

2023 -- H 6090

LC002438

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: Representatives Alzate, Shekarchi, Tanzi, Donovan, Shallcross Smith,
and McNamara

Date Introduced: March 03, 2023

Referred To: House Municipal Government & Housing

It is enacted by the General Assembly as follows:

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

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

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

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

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

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

1 [\(4\) Adaptive reuse. "adaptive reuse," as defined in § 42-64.22-2.](#)

2 ~~(4)~~[\(5\)](#) 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)~~[\(6\)](#) Agricultural land. "Agricultural land," as defined in § 45-22.2-4.

8 ~~(6)~~[\(7\)](#) Airport hazard area. "Airport hazard area," as defined in § 1-3-2.

9 ~~(7)~~[\(8\)](#) Applicant. An owner, or authorized agent of the owner, submitting an application
10 or appealing an action of any official, board, or agency.

11 ~~(8)~~[\(9\)](#) Application. The completed form, or forms, and all accompanying documents,
12 exhibits, and fees required of an applicant by an approving authority for development review,
13 approval, or permitting purposes.

14 ~~(9)~~[\(10\)](#) Buffer. Land that is maintained in either a natural or landscaped state, and is used
15 to screen or mitigate the impacts of development on surrounding areas, properties, or rights-of-
16 way.

17 [\(10\)](#)~~(11)~~ Building. Any structure used or intended for supporting or sheltering any use or
18 occupancy.

19 ~~(11)~~[\(12\)](#) Building envelope. The three-dimensional space within which a structure is
20 permitted to be built on a lot and that is defined by regulations governing building setbacks,
21 maximum height, and bulk; by other regulations; or by any combination thereof.

22 ~~(12)~~[\(13\)](#) Building height. For a vacant parcel of land, building height shall be measured
23 from the average, existing-grade elevation where the foundation of the structure is proposed. For
24 an existing structure, building height shall be measured from average grade taken from the
25 outermost four (4) corners of the existing foundation. In all cases, building height shall be measured
26 to the top of the highest point of the existing or proposed roof or structure. This distance shall
27 exclude spires, chimneys, flag poles, and the like. For any property or structure located in a special
28 flood hazard area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), or depicted
29 on the Rhode Island coastal resources management council (CRMC) suggested design elevation
30 three foot (3') sea level rise (CRMC SDE 3 SLR) map as being inundated during a one-hundred-
31 year (100) storm, the greater of the following amounts, expressed in feet, shall be excluded from
32 the building height calculation:

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

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

5 ~~(13)~~(14) Cluster. A site-planning technique that concentrates buildings in specific areas
6 on 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 may
9 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 uses.
11 Under cluster development, there is no increase in the number of lots that would be permitted under
12 conventional development except where ordinance provisions include incentive bonuses for certain
13 types or conditions of development.

14 ~~(14)~~(15) 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)~~(16) 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 halfway
21 houses or substance-use-disorder-treatment facilities. This does include, but is not limited to, the
22 following:

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

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

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

32 (iv) A community transitional residence providing care or assistance, or both, to no more
33 than six (6) unrelated persons or no more than three (3) families, not to exceed a total of eight (8)
34 persons, requiring temporary financial assistance, and/or to persons who are victims of crimes,

1 abuse, or neglect, and who are expected to reside in that residence not less than sixty (60) days nor
2 more than two (2) years. Residents will have access to, and use of, all common areas, including
3 eating areas and living rooms, and will receive appropriate social services for the purpose of
4 fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

5 ~~(16)~~(17) Comprehensive plan. The comprehensive plan adopted and approved pursuant to
6 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in
7 compliance.

8 ~~(17)~~(18) Day care — Daycare center. Any other daycare center that is not a family daycare
9 home.

10 ~~(18)~~(19) Day care — Family daycare home. Any home, other than the individual's home,
11 in which day care in lieu of parental care or supervision is offered at the same time to six (6) or less
12 individuals who are not relatives of the caregiver, but may not contain more than a total of eight
13 (8) individuals receiving day care.

