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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2021

A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES-NEIGHBORHOOD

Introduced By: Senators Bell, Quezada, Mack, Lombardo, Goodwin, Murray, Acosta,
Kallman, Cano, and Ciccone

Date Introduced: March 04, 2021

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-24-30, 45-24-31, 45-24-33, 45-24-34, 45-24-36, 45-24-37, 45-
2 24-39, 45-24-40, 45-24-42, 45-24-43, 45-24-44, 45-24-46.1, 45-24-46.2, 45-24-46.3, 45-24-46.4,
3 45-24-47, 45-24-48, 45-24-57, 45-24-58 and 45-24-61 of the General Laws in Chapter 45-24
4 entitled "Zoning Ordinances" are hereby amended to read as follows:

5 **45-24-30. General purposes of zoning ordinances.**

6 (a) Zoning regulations shall be developed and maintained in accordance with a
7 comprehensive plan prepared, adopted, and as may be amended, in accordance with chapter 22.2
8 of this title and shall be designed to address the following purposes. The general assembly
9 recognizes these purposes, each with equal priority and numbered for reference purposes only.

10 (1) Respecting the right of housing for every Rhode Islander in any city or town, regardless
11 of their income.

12 ~~(2)~~ (2) Promoting the public health, safety, and general welfare.

13 ~~(3)~~ (3) Providing for a range of uses and intensities of use appropriate to the character of
14 the city or town and reflecting current and expected future needs.

15 (4) Promoting smart growth: redevelopment of previously developed land and preservation
16 of undeveloped land.

17 ~~(5)~~ (5) Providing for orderly growth ~~and~~ development, and redevelopment that recognizes:

18 (i) The goals and patterns of land use contained in the comprehensive plan of the city or
19 town adopted pursuant to chapter 22.2 of this title;

- 1 (ii) The natural characteristics of the land, including its suitability for use based on soil
2 characteristics, topography, and susceptibility to surface or groundwater pollution;
- 3 (iii) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and
4 freshwater and coastal wetlands;
- 5 (iv) The values of unique or valuable natural resources and features;
- 6 (v) The availability and capacity of existing and planned public and/or private services and
7 facilities, specifically public and civic spaces, transportation, water, storm water management
8 systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation,
9 public facilities, open space, and other public requirements;
- 10 (vi) The need to shape and balance urban and rural development; and
- 11 (vii) The use of innovative development and redevelopment regulations and techniques.
- 12 ~~(4)~~(6) Providing for the control, protection, and/or abatement of air, water, groundwater,
13 and noise pollution, and soil erosion and sedimentation.
- 14 ~~(5)~~(7) Providing for the protection of the natural, historic, cultural, and scenic ~~character~~
15 characteristics of the city or town or areas in the municipality.
- 16 ~~(6)~~(8) Providing for the preservation and promotion of agricultural production, forest,
17 silviculture, aquaculture, timber resources, public and civic spaces, and open space.
- 18 ~~(7)~~(9) Providing for the protection of public investment in transportation, public and civic
19 spaces, water, stormwater management systems, sewage treatment and disposal, solid waste
20 treatment and disposal, schools, recreation, public facilities, open space, and other public
21 requirements.
- 22 ~~(8)~~(10) Promoting a balance of housing choices, for all income levels and groups, to assure
23 the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and
24 sanitary housing.
- 25 ~~(9)~~(11) Providing opportunities for the establishment of low- and moderate-income
26 housing.
- 27 ~~(10)~~(12) Promoting safety from ~~fire~~, flood, and ~~other natural or unnatural disasters~~ wildfire.
- 28 ~~(11)~~(13) Promoting a high level of quality in design and construction in the development
29 and redevelopment of private and public facilities.
- 30 ~~(12)~~(14) Promoting implementation of the comprehensive plan of the city or town adopted
31 pursuant to chapter 22.2 of this title.
- 32 ~~(13)~~(15) Providing for coordination of land uses with contiguous municipalities, other
33 municipalities, the state, and other agencies, as appropriate, especially with regard to resources and
34 facilities that extend beyond municipal boundaries or have a direct impact on that municipality.

1 ~~(14)~~(16) Providing for efficient review of development and redevelopment proposals, to
2 clarify and expedite the zoning approval process.

3 ~~(15)~~(17) Providing for procedures for the administration of the zoning ordinance,
4 including, but not limited to, variances, special and special-use permits, and, where adopted,
5 procedures for modifications.

6 ~~(16)~~(18) Providing opportunities for reasonable accommodations in order to comply with
7 the Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States Fair Housing
8 Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with Disabilities Act,
9 chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101
10 et seq.

