

2016 -- S 2561

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES

Introduced By: Senators McCaffrey, and Lombardi

Date Introduced: February 25, 2016

Referred To: Senate Housing & Municipal Government

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.** -- Where words or terms used in this chapter are defined in § 45-
4 22.2-4, or 45-23-32, they have the meanings stated in that section. In addition, the following
5 words have the following meanings. Additional words and phrases may be used in developing
6 local 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,
17 with its own legal means of ingress and egress and is a complete, separate dwelling unit. The
18 accessory dwelling unit shall be within or attached to the principal dwelling unit structure or
19 within an existing structure, such as a garage or barn, and designed so that the appearance of the

1 principal 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 § 45-22.2-4.

12 (6) Airport Hazard Area. - "Airport hazard area", as defined in § 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.~~ For a vacant parcel of land, building height shall be
29 measured from the average existing grade elevation where the foundation of the structure is
30 proposed. For an existing structure, building height shall be measured from average grade taken
31 from the outermost four (4) corners of the existing foundation. In all cases, building height shall
32 be measured to the top of the highest point of the existing or proposed roof or structure. This
33 distance may exclude spires, chimneys, flag poles, and the like. For any property located in a
34 flood hazard area, the building height shall be measured from the base flood elevation where the

1 [structure is located, as shown on the official FEMA Flood Insurance Rate Maps \(FIRMs\).](#)
2 [Additionally, for any property located in a flood hazard area, where freeboard as defined in](#)
3 [subsection \(29\) of this section is being utilized, such freeboard area shall be excluded from the](#)
4 [building height calculation.](#)

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

14 (14) Common Ownership. - Either:

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

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

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

23 (i) Whenever six (6) or fewer children or adults with retardation reside in any type of
24 residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All
25 requirements pertaining to local zoning are waived for these 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 care giver 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, including
2 eating areas and living rooms, and will receive appropriate social services for the purpose of
3 fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

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

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

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

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

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

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

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

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

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

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

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

34 (27) Floating Zone. - An unmapped zoning district adopted within the ordinance which

1 is established on the zoning map only when an application for development, meeting the zone
2 requirements, is approved.

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

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

8 ~~(29)~~(30) Groundwater. - "Groundwater" and associated terms, as defined in § 46-13.1-3.

9 ~~(30)~~(31) Halfway House. - A residential facility for adults or children who have been
10 institutionalized for criminal conduct and who require a group setting to facilitate the transition to
11 a functional member of society.

12 ~~(31)~~(32) Hardship. - See § 45-24-41.

13 ~~(32)~~(33) Historic District, or Historic Site. - As defined in § 45-22.2-4.

14 ~~(33)~~(34) Home Occupation. - Any activity customarily carried out for gain by a resident,
15 conducted as an accessory use in the resident's dwelling unit.

16 ~~(34)~~(35) Household. - One or more persons living together in a single dwelling unit, with
17 common access to, and common use of, all living and eating areas and all areas and facilities for
18 the preparation and storage of food within the dwelling unit. The term "household unit" is
19 synonymous with the term "dwelling unit" for determining the number of units allowed within
20 any structure on any lot in a zoning district. An individual household shall consist of any one of
21 the following:

- 22 (i) A family, which may also include servants and employees living with the family; or
23 (ii) A person or group of unrelated persons living together. The maximum number may
24 be set by local ordinance, but this maximum shall not be less than three (3).

25 ~~(35)~~(36) Incentive Zoning. - The process whereby the local authority may grant
26 additional development capacity in exchange for the developer's provision of a public benefit or
27 amenity as specified in local ordinances.

28 ~~(36)~~(37) Infrastructure. - Facilities and services needed to sustain residential,
29 commercial, industrial, institutional, and other activities.

30 ~~(37)~~(38) Land Development Project. - A project in which one or more lots, tracts, or
31 parcels of land are developed or redeveloped as a coordinated site for one or more uses, units, or
32 structures, including, but not limited to, planned development and/or cluster development for
33 residential, commercial, institutional, recreational, open space, and/or mixed uses as provided in
34 the zoning ordinance.

1 ~~(38)~~(39) Lot. - Either:

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

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

7 ~~(39)~~(40) Lot Area. - The total area within the boundaries of a lot, excluding any street
8 right-of-way, usually reported in acres or square feet.

9 ~~(40)~~(41) Lot Area, Minimum. - The smallest land area established by the local zoning
10 ordinance upon which a use, building or structure may be located in a particular zoning district.

11 ~~(41)~~(42) Lot Building Coverage. - That portion of the lot that is or may be covered by
12 buildings and accessory buildings.

13 ~~(42)~~(43) Lot Depth. - The distance measured from the front lot line to the rear lot line.
14 For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

15 ~~(43)~~(44) Lot Frontage. - That portion of a lot abutting a street. A zoning ordinance shall
16 specify how noncontiguous frontage will be considered with regard to minimum frontage
17 requirements.

18 ~~(44)~~(45) Lot Line. - A line of record, bounding a lot, which divides one lot from another
19 lot or 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 ~~(45)~~(46) Lot Size, Minimum. - Shall have the same meaning as "minimum lot area"
29 defined herein.

30 ~~(46)~~(47) Lot, Through. - A lot which fronts upon two (2) parallel streets, or which fronts
31 upon two (2) streets which do not intersect at the boundaries of the lot.

32 ~~(47)~~(48) Lot Width. - The horizontal distance between the side lines of a lot measured at
33 right angles to its depth along a straight line parallel to the front lot line at the minimum front
34 setback line.