14 ~~(19)~~(20) Density, residential. The number of dwelling units per unit of land.

15 ~~(20)~~(21) Development. The construction, reconstruction, conversion, structural alteration,
16 relocation, or enlargement of any structure; any mining, excavation, landfill, or land disturbance;
17 or any change in use, or alteration or extension of the use, of land.

18 ~~(21)~~(22) Development plan review. The process whereby authorized, local officials review
19 the site plans, maps, and other documentation of a development to determine the compliance with
20 the stated purposes and standards of the ordinance.

21 ~~(22)~~(23) District. See "zoning-use district."

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

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

29 ~~(25)~~(26) Extractive industry. The extraction of minerals, including: solids, such as coal
30 and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes
31 quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other
32 preparation customarily done at the extraction site or as a part of the extractive activity.

33 ~~(26)~~(27) Family member. A person, or persons, related by blood, marriage, or other legal
34 means, including, but not limited to, a child, parent, spouse, mother-in-law, father-in-law,

1 grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the household.

2 ~~(27)~~(28) Floating zone. An unmapped zoning district adopted within the ordinance that is
3 established on the zoning map only when an application for development, meeting the zone
4 requirements, is approved.

5 ~~(28)~~(29) Floodplains, or Flood hazard area. As defined in § 45-22.2-4.

6 ~~(29)~~(30) Freeboard. A factor of safety expressed in feet above the base flood elevation of
7 a flood hazard area for purposes of floodplain management. Freeboard compensates for the many
8 unknown factors that could contribute to flood heights, such as wave action, bridge openings, and
9 the hydrological effect of urbanization of the watershed.

10 ~~(30)~~(31) Groundwater. “Groundwater” and associated terms, as defined in § 46-13.1-3.

11 ~~(31)~~(32) Halfway house. A residential facility for adults or children who have been
12 institutionalized for criminal conduct and who require a group setting to facilitate the transition to
13 a functional member of society.

14 ~~(32)~~(33) Hardship. See § 45-24-41.

15 ~~(33)~~(34) Historic district or historic site. As defined in § 45-22.2-4.

16 ~~(34)~~(35) Home occupation. Any activity customarily carried out for gain by a resident,
17 conducted as an accessory use in the resident’s dwelling unit.

18 ~~(35)~~(36) Household. One or more persons living together in a single-dwelling unit, with
19 common access to, and common use of, all living and eating areas and all areas and facilities for
20 the preparation and storage of food within the dwelling unit. The term “household unit” is
21 synonymous with the term “dwelling unit” for determining the number of units allowed within any
22 structure on any lot in a zoning district. An individual household shall consist of any one of the
23 following:

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

27 ~~(36)~~(37) Incentive zoning. The process whereby the local authority may grant additional
28 development capacity in exchange for the developer’s provision of a public benefit or amenity as
29 specified in local ordinances.

30 ~~(37)~~(38) Infrastructure. Facilities and services needed to sustain residential, commercial,
31 industrial, institutional, and other activities.

32 ~~(38)~~(39) Land-development project. A project in which one or more lots, tracts, or parcels
33 of land are developed or redeveloped as a coordinated site for one or more uses, units, or structures,
34 including, but not limited to, planned development or cluster development for residential,

1 commercial, institutional, recreational, open space, or mixed uses as provided in the zoning
2 ordinance.

3 ~~(39)~~(40) Lot. Either:

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

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

9 ~~(40)~~(41) Lot area. The total area within the boundaries of a lot, excluding any street right-
10 of-way, usually reported in acres or square feet.

11 ~~(41)~~(42) Lot area, minimum. The smallest land area established by the local zoning
12 ordinance upon which a use, building, or structure may be located in a particular zoning district.

13 ~~(42)~~(43) Lot building coverage. That portion of the lot that is, or may be, covered by
14 buildings and accessory buildings.

15 (43)(44) Lot depth. The distance measured from the front lot line to the rear lot line. For
16 lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

17 ~~(44)~~(45) Lot frontage. That portion of a lot abutting a street. A zoning ordinance shall
18 specify how noncontiguous frontage will be considered with regard to minimum frontage
19 requirements.

