

# 2012 -- S 2442 SUBSTITUTE A

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LC01598/SUB A  
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## STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

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A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES

Introduced By: Senators Sosnowski, Walaska, Felag, McCaffrey, and Bates

Date Introduced: February 16, 2012

Referred To: Senate Environment & Agriculture

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

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

10           (2) Accessory Dwelling Unit. - A dwelling unit: (i) rented to and occupied either by one  
11 or more members of the family of the occupant or occupants of the principal residence; or (ii)  
12 reserved for rental occupancy by a person or a family where the principal residence is owner  
13 occupied, and which meets the following provisions:

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

16           (B) An accessory dwelling unit shall include separate cooking and sanitary facilities, with  
17 its own legal means of ingress and egress and is a complete, separate dwelling unit. The accessory  
18 dwelling unit shall be within or attached to the principal dwelling unit structure or within an  
19 existing structure, such as a garage or barn, and designed so that the appearance of the principal

1 structure remains that of a one-family residence.

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

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

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

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

11 (5) Agricultural Land. - "Agricultural land", as defined in section 45-22.2-4.

12 (6) Airport Hazard Area. - "Airport hazard area", as defined in section 1-3-2.

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

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

18 (9) Buffer. - Land which is maintained in either a natural or landscaped state, and is used  
19 to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-  
20 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 which is defined by regulations governing building setbacks,  
25 maximum height, and bulk; by other regulations; and/or by any combination thereof.

26 (12) Building Height. - The vertical distance from grade, as determined by the  
27 municipality, to the top of the highest point of the roof or structure. The distance may exclude  
28 spires, chimneys, flag poles, and the like.

29 (13) Cluster. - A site planning technique that concentrates buildings in specific areas on  
30 the site to allow the remaining land to be used for recreation, common open space, and/or  
31 preservation of environmentally, historically, culturally, or other sensitive features and/or  
32 structures. The techniques used to concentrate buildings shall be specified in the ordinance and  
33 may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk  
34 requirements, with the resultant open land being devoted by deed restrictions for one or more

1 uses. Under cluster development there is no increase in the number of lots that would be  
2 permitted under conventional development except where ordinance provisions include incentive  
3 bonuses for certain types or conditions of development.

4 (14) Common Ownership. - Either:

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

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

9 (15) Community Residence. - A home or residential facility where children and/or adults  
10 reside in a family setting and may or may not receive supervised care. This does not include  
11 halfway houses or substance abuse treatment facilities. This does include, but is not limited, to the  
12 following:

13 (i) Whenever six (6) or fewer children or adults with retardation reside in any type of  
14 residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All  
15 requirements pertaining to local zoning are waived for these community residences;

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

18 (iii) A residence for children providing care or supervision, or both, to not more than  
19 eight (8) children including those of the care giver and licensed by the state pursuant to chapter  
20 72.1 of title 42;

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

28 (16) Comprehensive Plan. - The comprehensive plan adopted and approved pursuant to  
29 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in  
30 compliance.

31 (17) Day Care -- Day Care Center. - Any other day care center which is not a family day  
32 care home.

33 (18) Day Care -- Family Day Care Home. - Any home other than the individual's home in  
34 which day care in lieu of parental care or supervision is offered at the same time to six (6) or less

1 individuals who are not relatives of the care giver, but may not contain more than a total of eight  
2 (8) individuals receiving day care.

3 (19) Density, Residential. - The number of dwelling units per unit of land.

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

7 (21) Development Plan Review. - The process whereby authorized local officials review  
8 the site plans, maps, and other documentation of a development to determine the compliance with  
9 the stated purposes and standards of the ordinance.

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

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

15 (24) Dwelling Unit. - A structure or portion of a structure providing complete,  
16 independent living facilities for one or more persons, including permanent provisions for living,  
17 sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

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

22 (26) Family. - A person or persons related by blood, marriage, or other legal means. See  
23 also "Household".

24 (27) Floating Zone. - An unmapped zoning district adopted within the ordinance which is  
25 established on the zoning map only when an application for development, meeting the zone  
26 requirements, is approved.

27 (28) Floodplains, or Flood Hazard Area. - As defined in section 45-22.2-4.

28 (29) Groundwater. - "Groundwater" and associated terms, as defined in section 46-13.1-3.

29 (30) Halfway House. - A residential facility for adults or children who have been  
30 institutionalized for criminal conduct and who require a group setting to facilitate the transition to  
31 a functional member of society.

32 (31) Hardship. - See section 45-24-41.

33 (32) Historic District, or Historic Site. - As defined in section 45-22.2-4.

34 (33) Home Occupation. - Any activity customarily carried out for gain by a resident,

1 conducted as an accessory use in the resident's dwelling unit.

