

2020 -- H 7743

=====
LC004973
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

—————
A N A C T

RELATING TO TOWNS AND CITIES – ZONING ORDINANCES

Introduced By: Representatives Noret, Marszalkowski, Vella-Wilkinson, Serodio, and Amore

Date Introduced: February 26, 2020

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-24-31 and 45-24-37 of the General Laws in Chapter 45-24
2 entitled "Zoning Ordinances" are hereby amended to read as follows:

3 **45-24-31. Definitions.**

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 with
10 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 unit~~
16 ~~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 accessory~~
19 ~~dwelling unit shall be within, or attached to, the principal dwelling unit structure or within an~~

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

3 (2) Accessory dwelling unit. A dwelling unit that is accessory to a single-family dwelling
4 and reserved for general or rental occupancy. Accessory dwelling units shall:

5 (i) Include separate cooking facilities, sanitary facilities, and their own legal means of
6 ingress and egress;

7 (ii) Be a complete, separate dwelling unit; and

8 (iii) Comply with local regulations that establish standards for the construction of accessory
9 dwelling units, including, but not limited to, height, setback, physical design, and maximum square
10 footage.

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

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

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

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

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

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

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

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

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

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

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

34 (12) Building height. For a vacant parcel of land, building height shall be measured from

1 the average, existing-grade elevation where the foundation of the structure is proposed. For an
2 existing structure, building height shall be measured from average grade taken from the outermost
3 four (4) corners of the existing foundation. In all cases, building height shall be measured to the top
4 of the highest point of the existing or proposed roof or structure. This distance shall exclude spires,
5 chimneys, flag poles, and the like. For any property or structure located in a special flood hazard
6 area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), or depicted on the
7 Rhode Island coastal resources management council (CRMC) suggested design elevation three foot
8 (3') sea level rise (CRMC SDE 3 SLR) map as being inundated during a one-hundred-year (100)
9 storm, the greater of the following amounts, expressed in feet, shall be excluded from the building
10 height calculation:

11 (i) The base flood elevation on the FEMA FIRM plus up to five feet (5') of any utilized or
12 proposed freeboard, less the average existing grade elevation; or

13 (ii) The suggested design elevation as depicted on the CRMC SDE 3 SLR map during a
14 one-hundred-year (100) storm, less the average existing grade elevation. CRMC shall reevaluate
15 the appropriate suggested design elevation map for the exclusion every ten (10) years, or as
16 otherwise necessary.

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

26 (14) Common ownership. Either:

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

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

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

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

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

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

10 (iv) A community transitional residence providing care or assistance, or both, to no more
11 than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8)
12 persons, requiring temporary financial assistance, and/or to persons who are victims of crimes,
13 abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days nor
14 more than two (2) years. Residents will have access to, and use of, all common areas, including
15 eating areas and living rooms, and will receive appropriate social services for the purpose of
16 fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

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

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

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

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

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

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

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

34 (23) Drainage system. A system for the removal of water from land by drains, grading, or

1 other appropriate means. These techniques may include runoff controls to minimize erosion and
2 sedimentation during and after construction or development; the means for preserving surface and
3 groundwaters; and the prevention and/or alleviation of flooding.

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

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

11 (26) Family member. A person, or persons, related by blood, marriage, or other legal
12 means, including, but not limited to, a child, parent, spouse, mother-in-law, father-in-law,
13 grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the household.

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

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

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

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

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

26 (32) Hardship. See § 45-24-41.

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

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

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

1 following:

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

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

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

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

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

15 (39) Lot. Either:

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

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

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

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

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

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

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

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

33 (i) Front: the lot line separating a lot from a street right-of-way. A zoning ordinance shall
34 specify the method to be used to determine the front lot line on lots fronting on more than one

1 street, for example, corner and through lots;

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

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

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

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

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

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

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

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

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

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

27 (ii) Nonconforming by dimension: a building, structure, or parcel of land not in compliance
28 with the dimensional regulations of the zoning ordinance. Dimensional regulations include all
29 regulations of the zoning ordinance, other than those pertaining to the permitted uses. A building
30 or structure containing more dwelling units than are permitted by the use regulations of a zoning
31 ordinance is nonconforming by use; a building or structure containing a permitted number of
32 dwelling units by the use regulations of the zoning ordinance, but not meeting the lot area per
33 dwelling unit regulations, is nonconforming by dimension.

34 (53) Overlay district. A district established in a zoning ordinance that is superimposed on

1 one or more districts or parts of districts. The standards and requirements associated with an overlay
2 district may be more or less restrictive than those in the underlying districts consistent with other
3 applicable state and federal laws.