11 Provided, however, that any zoning ordinance in which a community sets forth standards
12 or requirements for the location, design, construction, or maintenance of on-site wastewater
13 treatment systems shall first be submitted to the director of the department of environmental
14 management for approval as to the technical merits of the ordinance. In addition, any zoning
15 ordinance in which a municipality sets forth standards regarding wetland requirements, shall first
16 be submitted to the director of the department of environmental management for approval as to the
17 technical merits of the ordinance.

18 (b) Upon the effective date of this section, a city or town shall no longer be authorized to
19 adopt as a provision of its zoning ordinance new requirements that specify buffers or setbacks in
20 relation to freshwater wetland, freshwater wetland in the vicinity of the coast, or coastal wetland or
21 that specify setback distances between an onsite wastewater treatment system and a freshwater
22 wetlands, freshwater wetland in the vicinity of the coast, or coastal wetland.

23 (c) Upon promulgation of state regulations to designate wetland buffers and setbacks
24 pursuant to §§ 2-1-18 through 2-1-28, cities and towns shall be prohibited from applying the
25 requirements in existing zoning ordinances pertaining to both wetland buffers and onsite
26 wastewater treatment system setbacks to development applications submitted to a municipality
27 after the effective date of said state regulations. All applications for development that were
28 submitted to a municipality prior to the effective date of state regulations designating wetland
29 buffers and setbacks, will remain subject to, as applicable, the zoning provisions pertaining to
30 wetland buffers or setbacks for onsite wastewater treatment systems that were in effect at the time
31 the application was originally filed or granted approval, subject to the discretion of the municipality
32 to waive such requirements. Nothing herein shall rescind the authority of a city or town to enforce
33 local zoning requirements.

34 (d) Cities and towns shall act to amend their ordinances and regulations to conform to this

1 section within twelve (12) months of the effective date of state regulations referenced herein.

2 **45-24-31. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

34 (8) Application. The completed form, or forms, and all accompanying documents, exhibits,

1 and fees required of an applicant by an approving authority for development review, approval, or
2 permitting purposes.

3 (9) Architectural form. The shape or configuration of a building. Form and its opposite,
4 space, constitute primary elements of architecture. The form of a group of buildings, such as part
5 of a street wall, may include several buildings on separate lots owned by separate owners.

6 (10) Architectural wall. The vertical plane created by a series of architectural forms. See
7 also "street wall."

8 ~~(9)~~(11) Buffer. Land that is maintained in either a natural or landscaped state, and is used
9 to screen or mitigate the impacts of development on surrounding areas, properties, or rights-of-
10 way.

11 ~~(10)~~(12) Building. Any structure used or intended for supporting or sheltering any use or
12 occupancy.

13 ~~(11)~~(13) Building envelope. The three-dimensional space within which a structure is
14 permitted to be built on a lot and that is defined by regulations governing building setbacks,
15 maximum height, and bulk; by other regulations; or by any combination thereof.

16 ~~(12)~~(14) Building height. For a vacant parcel of land, building height shall be measured
17 from the average, existing-grade elevation where the foundation of the structure is proposed. For
18 an existing structure, building height shall be measured from average grade taken from the
19 outermost four (4) corners of the existing foundation. In all cases, building height shall be measured
20 to the top of the highest point of the existing or proposed roof or structure. This distance shall
21 exclude spires, chimneys, flag poles, and the like. For any property or structure located in a special
22 flood hazard area, as shown on the official FEMA Flood Insurance Rate Maps (FIRMs), or depicted
23 on the Rhode Island coastal resources management council (CRMC) suggested design elevation
24 three foot (3') sea level rise (CRMC SDE 3 SLR) map as being inundated during a one-hundred-
25 year (100) storm, the greater of the following amounts, expressed in feet, shall be excluded from
26 the building height calculation:

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

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

33 (15) Civic Space. See "public and civic space".

34 ~~(13)~~(16) Cluster. A site-planning technique that concentrates buildings in specific areas

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

9 ~~(14)~~[\(17\)](#) Common ownership. Either:

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

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

14 ~~(15)~~[\(18\)](#) Community residence. A home or residential facility where children and/or adults
15 reside in a family setting and may or may not receive supervised care. This does not include halfway
16 houses or substance-use-disorder-treatment facilities. This does include, but is not limited to, the
17 following:

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

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

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

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

34 ~~(16)~~[\(19\)](#) Comprehensive plan. The comprehensive plan adopted and approved pursuant to

1 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in
2 compliance.