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

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

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

11 (35) Incentive Zoning. - The process whereby the local authority may grant additional  
12 development capacity in exchange for the developer's provision of a public benefit or amenity as  
13 specified in local ordinances.

14 (36) Infrastructure. - Facilities and services needed to sustain residential, commercial,  
15 industrial, institutional, and other activities.

16 (37) Land Development Project. - A project in which one or more lots, tracts, or parcels  
17 of land are to be developed or redeveloped as a coordinated site for a complex of uses, units, or  
18 structures, including, but not limited to, planned development and/or cluster development for  
19 residential, commercial, institutional, recreational, open space, and/or mixed uses as may be  
20 provided for in the zoning ordinance.

21 (38) Lot. - Either:

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

24 (ii) A parcel of land whose boundaries have been established by some legal instrument  
25 such as a recorded deed or recorded map and which is recognized as a separate legal entity for  
26 purposes of transfer of title.

27 (39) Lot Area. - The total area within the boundaries of a lot, excluding any street right-  
28 of-way, usually reported in acres or square feet.

29 (40) Lot Building Coverage. - That portion of the lot that is or may be covered by  
30 buildings and accessory buildings.

31 (41) Lot Depth. - The distance measured from the front lot line to the rear lot line. For  
32 lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

33 (42) Lot Frontage. - That portion of a lot abutting a street. A zoning ordinance shall  
34 specify how noncontiguous frontage will be considered with regard to minimum frontage

1 requirements.

2 (43) Lot Line. - A line of record, bounding a lot, which divides one lot from another lot  
3 or from a public or private street or any other public or private space and shall include:

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

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

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

12 (44) Lot, Through. - A lot which fronts upon two (2) parallel streets, or which fronts upon  
13 two (2) streets which do not intersect at the boundaries of the lot.

14 (45) Lot Width. - The horizontal distance between the side lines of a lot measured at right  
15 angles to its depth along a straight line parallel to the front lot line at the minimum front setback  
16 line.

17 (46) Mere Inconvenience. - See section 45-24-41.

18 (47) Mixed Use. - A mixture of land uses within a single development, building, or tract.

19 (48) Modification. - Permission granted and administered by the zoning enforcement  
20 officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional  
21 variance other than lot area requirements from the zoning ordinance to a limited degree as  
22 determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent  
23 (25%) of each of the applicable dimensional requirements.

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

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

30 (ii) Nonconforming by dimension: a building, structure, or parcel of land not in  
31 compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations  
32 include all regulations of the zoning ordinance, other than those pertaining to the permitted uses.

33 A building or structure containing more dwelling units than are permitted by the use regulations  
34 of a zoning ordinance is nonconforming by use; a building or structure containing a permitted

1 number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot  
2 area per dwelling unit regulations, is nonconforming by dimension.

3 (50) Overlay District. - A district established in a zoning ordinance that is superimposed  
4 on one or more districts or parts of districts. The standards and requirements associated with an  
5 overlay district may be more or less restrictive than those in the underlying districts consistent  
6 with other applicable state and federal laws.

7 (51) Performance Standards. - A set of criteria or limits relating to elements which a  
8 particular use or process must either meet or may not exceed.

9 (52) Permitted Use. - A use by right which is specifically authorized in a particular  
10 zoning district.

11 (53) Planned Development. - A "land development project", as defined in section 45-24-  
12 31(37), and developed according to plan as a single entity and containing one or more structures  
13 and/or uses with appurtenant common areas.

14 (54) Plant Agriculture. - The growing of plants for food or fiber, to sell or consume.

15 ~~(54)~~(55) Preapplication Conference. - A review meeting of a proposed development held  
16 between applicants and reviewing agencies as permitted by law and municipal ordinance, before  
17 formal submission of an application for a permit or for development approval.

18 ~~(55)~~(56) Setback Line or Lines. - A line or lines parallel to a lot line at the minimum  
19 distance of the required setback for the zoning district in which the lot is located that establishes  
20 the area within which the principal structure must be erected or placed.

21 ~~(56)~~(57) Site Plan. - The development plan for one or more lots on which is shown the  
22 existing and/or the proposed conditions of the lot.

23 ~~(57)~~(58) Special Use. - A regulated use which is permitted pursuant to the special-use  
24 permit issued by the authorized governmental entity, pursuant to section 45-24-42. Formerly  
25 referred to as a special exception.

26 ~~(58)~~(59) Structure. - A combination of materials to form a construction for use,  
27 occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.

28 ~~(59)~~(60) Substandard Lot of Record. - Any lot lawfully existing at the time of adoption or  
29 amendment of a zoning ordinance and not in conformance with the dimensional and/or area  
30 provisions of that ordinance.

