirements and guidelines consistent with the latest technical paper on renewable  
6 energy sitting guidelines for terrestrial wind energy systems published by the statewide planning  
7 program.

8 (c) A zoning ordinance, notwithstanding any other provision of this chapter, shall require  
9 notice, sent by first-class mail, to all property owners in or within:

10 (1) Not less than five hundred feet (500') or three (3) times the height, in feet, of the  
11 proposed wind energy system, small, whichever is greater; or

12 (2) One thousand feet (1,000') or three (3) times the height, in feet, of the proposed wind  
13 energy system, large;

14 (3) Both subsections (c)(1) and (c)(2) of this section, shall be measured from the  
15 boundaries of the proposed parcel.

16 SECTION 3. This act shall take effect on March 1, 2019.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TOWNS AND CITIES - ZONING ORDINANCES

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1           This act would define small, large and residential wind energy systems and provide that  
2 the zoning ordinance concerning wind energy systems shall establish requirements and guidelines  
3 consistent with the latest technical paper on renewable energy siting guidelines for terrestrial  
4 wind energy systems published by the statewide planning program. This act would further require  
5 that notice of the zoning ordinance be sent, by first-class mail, to certain property owners.

6           This act would take effect on March 1, 2019.

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