3 ~~(17)~~[\(20\)](#) Day care -- Day-care center. Any other day-care center that is not a family day-
4 care home.

5 ~~(18)~~[\(21\)](#) Day care -- Family day-care home. Any home, other than the individual's home,
6 in which day care in lieu of parental care or supervision is offered at the same time to six (6) or less
7 individuals who are not relatives of the caregiver, but may not contain more than a total of eight
8 (8) individuals receiving day care.

9 ~~(19)~~[\(22\)](#) Density, residential. The number of dwelling units per unit of land.

10 ~~(20)~~[\(23\)](#) Development. The construction, reconstruction, conversion, [facade redesign](#),
11 structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill,
12 or land disturbance; or any change in use, or alteration or extension of the use, of land.

13 ~~(21)~~[\(24\)](#) Development plan review. The process whereby authorized, local officials review
14 the site plans, maps, and other documentation of a development to determine the compliance with
15 the stated purposes and standards of the ordinance.

16 ~~(22)~~[\(25\)](#) District. See "zoning-use [and form](#) district."

17 ~~(23)~~[\(26\)](#) Drainage system. A system for the removal of water from land by drains, grading,
18 or other appropriate means. These techniques may include runoff controls to minimize erosion and
19 sedimentation during and after construction or development; the means for preserving surface and
20 groundwaters; and the prevention and/or alleviation of flooding.

21 ~~(24)~~[\(27\)](#) Dwelling unit. A structure, or portion of a structure, providing complete,
22 independent living facilities for one or more persons, including permanent provisions for living,
23 sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

24 ~~(25)~~[\(28\)](#) Extractive industry. The extraction of minerals, including: solids, such as coal and
25 ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also includes
26 quarrying; well operation; milling, such as crushing, screening, washing, and flotation; and other
27 preparation customarily done at the extraction site or as a part of the extractive activity.

28 ~~(26)~~[\(29\)](#) Family member. A person, or persons, related by blood, marriage, or other legal
29 means, including, but not limited to, a child, parent, spouse, mother-in-law, father-in-law,
30 grandparents, grandchildren, domestic partner, sibling, care recipient, or member of the household.

31 ~~(27)~~[\(30\)](#) Floating zone. An unmapped zoning district adopted within the ordinance that is
32 established on the zoning map only when an application for development, meeting the zone
33 requirements, is approved.

34 ~~(28)~~[\(31\)](#) Floodplains, or Flood hazard area. As defined in § 45-22.2-4.

1 [\(32\) Form. See "architectural form."](#)

2 ~~(29)~~[\(33\)](#) Freeboard. A factor of safety expressed in feet above the base flood elevation of
3 a flood hazard area for purposes of floodplain management. Freeboard compensates for the many
4 unknown factors that could contribute to flood heights, such as wave action, bridge openings, and
5 the hydrological effect of urbanization of the watershed.

6 ~~(30)~~[\(34\)](#) Groundwater. "Groundwater" and associated terms, as defined in § 46-13.1-3.

7 ~~(31)~~[\(35\)](#) Halfway house. A residential facility for adults or children who have been
8 institutionalized for criminal conduct and who require a group setting to facilitate the transition to
9 a functional member of society.

10 ~~(32)~~[\(36\)](#) Hardship. See § 45-24-41.

11 ~~(33)~~[\(37\)](#) Historic district or historic site. As defined in § 45-22.2-4.

12 ~~(34)~~[\(38\)](#) Home occupation. Any activity customarily carried out for gain by a resident,
13 conducted as an accessory use in the resident's dwelling unit.

14 ~~(35)~~[\(39\)](#) Household. One or more persons living together in a single-dwelling unit, with
15 common access to, and common use of, all living and eating areas and all areas and facilities for
16 the preparation and storage of food within the dwelling unit. The term "household unit" is
17 synonymous with the term "dwelling unit" for determining the number of units allowed within any
18 structure on any lot in a zoning district. An individual household shall consist of any one of the
19 following:

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

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

23 ~~(36)~~[\(40\)](#) Incentive zoning. The process whereby the local authority may grant additional
24 development capacity in exchange for the developer's provision of a public benefit or amenity as
25 specified in local ordinances.

26 ~~(37)~~[\(41\)](#) Infrastructure. Facilities and services needed to sustain residential, commercial,
27 industrial, institutional, and other activities.

28 ~~(38)~~[\(42\)](#) Land-development project. A project in which one or more lots, tracts, or parcels
29 of land are developed or redeveloped as a coordinated site for one or more uses, units, or structures,
30 including, but not limited to, planned development or cluster development for residential,
31 commercial, institutional, recreational, open space, or mixed uses as provided in the zoning
32 ordinance.