20 ~~(45)~~(46) Lot line. A line of record, bounding a lot, that divides one lot from another lot or
21 from a public or private street or any other public or private space and shall include:

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

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

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

30 ~~(46)~~(47) Lot size, minimum. Shall have the same meaning as “minimum lot area” defined
31 herein.

32 ~~(47)~~(48) Lot, through. A lot that fronts upon two (2) parallel streets, or that fronts upon
33 two (2) streets that do not intersect at the boundaries of the lot.

34 (48)(49) Lot width. The horizontal distance between the side lines of a lot measured at

1 right angles to its depth along a straight line parallel to the front lot line at the minimum front
2 setback line.

3 ~~(49)~~(50) Mere inconvenience. See § 45-24-41.

4 ~~(50)~~(51) Mixed use. A mixture of land uses within a single development, building, or tract.

5 ~~(51)~~(52) Modification. Permission granted and administered by the zoning enforcement
6 officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional
7 variance other than lot area requirements from the zoning ordinance to a limited degree as
8 determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent (25%)
9 of each of the applicable dimensional requirements.

10 ~~(52)~~(53) Nonconformance. A building, structure, or parcel of land, or use thereof, lawfully
11 existing at the time of the adoption or amendment of a zoning ordinance and not in conformity with
12 the provisions of that ordinance or amendment. Nonconformance is of only two (2) types:

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

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

23 ~~(53)~~(54) Overlay district. A district established in a zoning ordinance that is superimposed
24 on one or more districts or parts of districts. The standards and requirements associated with an
25 overlay district may be more or less restrictive than those in the underlying districts consistent with
26 other applicable state and federal laws.

27 ~~(54)~~(55) Performance standards. A set of criteria or limits relating to elements that a
28 particular use or process must either meet or may not exceed.

29 ~~(55)~~(56) Permitted use. A use by right that is specifically authorized in a particular zoning
30 district.

31 ~~(56)~~(57) Planned development. A “land-development project,” as defined in subsection
32 (38), and developed according to plan as a single entity and containing one or more structures or
33 uses with appurtenant common areas.

34 ~~(57)~~(58) Plant agriculture. The growing of plants for food or fiber, to sell or consume.

1 ~~(58)~~(59) Preapplication conference. A review meeting of a proposed development held
2 between applicants and reviewing agencies as permitted by law and municipal ordinance, before
3 formal submission of an application for a permit or for development approval.

4 ~~(59)~~(60) Setback line or lines. A line, or lines, parallel to a lot line at the minimum distance
5 of the required setback for the zoning district in which the lot is located that establishes the area
6 within which the principal structure must be erected or placed.

7 ~~(60)~~(61) Site plan. The development plan for one or more lots on which is shown the
8 existing and/or the proposed conditions of the lot.

9 ~~(61)~~(62) Slope of land. The grade, pitch, rise, or incline of the topographic landform or
10 surface of the ground.

11 ~~(62)~~(63) Special use. A regulated use that is permitted pursuant to the special-use permit
12 issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to as a
13 special exception.

14 ~~(63)~~(64) Structure. A combination of materials to form a construction for use, occupancy,
15 or ornamentation, whether installed on, above, or below the surface of land or water.

16 ~~(64)~~(65) Substandard lot of record. Any lot lawfully existing at the time of adoption or
17 amendment of a zoning ordinance and not in conformance with the dimensional or area provisions
18 of that ordinance.

19 ~~(65)~~(66) Use. The purpose or activity for which land or buildings are designed, arranged,
20 or intended, or for which land or buildings are occupied or maintained.

21 ~~(66)~~(67) Variance. Permission to depart from the literal requirements of a zoning
22 ordinance. An authorization for the construction or maintenance of a building or structure, or for
23 the establishment or maintenance of a use of land, that is prohibited by a zoning ordinance. There
24 are only two (2) categories of variance, a use variance or a dimensional variance.

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

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

1 ~~(67)~~(68) Waters. As defined in § 46-12-1(23).