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

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

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

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

12 (58) Preapplication conference. A review meeting of a proposed development held between
13 applicants and reviewing agencies as permitted by law and municipal ordinance, before formal
14 submission of an application for a permit or for development approval.

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

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

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

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

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

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

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

32 (66) Variance. Permission to depart from the literal requirements of a zoning ordinance.
33 An authorization for the construction or maintenance of a building or structure, or for the
34 establishment or maintenance of a use of land, that is prohibited by a zoning ordinance. There are

1 only two (2) categories of variance, a use variance or a dimensional variance.

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

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

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

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

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

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

19 (71) Zoning map. The map, or maps, that are a part of the zoning ordinance and that
20 delineate the boundaries of all mapped zoning districts within the physical boundary of the city or
21 town.

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

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

32 **45-24-37. General provisions -- Permitted uses.**

33 (a) The zoning ordinance shall provide a listing of all land uses and/or performance
34 standards for uses that are permitted within the zoning use districts of the municipality.

1 (b) Notwithstanding any other provision of this chapter, the following uses are permitted
2 uses within all residential zoning use districts of a municipality and all industrial and commercial
3 zoning use districts except where residential use is prohibited for public health or safety reasons:

- 4 (1) Households;
- 5 (2) Community residences; and
- 6 (3) Family day care homes.

7 (c) Any time a building or other structure used for residential purposes, or a portion of a
8 building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire
9 or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured home,
10 or homes, as the need may be, elsewhere upon the land, for use and occupancy of the former
11 occupants for a period of up to twelve (12) months, or until the building or structure is rehabilitated
12 and otherwise made fit for occupancy. The property owner, or a properly designated agent of the
13 owner, is only allowed to cause the mobile and manufactured home, or homes, to remain
14 temporarily upon the land by making timely application to the local building official for the
15 purposes of obtaining the necessary permits to repair or rebuild the structure.

16 (d) Notwithstanding any other provision of this chapter, appropriate access for people with
17 disabilities to residential structures is allowed as a reasonable accommodation for any person(s)
18 residing, or intending to reside, in the residential structure.

19 (e) Notwithstanding any other provision of this chapter, an accessory ~~family~~ dwelling unit
20 in an owner-occupied, single-family residence shall be permitted: (1) as As a reasonable
21 accommodation for family members with disabilities or who are sixty-two (62) years of age or
22 older; ; or to accommodate other family members. The appearance of the structure shall remain that
23 of a single family residence and there shall be an internal means of egress between the principal
24 unit and the accessory family dwelling unit. If possible, no additional exterior entrances should be
25 added. Where additional entrance is required, placement should generally be in the rear or side of
26 the structure. (2) For occupancy by a family member generally. Municipalities may establish
27 standards for the construction of accessory dwelling units; provided however; that the standards
28 shall not render it infeasible to construct an accessory dwelling unit as a reasonable
29 accommodation. When the structure is serviced by an individual, sewage-disposal system, the
30 applicant shall have the existing or any new system approved by the department of environmental
31 management. The zoning-enforcement officer shall require that a declaration of the accessory
32 family dwelling unit for the family member, or members, and its restrictions be ~~recorded in the~~
33 ~~land evidence records and~~ filed with the zoning-enforcement officer and the building official. Once
34 the family members with disabilities or who are sixty-two (62) years of age or older, or any other

1 family member, no longer reside(s) in the premises on a permanent basis, or the title is transferred,
2 the property owner shall notify the zoning official in writing, and the accessory family-dwelling
3 unit shall no longer be permitted, unless there is a subsequent, valid application.

4 (f) When used in this section the terms "people with disabilities" or "member, or members,
5 with disabilities" means a person(s) who has a physical or mental impairment that substantially
6 limits one or more major life activities, as defined in § 42-87-1(7).

7 (g) Notwithstanding any other provisions of this chapter, plant agriculture is a permitted
8 use within all zoning districts of a municipality, including all industrial and commercial zoning
9 districts, except where prohibited for public health or safety reasons or the protection of wildlife
10 habitat.

11 SECTION 2. This act shall take effect upon passage.

=====
LC004973
=====

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

1 This act would allow an accessory dwelling unit of a single-family dwelling to be permitted
2 as a reasonable accommodation for family members with disabilities or who are sixty-two (62)
3 years of age or older, or for occupancy by a family member generally, and allow municipalities to
4 establish standards for the construction of accessory dwelling units.

5 This act would take effect upon passage.

=====
LC004973
=====