

2023 -- S 1032 SUBSTITUTE A

LC002508/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

A N A C T

RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES

Introduced By: Senators F. Lombardi, LaMountain, McKenney, Ujfusa, Zurier, and Euer

Date Introduced: May 19, 2023

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-24-31, 45-24-38, 45-24-40, 45-24-41, 45-24-42 and 45-24-46 of
2 the General Laws in Chapter 45-24 entitled "Zoning Ordinances" are hereby amended to read as
3 follows:

4 **45-24-31. ~~Definitions.~~ Definitions – Effective January 1, 2024.**

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

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

12 (2) Accessory dwelling unit (ADU). A residential living unit on the same parcel where the
13 primary use is a legally established single-unit or multi-unit dwelling. An ADU provides complete
14 independent living facilities for one or more persons. It may take various forms including, but not
15 limited to: a detached unit; a unit that is part of an accessory structure, such as a detached garage;
16 or a unit that is part of an expanded or remodeled primary dwelling.

17 (3) Accessory use. A use of land or of a building, or portion thereof, customarily incidental
18 and subordinate to the principal use of the land or building. An accessory use may be restricted to
19 the same lot as the principal use. An accessory use shall not be permitted without the principal use

1 to which it is related.

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

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

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

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

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

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

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

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

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

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

21 (12) Building height. For a vacant parcel of land, building height shall be measured from
22 the average, existing-grade elevation where the foundation of the structure is proposed. For an
23 existing structure, building height shall be measured from average grade taken from the outermost
24 four (4) corners of the existing foundation. In all cases, building height shall be measured to the top
25 of the highest point of the existing or proposed roof or structure. This distance shall exclude spires,
26 chimneys, flag poles, and the like. For any property or structure located in a special flood hazard
27 area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), or depicted on the
28 Rhode Island coastal resources management council (CRMC) suggested design elevation three foot
29 (3') sea level rise (CRMC SDE 3 SLR) map as being inundated during a one-hundred-year (100)
30 storm, the greater of the following amounts, expressed in feet, shall be excluded from the building
31 height calculation:

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

34 (ii) The suggested design elevation as depicted on the CRMC SDE 3 SLR map during a

1 one-hundred-year (100) storm, less the average existing grade elevation. CRMC shall reevaluate
2 the appropriate suggested design elevation map for the exclusion every ten (10) years, or as
3 otherwise necessary.

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

26 (ii) A group home providing care or supervision, or both, to not more than eight (8) persons
27 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 eight
29 (8) children, including those of the caregiver, and licensed by the state pursuant to chapter 72.1 of
30 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 nor

1 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 — Daycare center. Any other daycare center that is not a family daycare
8 home.

9 (18) Day care — Family daycare home. Any home, other than the individual's home, in
10 which day care in lieu of parental care or supervision is offered at the same time to six (6) or less
11 individuals who are not relatives of the caregiver, but may not contain more than a total of eight
12 (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 the
18 site plans, maps, and other documentation of a development to determine the compliance with the
19 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, or
22 other appropriate means. These techniques may include runoff controls to minimize erosion and
23 sedimentation during and after construction or development; the means for preserving surface and
24 groundwaters; and the prevention and/or alleviation of flooding.

25 (24) Dwelling unit. A structure, or portion of a structure, providing complete, independent
26 living facilities for one or more persons, including permanent provisions for living, sleeping, eating,
27 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 member. A person, or persons, related by blood, marriage, or other legal
33 means, including, but not limited to, a child, parent, spouse, mother-in-law, father-in-law,
34 grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the 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 any
21 structure on any lot in a zoning district. An individual household shall consist of any one of the
22 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 be
25 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 buildings
13 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 from
19 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 may
27 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 officer
4 of the city or town, and pursuant to the provisions of this chapter to grant a dimensional variance
5 other than lot area requirements from the zoning ordinance to a limited degree as determined by
6 the zoning ordinance of the city or town, but not to exceed twenty-five percent (25%) of each of
7 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 with
10 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 compliance
15 with the dimensional regulations of the zoning ordinance. Dimensional regulations include all
16 regulations of the zoning ordinance, other than those pertaining to the permitted uses. A building
17 or structure containing more dwelling units than are permitted by the use regulations of a zoning
18 ordinance is nonconforming by use; a building or structure containing a permitted number of
19 dwelling units by the use regulations of the zoning ordinance, but not meeting the lot area per
20 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 overlay
23 district may be more or less restrictive than those in the underlying districts consistent with other
24 applicable state and federal laws.