33 ~~(39)~~[\(43\)](#) Lot. Either:

34 (i) The basic development unit for determination of lot area, depth, and other dimensional

1 regulations; or

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

5 ~~(40)~~(44) Lot area. The total area within the boundaries of a lot, excluding any street right-
6 of-way, usually reported in acres or square feet.

7 ~~(41)~~(45) Lot area, minimum. The smallest land area established by the local zoning
8 ordinance upon which a use, building, or structure may be located in a particular zoning district.

9 ~~(42)~~(46) Lot building coverage. That portion of the lot that is, or may be, covered by
10 buildings and accessory buildings.

11 ~~(43)~~(47) Lot depth. The distance measured from the front lot line to the rear lot line. For
12 lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

13 ~~(44)~~(48) Lot frontage. That portion of a lot abutting a street. A zoning ordinance shall
14 specify how noncontiguous frontage will be considered with regard to minimum frontage
15 requirements.

16 ~~(45)~~(49) Lot line. A line of record, bounding a lot, that divides one lot from another lot or
17 from a public or private street or any other public or private space and shall include:

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

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

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

26 ~~(46)~~(50) Lot size, minimum. Shall have the same meaning as "minimum lot area" defined
27 herein.

28 ~~(47)~~(51) Lot, through. A lot that fronts upon two (2) parallel streets, or that fronts upon two
29 (2) streets that do not intersect at the boundaries of the lot.

30 ~~(48)~~(52) Lot width. The horizontal distance between the side lines of a lot measured at right
31 angles to its depth along a straight line parallel to the front lot line at the minimum front setback
32 line.

33 ~~(49)~~(53) Mere inconvenience. See § 45-24-41.

34 ~~(50)~~(54) Mixed use. A mixture of land uses within a single development, building, or tract.

1 [Also referred to as traditional development. Typically ground floor commercial with residential](#)
2 [above.](#)

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)~~(55) 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 [or in existence for at least](#)
10 [six \(6\) years](#) and not in conformity with the provisions of that ordinance or amendment.
11 Nonconformance is of only two (2) types:

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

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

22 ~~(53)~~(56) Overlay district. A district established in a zoning ordinance that is superimposed
23 on one or more districts or parts of districts. The standards and requirements associated with an
24 overlay district may be more or less restrictive than those in the underlying districts consistent with
25 other applicable state and federal laws.

26 ~~(54)~~(57) Performance standards. A set of criteria or limits relating to elements that a
27 particular use or process must either meet or may not exceed.

28 ~~(55)~~(58) Permitted use. A use by right that is specifically authorized in a particular zoning
29 district.

30 ~~(56)~~(59) Planned development. A "land-development project," as defined in subsection
31 (38), and developed according to plan as a single entity and containing one or more structures or
32 uses with appurtenant common areas.

33 ~~(57)~~(60) Plant agriculture. The growing of plants for food or fiber, to sell or consume.

34 ~~(58)~~(61) Preapplication conference. A review meeting of a proposed development held

1 between applicants and reviewing agencies as permitted by law and municipal ordinance, before
2 formal submission of an application for a permit or for development approval.

3 (62) Public and civic space. An extension of the community, serving as a stage for our
4 public lives. The space enriches the lives of its users and enhances its surrounding buildings and
5 neighborhood. Public and civic space includes atria, boardwalks, courtyards, forecourts, overlooks,
6 plazas, paths, and squares.

7 (63) Reconstruction. The act or process of depicting, by means of new construction, the
8 form features, and detailing of a non-surviving site, landscape, building, structure, or object for the
9 purpose of replicating its appearance at a specific period of time and in its historic location.

10 (64) Redevelopment. Alteration to previously developed land, structures, or buildings. May
11 include adaptive reuse, reconstruction, conversion, facade redesign, structural alteration,
12 relocation, or enlargement of any structure or building.

13 (65) Rural. Sparsely populated and lacking in public services. Primarily open space and
14 agriculture with interstitial development.

15 ~~(59)~~(66) Setback line or lines. A line, or lines, parallel to a lot line at the minimum distance
16 of the required setback for the zoning district in which the lot is located that establishes the area
17 within which the principal structure must be erected or placed.

18 ~~(60)~~(67) Site plan. The development plan for one or more lots on which is shown the
19 existing and/or the proposed conditions of the lot.

20 ~~(61)~~(68) Slope of land. The grade, pitch, rise, or incline of the topographic landform or
21 surface of the ground.