2 ~~(68)~~(69) Wetland, coastal. As defined in § 45-22.2-4.

3 ~~(69)~~(70) Wetland, freshwater. As defined in § 2-1-20.

4 ~~(70)~~(71) Zoning certificate. A document signed by the zoning-enforcement officer, as
5 required in the zoning ordinance, that acknowledges that a use, structure, building, or lot either
6 complies with, or is legally nonconforming to, the provisions of the municipal zoning ordinance or
7 is an authorized variance or modification therefrom.

8 ~~(71)~~(72) Zoning map. The map, or maps, that are a part of the zoning ordinance and that
9 delineate the boundaries of all mapped zoning districts within the physical boundary of the city or
10 town.

11 ~~(72)~~(73) Zoning ordinance. An ordinance enacted by the legislative body of the city or
12 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the city
13 or town's legislative or home rule charter, if any, that establish regulations and standards relating
14 to the nature and extent of uses of land and structures; that is consistent with the comprehensive
15 plan of the city or town as defined in chapter 22.2 of this title; that includes a zoning map; and that
16 complies with the provisions of this chapter.

17 ~~(73)~~(74) Zoning-use district. The basic unit in zoning, either mapped or unmapped, to
18 which a uniform set of regulations applies, or a uniform set of regulations for a specified use.
19 Zoning-use districts include, but are not limited to: agricultural, commercial, industrial,
20 institutional, open space, and residential. Each district may include sub-districts. Districts may be
21 combined.

22 **45-24-37. General provisions — Permitted uses.**

23 (a) The zoning ordinance shall provide a listing of all land uses and/or performance
24 standards for uses that are permitted within the zoning use districts of the municipality. The
25 ordinance may provide for a procedure under which a proposed land use that is not specifically
26 listed may be presented by the property owner to the zoning board of review or to a local official
27 or agency charged with administration and enforcement of the ordinance for an evaluation and
28 determination of whether the proposed use is of a similar type, character, and intensity as a listed
29 permitted use. Upon such determination, the proposed use may be considered to be a permitted use.

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

33 (1) Households;

34 (2) Community residences; and

1 (3) Family daycare homes.

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

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

14 (e) Notwithstanding any other provision of this chapter, an accessory dwelling unit in an
15 owner-occupied residence that complies with §§ 45-24-31 and 45-24-73 shall be permitted as a
16 reasonable accommodation for family members with disabilities or who are sixty-two (62) years of
17 age or older, or to accommodate other family members.

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

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

25 (h)(1) Notwithstanding any other provisions of this chapter, adaptive reuse for the
26 conversion of any commercial building, including offices, schools, religious facilities, medical
27 buildings, and malls into residential units or mixed use developments which include the
28 development of fifty percent (50%) of the existing footprint into residential units, shall be a
29 permitted use and allowed by specific and objective provisions of a zoning ordinance, except where
30 such is prohibited by environmental land use restrictions preventing the conversion to residential
31 use. Such specific zoning ordinance provisions shall exempt adaptive reuse developments from
32 parking requirements of over one per dwelling unit and shall allow for high density development
33 of at least fifteen (15) units per acre (DU/A) where development is:

34 (i) Limited to the existing footprint; and

- 1 (ii) The development includes low- and moderate-income housing.
- 2 (2) For adaptive reuse projects, notwithstanding any other provisions of this chapter,
3 existing building setbacks may remain and shall be considered legal nonconforming, but no further
4 encroachments shall be permitted into any nonconforming setback.
- 5 (3) For adaptive reuse projects, notwithstanding any other provisions of this chapter, the
6 height of the existing structure, if it exceeds the maximum height of the zoning district, may remain
7 and shall be considered legal nonconforming, and any rooftop construction shall be included within
8 the height exemption

9 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 provide that adaptive reuse for the conversion of commercial property into
2 residential or mixed-use developments shall be a permitted use and allowable by specific and
3 objective provisions of a zoning ordinance, subject to certain restrictions.

4 This act would take effect upon passage.

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