25 (54) Performance standards. A set of criteria or limits relating to elements that a particular
26 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 within
4 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 surface
8 of the ground.

9 (62) Special use. A regulated use that is permitted pursuant to the special-use permit issued
10 by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to as a special
11 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 provisions
16 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~~ under the applicable standards set forth in § 45-24-
33 41.

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

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

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

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

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

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

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

20 ~~45-24-38. General provisions — Substandard lots of record~~ **General provisions --**
21 **Substandard lots of record -- Effective January 1, 2024.**

22 (a) Any city or town adopting or amending a zoning ordinance under this chapter shall
23 regulate the ~~use or uses~~ development of any single substandard lot of record or contiguous lots of
24 record at the effective date of adoption or amendment of the zoning ordinance.

25 (b) Notwithstanding ~~notwithstanding~~ the failure of that lot or those lots to meet the
26 dimensional and/or quantitative requirements, and/or road frontage or other access requirements,
27 applicable in the district as stated in the ordinance, a substandard lot of record shall not be required
28 to seek any zoning relief based solely on the failure to meet minimum lot size requirements of the
29 district in which such lot is located. The setback, frontage, and/or lot width requirements for a
30 structure under this section shall be reduced and the maximum building coverage requirements
31 shall be increased by the same proportion as the lot area of the substandard lot is to the minimum
32 lot area requirement of the zoning district in which the lot is located. All proposals exceeding such
33 reduced requirement shall proceed with a modification request under § 45-24-46 or a dimensional
34 variance request under § 45-24-41, whichever is applicable.

1 (c) Provisions may be made for the merger of contiguous unimproved, or improved and
2 unimproved, substandard lots of record in the same ownership to create dimensionally conforming
3 lots or to reduce the extent of dimensional nonconformance. The ordinance shall specify the
4 standards, on a district by district basis, which determine the mergers. The standards include, but
5 are not to be limited to, the availability of infrastructure, the character of the neighborhood, and the
6 consistency with the comprehensive plan. The merger of lots shall not be required when the
7 substandard lot of record has an area equal to or greater than the area of fifty percent (50%) of the
8 lots within two hundred feet (200') of the subject lot, as confirmed by the zoning enforcement
9 officer.

10 **45-24-40. General provisions—Alteration of nonconforming development. General**
11 **provisions — Alteration of nonconforming development; Alteration of uses established by**
12 **variance or special use permit — Effective January 1, 2024.**

13 (a) A zoning ordinance may permit a nonconforming development to be altered under
14 either of the following conditions:

15 (1) The ordinance may establish a special-use permit, authorizing the alteration, which
16 must be approved by the zoning board of review following the procedure established in this chapter
17 and in the zoning ordinance; or

18 (2) The ordinance may allow the addition and enlargement, expansion, intensification, or
19 change in use, of nonconforming development either by permit or by right and may distinguish
20 between the foregoing actions by zoning districts.

21 (b) The ordinance may require that the alteration more closely adheres to the intent and
22 purposes of the zoning ordinance.

23 (c) A use established by variance or special use permit shall not acquire the rights of this
24 section, unless allowed by specific provisions of a municipal zoning ordinance.

25 **45-24-41. General provisions—Variances. General provisions -Variances – Effective**
26 **January 1, 2024.**

27 (a) An application for relief from the literal requirements of a zoning ordinance because of
28 hardship may be made by any person, group, agency, or corporation by filing with the zoning
29 enforcement officer or agency an application describing the request and supported by any data and
30 evidence as may be required by the zoning board of review or by the terms of the ordinance. The
31 zoning enforcement officer or agency shall immediately transmit each application received to the
32 zoning board of review and a copy of each application to the planning board or commission.

33 (b) A zoning ordinance provides that the zoning board of review, immediately upon receipt
34 of an application for a variance in the application of the literal terms of the zoning ordinance, may

1 request that the planning board or commission and/or staff report its findings and recommendations,
2 including a statement on the general consistency of the application with the goals and purposes of
3 the comprehensive plan of the city or town, in writing, to the zoning board of review within thirty
4 (30) days of receipt of the application from that board. The zoning board shall hold a public hearing
5 on any application for variance in an expeditious manner, after receipt, in proper form, of an
6 application, and shall give public notice at least fourteen (14) days prior to the date of the hearing
7 in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by first-
8 class mail to the applicant, and to at least all those who would require notice under § 45-24-53. The
9 notice shall also include the street address of the subject property. A zoning ordinance may require
10 that a supplemental notice, that an application for a variance is under consideration, be posted at
11 the location in question. The posting is for information purposes only and does not constitute
12 required notice of a public hearing. The cost of notification shall be borne by the applicant.