22 ~~(62)~~(69) Special ~~use~~ permit. A regulated use or dimension that is permitted pursuant to the
23 special-use permit issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly
24 referred to as a special use permit or modification, or special exception. There are only two (2)
25 categories of special permit, a special use permit or a special dimensional permit.

26 (i) Special use permit. A regulated use that is permitted pursuant to the special use permit
27 issued by the authorized governmental entity, pursuant to § 45-24-42. Special use permits are
28 typically utilized for uses that may have an outsize impact on the surrounding area, such as schools
29 or drive-through windows.

30 (ii) Special dimensional permit. A regulated dimension that is permitted pursuant to the
31 special dimensional permit issued by the authorized governmental entity, pursuant to § 45-24-42.
32 Special dimensional permits allow the involvement of the public and the discretion of the
33 authorized governmental entity in allowing small deviations from a zoning ordinance.

34 (70) Street wall. The architectural wall on either side of a street. A street wall requires

1 relatively consistent setbacks, building heights, building envelopes, and landscaping to function.

2 ~~(63)~~(71) Structure. A combination of materials to form a construction for use, occupancy,
3 or ornamentation, whether installed on, above, or below the surface of land or water.

4 ~~(64)~~(72) Substandard lot of record. Any lot lawfully existing at the time of adoption or
5 amendment of a zoning ordinance and not in conformance with the dimensional or area provisions
6 of that ordinance.

7 (73) Urban. Densely populated with defined and balanced public and private realms,
8 primarily with public and civic spaces, people-centric design, continuous, coherent, and
9 harmonious architectural wall, extensive public services, including transportation, water,
10 stormwater management systems, sewage treatment and disposal, solid waste treatment and
11 disposal, schools, recreation, public facilities, interstitial open space and agriculture, and other
12 public requirements, Generally defined by the division of planning as village centers and areas
13 within the urban services boundary, on a map maintained by the division of planning.

14 ~~(65)~~(74) Use. The purpose or activity for which land or buildings are designed, arranged,
15 or intended, or for which land or buildings are occupied or maintained.

16 ~~(66)~~(75) Variance. Permission to depart from the literal requirements of a zoning
17 ordinance. An authorization for the construction or maintenance of a building or structure, or for
18 the establishment or maintenance of a use of land, that is prohibited by a zoning ordinance. There
19 are only two (2) categories of variance, a use variance or a dimensional variance.

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

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

30 ~~(67)~~(76) Waters. As defined in § 46-12-1(23).

31 ~~(68)~~(77) Wetland, coastal. As defined in § 45-22.2-4.

32 ~~(69)~~(78) Wetland, freshwater. As defined in § 2-1-20.

33 ~~(70)~~(79) Zoning certificate. A document signed by the zoning-enforcement officer, as
34 required in the zoning ordinance, that acknowledges that a use, structure, building, or lot either

1 complies with, or is legally nonconforming to, the provisions of the municipal zoning ordinance or
2 is an authorized variance or modification therefrom.

3 ~~(71)~~(80) Zoning map. The map, or maps, that are a part of the zoning ordinance and that
4 delineate the boundaries of all mapped zoning districts within the physical boundary of the city or
5 town.

6 ~~(72)~~(81) Zoning ordinance. An ordinance enacted by the legislative body of the city or
7 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the city
8 or town's legislative or home rule charter, if any, that establish regulations and standards relating
9 to the nature and extent of uses of land and structures; that is consistent with the comprehensive
10 plan of the city or town as defined in chapter 22.2 of this title; that includes a zoning map; and that
11 complies with the provisions of this chapter.

12 ~~(73)~~(82) Zoning-use and form district. The basic unit in zoning, either mapped or
13 unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a
14 specified use. Zoning-use and form districts include, but are not limited to: agricultural,
15 commercial, industrial, institutional, mixed-use, open space, and residential, as well as urban core,
16 urban center, general urban, inner suburban, outer suburban, exurban, and rural. Each district may
17 include sub-districts. Districts may be combined.

18 (83) Zoning use that raises pollution risk. A use that raises potential for residents and
19 visitors of the surrounding area to experience the negative effects of air, groundwater, stormwater,
20 smell, auditory, or vibrational activities associated with the primary or accessory use of the subject
21 property. The following uses shall be included: animal care facility, nightclub, broadcasting
22 facility, car wash, drive-through facility, parking facility, asphalt surfaces, freight terminal, funeral
23 home, gas station, golf course, plant nursery, commercial agriculture, marina, boat construction
24 and repair, brewery, distillery, winery, power plant, strip mall, motorized vehicle repair, and all
25 industrial uses, The division of planning shall have the power to establish rules and regulations that
26 identify additional uses that meet these criteria.

