

**2019 -- S 0689 SUBSTITUTE A**

LC001778/SUB A

**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2019**

**A N A C T**

**RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES**

Introduced By: Senators Euer, and McCaffrey

Date Introduced: March 21, 2019

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. ~~[Effective March 1, 2019.]~~ 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  
10 with no intervening land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 ~~from the building height calculation; provided, however that the Rhode Island coastal resources~~  
2 ~~management council design elevation maps may be used by an owner or applicant to establish a~~  
3 ~~base flood elevation for a property that is higher than the official FEMA FIRMs~~ or depicted on  
4 the Rhode Island coastal resources management council (CRMC) suggested design elevation  
5 three foot (3') sea level rise (CRMC SDE 3 SLR) map as being inundated during a one hundred  
6 (100) year storm, the greater of the following amounts, expressed in feet, shall be excluded from  
7 the building height calculation:

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

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

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

23 (14) Common ownership. Either:

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

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

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

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

1 community residences;

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

4 (iii) A residence for children providing care or supervision, or both, to not more than  
5 eight (8) children, including those of the caregiver, and licensed by the state pursuant to chapter  
6 72.1 of title 42;

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

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

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

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

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

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

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

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

32 (23) Drainage system. A system for the removal of water from land by drains, grading, or  
33 other appropriate means. These techniques may include runoff controls to minimize erosion and  
34 sedimentation during and after construction or development; the means for preserving surface and

1 groundwaters; and the prevention and/or alleviation of flooding.

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

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

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

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

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

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

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

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

23 (32) Hardship. See § 45-24-41.

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

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

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

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

34 (ii) A person or group of unrelated persons living together. The maximum number may

1 be set by local ordinance, but this maximum shall not be less than three (3).

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

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

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

12 (39) Lot. Either:

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

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

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

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

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

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

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

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

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

33 (ii) Rear: the lot line opposite and most distant from the front lot line, or in the case of  
34 triangular or otherwise irregularly shaped lots, an assumed line at least ten feet (10') in length

1 entirely within the lot, parallel to and at a maximum distance from, the front lot line; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

33 (i) Use variance. Permission to depart from the use requirements of a zoning ordinance  
34 where the applicant for the requested variance has shown by evidence upon the record that the



1 subject land or structure cannot yield any beneficial use if it is to conform to the provisions of the  
2 zoning ordinance.

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

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

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

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

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

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

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

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

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

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LC001778/SUB A  
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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 revise the definition of building height by including in special flood  
2 hazard zones those areas identified by the Rhode Island coastal resources management council  
3 (CRMC) suggested design elevation three foot (3') sea level rise map as being inundated during a  
4 100 year storm (CRMC SDE 3 SLR), measuring building height in special flood hazard zones  
5 from average grade, and exempting from building height within special flood hazard zones the  
6 greater of, expressed in feet, the base flood elevation plus up to five feet (5') of any utilized or  
7 proposed freeboard less average existing grade, or the suggested design elevation depicted on the  
8 CRMC SDE 3 SLR.

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