13 (c) A zoning ordinance may provide for unified development review, pursuant to § 45-24-
14 46.4. Requests for dimensional and use variances submitted under a unified development review
15 provision of a zoning ordinance shall be submitted as part of the subdivision or land-development
16 application to the administrative officer of the planning board or commission, pursuant to § 45-24-
17 46.4(a). All subdivision or land-development applications submitted under the unified development
18 review provisions of a zoning ordinance shall have a public hearing, which shall meet the
19 requirements of § 45-23-50.1(c).

20 (d) In granting a variance, the zoning board of review, or, where unified development
21 review is enabled pursuant to § 45-24-46.4, the planning board or commission, shall require that
22 evidence to the satisfaction of the following standards is entered into the record of the proceedings:

23 (1) That the hardship from which the applicant seeks relief is due to the unique
24 characteristics of the subject land or structure and not to the general characteristics of the
25 surrounding area; and is not due to a physical or economic disability of the applicant, excepting
26 those physical disabilities addressed in § 45-24-30(a)(16);

27 (2) That the hardship is not the result of any prior action of the applicant ~~and does not result~~
28 ~~primarily from the desire of the applicant to realize greater financial gain;~~ and

29 (3) That the granting of the requested variance will not alter the general character of the
30 surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan
31 upon which the ordinance is based; ~~and~~

32 ~~(4) That the relief to be granted is the least relief necessary.~~

33 (e) The zoning board of review, or, where unified development review is enabled pursuant
34 to § 45-24-46.4, the planning board or commission, shall, in addition to the above standards, require

1 that evidence is entered into the record of the proceedings showing that:

2 (1) In granting a use variance, the subject land or structure cannot yield any beneficial use
3 if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of
4 neighboring land or structures in the same district and permitted use of lands or structures in an
5 adjacent district shall not be considered in granting a use variance; and

6 (2) In granting a dimensional variance, that the hardship suffered by the owner of the
7 subject property if the dimensional variance is not granted amounts to more than a mere
8 inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted
9 use to which the property is proposed to be devoted. The fact that a use may be more profitable or
10 that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning
11 board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the
12 planning board or commission has the power to grant dimensional variances where the use is
13 permitted by special-use permit ~~if provided for in the special-use permit sections of the zoning~~
14 ~~ordinance~~.

15 ~~45-24-42. General provisions—Special-use permits~~ General provisions -- Special-use
16 permits -- Effective January 1, 2024.

17 (a) A zoning ordinance shall provide for the issuance of special-use permits approved by
18 the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-
19 46.4, the planning board or commission.

20 (b) The ordinance shall:

21 (1) Specify the uses requiring special-use permits in each district. The ordinance ~~may~~ shall
22 provide for a procedure under which a proposed land use that is not specifically listed may be
23 presented by the property owner to the zoning board of review or to a local official or agency
24 charged with administration and enforcement of the ordinance for an evaluation and determination
25 of whether the proposed use is of a similar type, character, and intensity as a listed use requiring a
26 special-use permit. Upon such determination, the proposed use may be considered to be a use
27 requiring a special-use permit;

28 (2) Describe the conditions and procedures under which special-use permits, of each of the
29 various categories of special-use permits established in the zoning ordinance, ~~may~~ shall be issued;

30 (3) Establish specific and objective criteria for the issuance of each type of use category of
31 special-use permit ~~that~~, which criteria shall be in conformance with the purposes and intent of the
32 comprehensive plan and the zoning ordinance of the city or town; however, in no case shall any
33 specific and objective criteria for a special use permit include a determination of consistency with
34 the comprehensive plan;

1 (4) Provide for public hearings and notification of the date, time, place, and purpose of
2 those hearings to interested parties. Special-use permit requests submitted under a zoning
3 ordinance's unified development review provisions shall be heard and noticed in conjunction with
4 the subdivision or land-development application, according to the requirements of § 45-23-50.1.
5 Public notice for special-use permits that are not submitted under a zoning ordinance's unified
6 development review provisions shall be given at least fourteen (14) days prior to the date of the
7 hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by
8 first-class mail to the applicant, and to all those who would require notice under § 45-24-53. The
9 notice shall also include the street address of the subject property. A zoning ordinance may require
10 that a supplemental notice, that an application for a special-use permit is under consideration, be
11 posted at the location in question. The posting is for information purposes only and does not
12 constitute required notice of a public hearing. The cost of notification shall be borne by the
13 applicant;

14 (5) Provide for the recording of findings of fact and written decisions; and

15 (6) Provide that appeals may be taken pursuant to § 45-24-70 or § 45-23-66, dependent on
16 the board to which application was made.