27 **45-24-33. Standard provisions.**

28 (a) A zoning ordinance addresses each of the purposes stated in § 45-24-30 and addresses,
29 through reasonable objective standards and criteria, the following general provisions which are
30 numbered for reference purposes only except as prohibited by §§ 45-24-30(b), 45-24-30(c), or 45-
31 24-30(d):

32 (1) Permitting, prohibiting, limiting, and restricting the development and redevelopment of
33 land and structures in zoning districts, and regulating those land and structures according to their
34 type and the nature and extent of their use;

1 (2) Regulating the nature and extent of the use of land for residential, commercial,
2 industrial, institutional, recreational, agricultural, open space, or other use or combination of uses,
3 as the need for land for those purposes is determined by the city or town's comprehensive plan;

4 (3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and
5 other development and redevelopment by performance standards, or other requirements, related to
6 air and water and groundwater quality, noise and glare, energy consumption, soil erosion and
7 sedimentation, and/or the availability and capacity of existing and planned public or private
8 services, specifically transportation, water, stormwater management systems, sewage treatment and
9 disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space, and
10 other public requirements;

11 (4) Regulating within each district and designating requirements for:

12 (i) The height, number of stories, ~~and~~ size, fenestration, and proportions of buildings;

13 (ii) The dimensions, size, lot coverage, ~~floor area ratios~~, and layout of lots or development
14 areas;

15 (iii) The density and intensity of use;

16 (iv) Access to ~~air and light~~, views, and solar access;

17 (v) Open space, yards, courts, and buffers;

18 (vi) Parking areas, road design, ~~and, where appropriate~~, pedestrian, bicycle, and other
19 circulator systems;

20 (vii) Landscaping, fencing, and lighting;

21 (viii) Appropriate drainage requirements and methods to manage stormwater runoff;

22 (ix) Public access to waterbodies, rivers, and streams; and

23 (x) Other requirements in connection with any use of land or structure;

24 (5) Permitting, prohibiting, limiting, and restricting development and redevelopment in
25 flood plains or flood hazard areas and designated significant natural areas;

26 (6) Promoting the conservation of energy and promoting energy-efficient patterns of
27 development and redevelopment;

28 (7) Providing for the protection of existing and planned public drinking water supplies,
29 their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and
30 watershed;

31 (8) Providing for adequate, safe, and efficient transportation systems; and avoiding
32 congestion by relating types and levels of development and redevelopment to the capacity of the
33 circulation system, and maintaining a safe level of service of the system;

34 (9) Providing for the preservation and enhancement of the recreational resources of the city

1 or town;

2 (10) Promoting an economic climate that increases quality job opportunities and the overall
3 economic well-being of the city or town and the state;

4 (11) Providing for ~~pedestrian~~ [transportation](#) access to and between public and private
5 facilities, including, but not limited to, schools, employment centers, shopping areas, recreation
6 areas, and residences;

7 (12) Providing standards for, and requiring the provision of, adequate and properly
8 designed physical improvements, including plantings, and the proper maintenance of property;

9 (13) Permitting, prohibiting, limiting, and restricting land use in areas where development
10 [and redevelopment](#) is deemed to create a hazard to the public health or safety;

11 (14) Permitting, prohibiting, limiting, and restricting extractive industries and earth
12 removal and requiring restoration of land after these activities;

13 (15) Regulating sanitary landfill, except as otherwise provided by state statute;

14 (16) Permitting, prohibiting, limiting, and restricting signs and billboards and other outdoor
15 advertising devices;

16 (17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and
17 enforcement of airport hazard area zoning regulations under the provisions established in that
18 chapter;

19 (18) Designating areas of historic, cultural, and/or archaeological value and regulating
20 development [and redevelopment](#) in those areas under the provisions of chapter 24.1 of this title;

21 (19) Providing standards and requirements for the regulation, review, and approval of any
22 proposed development [and redevelopment](#) in connection with those uses of land, buildings, or
23 structures specifically designated as subject to development plan review in a zoning ordinance;

24 (20) Designating special protection areas for water supply and limiting or prohibiting
25 development [and redevelopment](#) in these areas, except as otherwise provided by state statute;

26 (21) Specifying requirements for safe road access to developments [and redevelopments](#)
27 from existing streets, including limiting the number, design, and location of curb cuts, and
28 provisions for internal circulation systems, [including pedestrian and bicycle ways](#), for new
29 developments [and redevelopments](#), ~~and provisions for pedestrian and bicycle ways~~; and

30 (22) Reducing unnecessary delay in approving or disapproving development applications
31 through provisions for preapplication conferences and other means.