31 ~~(60)~~(61) Use. - The purpose or activity for which land or buildings are designed,  
32 arranged, or intended, or for which land or buildings are occupied or maintained.

33 ~~(61)~~(62) Variance. - Permission to depart from the literal requirements of a zoning  
34 ordinance. An authorization for the construction or maintenance of a building or structure, or for

1 the establishment or maintenance of a use of land, which is prohibited by a zoning ordinance.  
2 There are only two (2) categories of variance, a use variance or a dimensional variance.

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

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

13 ~~(62)~~(63) Waters. - As defined in section 46-12-1(23).

14 ~~(63)~~(64) Wetland, Coastal. - As defined in section 45-22.2-4.

15 ~~(64)~~(65) Wetland, Freshwater. - As defined in section 2-1-20.

16 ~~(65)~~(66) Zoning Certificate. - A document signed by the zoning enforcement officer, as  
17 required in the zoning ordinance, which acknowledges that a use, structure, building, or lot either  
18 complies with or is legally nonconforming to the provisions of the municipal zoning ordinance or  
19 is an authorized variance or modification therefrom.

20 ~~(66)~~(67) Zoning Map. - The map or maps which are a part of the zoning ordinance and  
21 which delineate the boundaries of all mapped zoning districts within the physical boundary of the  
22 city or town.

23 ~~(67)~~(68) Zoning Ordinance. - An ordinance enacted by the legislative body of the city or  
24 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the  
25 city or town's legislative or home rule charter, if any, which establish regulations and standards  
26 relating to the nature and extent of uses of land and structures, which is consistent with the  
27 comprehensive plan of the city or town as defined in chapter 22.2 of this title, which includes a  
28 zoning map, and which complies with the provisions of this chapter.

29 ~~(68)~~(69) Zoning Use District. - The basic unit in zoning, either mapped or unmapped, to  
30 which a uniform set of regulations applies, or a uniform set of regulations for a specified use.  
31 Zoning use districts include, but are not limited to: agricultural, commercial, industrial,  
32 institutional, open space, and residential. Each district may include sub-districts. Districts may be  
33 combined.

34 **45-24-37. General provisions -- Permitted uses.** -- (a) The zoning ordinance provides a



1 listing of all land uses and/or performance standards for uses which are permitted within the  
2 zoning use districts of the municipality.

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

6 (1) Households;

7 (2) Community residences; [and](#)

8 (3) Family day care homes; ~~and,~~

9 ~~(4) Plant agriculture, being defined herein as the growing of plants, both food and fiber,~~  
10 ~~to sell and/or consume.~~

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

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

23 (e) Notwithstanding any other provision of this chapter, an accessory family dwelling  
24 unit in an owner-occupied, single-family residence shall be permitted as a reasonable  
25 accommodation only for family members with disabilities. The appearance of the structure shall  
26 remain that of a single-family residence and there shall be an internal means of egress between  
27 the principal unit and the accessory family dwelling unit. If possible, no additional exterior  
28 entrances should be added. Where additional entrance is required, placement should generally be  
29 in the rear or side of the structure. When the structure is serviced by an individual sewage  
30 disposal system, the applicant shall have the existing or any new system approved by the  
31 department of environmental management. The zoning enforcement officer shall require that a  
32 declaration of the accessory family dwelling unit for the family member or members and its  
33 restrictions be recorded in the land evidence records and filed with the zoning enforcement officer  
34 and the building official. Once the family member or members with disabilities no longer resides

1 in the premises on a permanent basis, or the title is transferred, the property owner shall notify the  
2 zoning official in writing, and the accessory family dwelling unit shall no longer be permitted,  
3 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 which substantially  
6 limits one or more major life activities, as defined in section 34-37-3 of the general laws.

7 (g) Notwithstanding any other provisions of this chapter, plant agriculture, ~~being defined~~  
8 ~~as the growing of plants for both food and fiber, to sell and/or consume,~~ is a permitted use within  
9 all ~~residential-use~~ zoning districts of a municipality, including all industrial and commercial  
10 zoning districts, except where prohibited for public health or safety reasons or the protection of  
11 wildlife habitat, ~~consistent with the "Rhode Island Right to Farm Act", chapter 2-23, including~~  
12 ~~the provisions that this chapter does not apply to agricultural operations conducted in a malicious~~  
13 ~~or negligent manner, and the director of the department of environmental management, in~~  
14 ~~consultation with the chief of the division of agriculture, shall determine what is agriculture, or an~~  
15 ~~agricultural activity use or operation.~~

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

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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 make plant agriculture a permitted use within all lands subject to the  
2 jurisdiction of the Rhode Island Coastal Resources Management Council and grants to the  
3 department of environmental management jurisdiction and enforcement of such use.

4           This act would take effect upon passage.

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