17 (c) If an ordinance does not expressly provide for specific and objective criteria for the
18 issuance of a category of special use permit such category shall be deemed to be permitted use.

19 ~~(e)~~(d) The ordinance additionally ~~may~~ shall provide that an applicant ~~may~~ apply for, and
20 be issued, a dimensional variance in conjunction with a special-use permit. If the special use could
21 not exist without the dimensional variance, the zoning board of review, or, where unified
22 development review is enabled pursuant to § 45-24-46.4(b), the planning board or commission shall
23 consider the special-use permit and the dimensional variance together to determine if granting the
24 special use is appropriate based on both the special use criteria and the dimensional variance
25 evidentiary standards.

26 ~~45-24-46. Special provisions — Modification~~ **Special provisions -- Modification --**
27 **Effective January 1 2024.**

28 (a) A zoning ordinance ~~may~~ shall provide for the issuance of modifications ~~or adjustments~~
29 from the literal dimensional requirements of the zoning ordinance in the instance of the
30 construction, alteration, or structural modification of a structure or lot of record. ~~If the ordinance~~
31 ~~allows modifications then the~~ The zoning enforcement officer is authorized to grant modification
32 permits. The zoning ordinance ~~establishes the maximum percent allowed for a modification, which~~
33 ~~shall not exceed twenty five percent (25%), of any of~~ shall permit modifications that are fifteen
34 percent (15%) or less of the dimensional requirements specified in the zoning ordinance but may

1 permit modification up to twenty-five percent (25%). A modification does not permit moving of
2 lot lines. ~~The zoning ordinance shall specify which dimensional requirements or combinations of~~
3 ~~these requirements are allowable under a modification. These requirements may differ by use or~~
4 ~~zoning district.~~ Within ten (10) days of the receipt of a request for a modification, the zoning
5 enforcement officer shall make a decision as to the suitability of the requested modification based
6 on the following determinations:

7 (1) The modification requested is reasonably necessary for the full enjoyment of the
8 permitted use;

9 (2) If the modification is granted, neighboring property will neither be substantially injured
10 nor its appropriate use substantially impaired;

11 (3) The modification requested ~~is in harmony with the purposes and intent of the~~
12 ~~comprehensive plan and zoning ordinance of the city or town~~ does not require a variance of a flood
13 hazard requirement, unless the building is built in accordance with applicable regulations; and

14 (4) The modification requested does not ~~require a variance of a flood hazard requirement~~
15 violate any rules or regulations with respect to freshwater or coastal wetlands.

16 (b) Upon an affirmative determination, in the case of a modification of five percent (5%)
17 or less, the zoning enforcement officer shall have the authority to issue a permit approving the
18 modification, without any public notice requirements. In the case of a modification of greater than
19 five percent (5%), the zoning enforcement officer shall notify, by ~~registered or certified~~ first class
20 mail, all property owners abutting the property which is the subject of the modification request, and
21 shall indicate the street address of the subject property in the notice, and shall publish in a
22 newspaper of ~~general~~ local circulation within the city or town that the modification will be granted
23 unless written objection is received within ~~thirty (30)~~ fourteen (14) days of the public notice. If
24 written objection is received within ~~thirty (30)~~ fourteen (14) days, the request for a modification
25 shall be ~~denied.~~ scheduled for the next available hearing before the zoning board of review on
26 application for a dimensional variance ~~In that case the changes requested will be considered a~~
27 ~~request for a variance and may only be issued by the zoning board of review~~ following the standard
28 procedures for such variances, including notice requirements provided for under this chapter. If no
29 written objections are received within ~~thirty (30)~~ fourteen (14) days, the zoning enforcement officer
30 shall grant the modification. The zoning enforcement officer may apply any special conditions to
31 the permit as may, in the opinion of the officer, be required to conform to the intent and purposes
32 of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests
33 for modifications, and of findings, determinations, special conditions, and any objections received.
34 Costs of any notice required under this subsection shall be borne by the applicant requesting the

1 modification.

2 SECTION 2. This act shall take effect on January 1, 2024.

=====
LC002508/SUB A
=====

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

1 This act would amend certain general laws relative to zoning ordinance and variances,
2 special use permits, modifications thereto and also amend provisions relative to substandard lots of
3 record and the merger of such lots.

4 This act would take effect on January 1, 2024.

=====
LC002508/SUB A
=====