32 (23) Providing for the application of the Rhode Island Fair Housing Practices Act, chapter
33 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA); the Rhode Island
34 Civil Rights People with Disabilities Act, chapter 37 of title 42; and the Americans with Disabilities

1 Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

2 (24) Regulating drive-through windows of varied intensity of use when associated with
3 land-use activities and providing standards and requirements for the regulation, review, and
4 approval of the drive-through windows, including, but not limited to:

5 (i) Identifying within which zoning districts drive-through windows may be permitted,
6 prohibited, or permitted by ~~special-use~~ special permit;

7 (ii) Specifying requirements for adequate traffic circulation; and

8 (iii) Providing for adequate pedestrian safety and access, including issues concerning safety
9 and access for those with disabilities.

10 (b) A zoning ordinance may include special provisions for any or all of the following:

11 (1) Authorizing development incentives, including, but not limited to, additional permitted
12 uses, increased development and density, or additional design or dimensional flexibility in
13 exchange for:

14 (i) Increased open space;

15 (ii) Increased housing choices;

16 (iii) Traffic and pedestrian improvements;

17 (iv) Public and/or private facilities; and/or

18 (v) Other amenities as desired by the city or town and consistent with its comprehensive
19 plan. The provisions in the ordinance shall include maximum allowable densities of population
20 and/or intensities of use and shall indicate the type of improvements, amenities, and/or conditions.
21 Conditions may be made for donation in lieu of direct provisions for improvements or amenities;

22 (2) Establishing a system for transfer of development rights within or between zoning
23 districts designated in the zoning ordinance; and

24 (3) Regulating the development and redevelopment adjacent to designated scenic
25 highways, scenic waterways, major thoroughfares, public greenspaces, or other areas of special
26 public investment or valuable natural resources.

27 (c) Slope of land shall not be excluded from the calculation of the buildable lot area or the
28 minimum lot size, or in the calculation of the number of buildable lots or units.

29 (d) Nothing in this section shall be construed to restrict a municipality's right, within state
30 and local regulations, to establish its own minimum lot size per zoning district in its town or city.

31 **45-24-34. General provisions -- Purpose and consistency with comprehensive plan.**

32 (a) A zoning ordinance adopted pursuant to this chapter shall provide a statement of its
33 purposes. Those purposes shall be consistent with § 45-24-30. A zoning ordinance adopted or
34 amended pursuant to this chapter shall include a statement that the zoning ordinance is consistent

1 with the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title, or as
2 otherwise provided below and shall provide that in the instance of uncertainty in the construction
3 or application of any section of the ordinance, the ordinance shall be construed in a manner that
4 will further the implementation of, and not be contrary to, the goals and policies and applicable
5 elements of the comprehensive plan.

6 (b) The city or town shall bring the zoning ordinance or amendment into conformance with
7 its comprehensive plan as approved by the chief of the division of planning of the department of
8 administration or the superior court in accordance with its implementation schedule as set forth in
9 said plan, [a period no longer than three \(3\) years](#). A zoning ordinance shall address and specify
10 requirements for the coordination between contiguous communities, the state, and other agencies,
11 as required by chapter 22.2 of this title.

12 **45-24-36. General provisions -- Division into districts.**

13 A zoning ordinance divides a city or town into zoning use [and form](#) districts, which may
14 include overlay districts and floating zone districts, of the number, kind, type, shape, and area
15 suitable to carry out the purposes of this chapter. Regulations and standards shall be consistent for
16 each land use, type of development [and redevelopment](#), or type of building or structure within a
17 district, but may differ from those in other districts. Zoning use [and form](#) districts shall be depicted
18 by type and location on the zoning map.

19 **45-24-37. General provisions -- Permitted uses.**

20 (a) The zoning ordinance shall provide a listing of all land uses and/or performance
21 standards for uses that are permitted within the zoning use [and form](#) districts of the municipality.

22 (b) Notwithstanding any other provision of this chapter, the following uses are permitted
23 uses within all residential zoning use [and form](#) districts of a municipality and all industrial and
24 commercial zoning use [and form](#) districts except where residential use is prohibited for public
25 health or safety reasons:

- 26 (1) Households;
- 27 (2) Community residences; and
- 28 (3) Family day care homes.