1 ~~(48)~~(49) Mere Inconvenience. - See § 45-24-41.

2 ~~(49)~~(50) Mixed Use. - A mixture of land uses within a single development, building, or
3 tract.

4 ~~(50)~~(51) Modification. - Permission granted and administered by the zoning enforcement
5 officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional
6 variance other than lot area requirements from the zoning ordinance to a limited degree as
7 determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent
8 (25%) of each of the applicable dimensional requirements.

9 ~~(51)~~(52) Nonconformance. - A building, structure, or parcel of land, or use thereof,
10 lawfully existing at the time of the adoption or amendment of a zoning ordinance and not in
11 conformity with the provisions of that ordinance or amendment. Nonconformance is of only two
12 (2) types:

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

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

24 ~~(52)~~(53) Overlay District. - A district established in a zoning ordinance that is
25 superimposed on one or more districts or parts of districts. The standards and requirements
26 associated with an overlay district may be more or less restrictive than those in the underlying
27 districts consistent with other applicable state and federal laws.

28 ~~(53)~~(54) Performance Standards. - A set of criteria or limits relating to elements which a
29 particular use or process must either meet or may not exceed.

30 ~~(54)~~(55) Permitted Use. - A use by right which is specifically authorized in a particular
31 zoning district.

32 ~~(55)~~(56) Planned Development. - A "land development project", as defined in § 45-24-
33 31(37), and developed according to plan as a single entity and containing one or more structures
34 and/or uses with appurtenant common areas.

1 ~~(56)~~(57) Plant Agriculture. - The growing of plants for food or fiber, to sell or consume.

2 ~~(57)~~(58) Preapplication Conference. - A review meeting of a proposed development held
3 between applicants and reviewing agencies as permitted by law and municipal ordinance, before
4 formal submission of an application for a permit or for development approval.

5 ~~(58)~~(59) Setback Line or Lines. - A line or lines parallel to a lot line at the minimum
6 distance of the required setback for the zoning district in which the lot is located that establishes
7 the area within which the principal structure must be erected or placed.

8 ~~(59)~~(60) Slope of Land. - The grade, pitch, rise or incline of the topographic landform or
9 surface of the ground.

10 ~~(60)~~(61) Site Plan. - The development plan for one or more lots on which is shown the
11 existing and/or the proposed conditions of the lot.

12 ~~(61)~~(62) Special Use. - A regulated use which is permitted pursuant to the special-use
13 permit issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to
14 as a special exception.

15 ~~(62)~~(63) Structure. - A combination of materials to form a construction for use,
16 occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.

17 ~~(63)~~(64) Substandard Lot of Record. - Any lot lawfully existing at the time of adoption
18 or amendment of a zoning ordinance and not in conformance with the dimensional and/or area
19 provisions of that ordinance.

20 ~~(64)~~(65) Use. - The purpose or activity for which land or buildings are designed,
21 arranged, or intended, or for which land or buildings are occupied or maintained.

22 ~~(65)~~(66) Variance. - Permission to depart from the literal requirements of a zoning
23 ordinance. An authorization for the construction or maintenance of a building or structure, or for
24 the establishment or maintenance of a use of land, which is prohibited by a zoning ordinance.
25 There are only two (2) categories of variance, a use variance or a dimensional variance.

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

30 (ii) Dimensional Variance. - Permission to depart from the dimensional requirements of
31 a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the
32 record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use
33 of the subject property unless granted the requested relief from the dimensional regulations.
34 However, the fact that a use may be more profitable or that a structure may be more valuable after

1 the relief is granted are not grounds for relief.

2 ~~(66)~~(67) Waters. - As defined in § 46-12-1(23).

3 ~~(67)~~(68) Wetland, Coastal. - As defined in § 45-22.2-4.

4 ~~(68)~~(69) Wetland, Freshwater. - As defined in § 2-1-20.

5 ~~(69)~~(70) Zoning Certificate. - A document signed by the zoning enforcement officer, as
6 required in the zoning ordinance, which acknowledges that a use, structure, building, or lot either
7 complies with or is legally nonconforming to the provisions of the municipal zoning ordinance or
8 is an authorized variance or modification therefrom.

9 ~~(70)~~(71) Zoning Map. - The map or maps which are a part of the zoning ordinance and
10 which delineate the boundaries of all mapped zoning districts within the physical boundary of the
11 city or town.

12 ~~(71)~~(72) Zoning Ordinance. - An ordinance enacted by the legislative body of the city or
13 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the
14 city or town's legislative or home rule charter, if any, which establish regulations and standards
15 relating to the nature and extent of uses of land and structures, which is consistent with the
16 comprehensive plan of the city or town as defined in chapter 22.2 of this title, which includes a
17 zoning map, and which complies with the provisions of this chapter.

18 ~~(72)~~(73) Zoning Use District. - The basic unit in zoning, either mapped or unmapped, to
19 which a uniform set of regulations applies, or a uniform set of regulations for a specified use.
20 Zoning use districts include, but are not limited to: agricultural, commercial, industrial,
21 institutional, open space, and residential. Each district may include sub-districts. Districts may be
22 combined.

23 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

1 This act would amend the definition of "building height" and define the term "freeboard"
2 in the Zoning Enabling Act to account for obstacles to construction in flood zone areas and to
3 encourage safe and stable design for those structures.

4 This act would take effect upon passage.

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