29 (c) Any time a building or other structure used for residential purposes, or a portion of a
30 building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire
31 or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured home,
32 or homes, as the need may be, elsewhere upon the land, for use and occupancy of the former
33 occupants for a period of up to twelve (12) months, or until the building or structure is rehabilitated
34 and otherwise made fit for occupancy. The property owner, or a properly designated agent of the

1 owner, is only allowed to cause the mobile and manufactured home, or homes, to remain
2 temporarily upon the land by making timely application to the local building official for the
3 purposes of obtaining the necessary permits to ~~repair or rebuild~~ redevelop the structure.

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

7 (e) Notwithstanding any other provision of this chapter, an accessory family dwelling unit
8 in an owner-occupied, single-family residence shall be permitted as a reasonable accommodation
9 for family members with disabilities or who are sixty-two (62) years of age or older, or to
10 accommodate other family members. The appearance of the structure shall remain that of a single-
11 family residence and there shall be an internal means of egress between the principal unit and the
12 accessory family dwelling unit. If possible, no additional exterior entrances should be added. Where
13 additional entrance is required, placement should generally be in the rear or side of the structure.
14 When the structure is serviced by an individual, sewage-disposal system, the applicant shall have
15 the existing or any new system approved by the department of environmental management. The
16 zoning-enforcement officer shall require that a declaration of the accessory family dwelling unit
17 for the family member, or members, and its restrictions be recorded in the land-evidence records
18 and filed with the zoning-enforcement officer and the building official. Once the family members
19 with disabilities or who are sixty-two (62) years of age or older, or any other family member, no
20 longer reside(s) in the premises on a permanent basis, or the title is transferred, the property owner
21 shall notify the zoning official in writing, and the accessory family-dwelling unit shall no longer
22 be permitted, unless there is a subsequent, valid application.

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

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

30 **45-24-39. General provisions -- Nonconforming development.**

31 (a) Any city or town adopting or amending a zoning ordinance under this chapter shall
32 make provision for any use, activity, structure, building, or sign or other improvement, lawfully
33 existing at the time of the adoption or amendment of the zoning ordinance, but which is
34 nonconforming by use or nonconforming by dimension. The zoning ordinance may regulate

1 development which is nonconforming by dimension differently than that which is nonconforming
2 by use.

3 (b) The zoning ordinance shall permit the continuation of nonconforming development;
4 however, this does not prohibit the regulation of nuisances.

5 (c) A zoning ordinance ~~may~~ shall provide that, if a nonconforming use is abandoned, it
6 may not be reestablished. Abandonment of a ~~nonconforming use~~ zoning use that raises pollution
7 risk consists of some overt act, or failure to act, which leads one to believe that the owner of the
8 nonconforming use neither claims nor retains any interest in continuing the nonconforming use
9 unless the owner can demonstrate an intent not to abandon the use. If any zoning use that raises
10 pollution risk halted for a period of three (3) years, the owner of the nonconforming use is presumed
11 to have abandoned the nonconforming use, even if there is no intent to abandon the use. ~~An~~
12 ~~involuntary interruption of nonconforming use, as by fire and natural catastrophe, does not establish~~
13 ~~the intent to abandon the nonconforming use; however, if~~ If any nonconforming use is halted for a
14 period of ~~one year~~ twenty (20) years, the owner of the nonconforming use is presumed to have
15 abandoned the nonconforming use, unless that presumption is rebutted by the presentation of
16 sufficient evidence of intent not to abandon the use. A use that is nonconforming by use because
17 the building or structure contains more dwelling units than are permitted by the use regulations of
18 a zoning ordinance shall never be considered abandoned, unless the zoning use and form district
19 does not permit any residential use.

20 (d) Abandonment of a nonconforming accessory use shall not be construed to imply
21 abandonment of other uses of the site.

22 (e) A nonconforming development by dimension never abandons its nonconformance by
23 dimension. In reconstructing a development that is nonconforming by dimension, the activity shall
24 be reviewed as an alteration of nonconforming development.

25 **45-24-40. General provisions -- Alteration of nonconforming development.**

26 (a) A zoning ordinance ~~may~~ shall permit a nonconforming development to be altered under
27 ~~either of~~ the following conditions:

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

31 ~~(2)~~(1) The ordinance ~~may~~ shall allow the reconstruction, addition and enlargement,
32 expansion, intensification, or change in use, of nonconforming development either by special
33 permit or by right and may distinguish between the foregoing actions by zoning districts.

34 ~~(b) The ordinance may require that the alteration more closely adheres to the intent and~~

1 ~~purposes of the zoning ordinance.~~

2 (c) A use established by variance or special use permit shall not acquire the rights of this
3 section.

4 **45-24-42. General provisions -- Special-use permits. General provisions -- Special**
5 **permits.**

6 (a) A zoning ordinance shall provide for the issuance of special-use permits approved by
7 the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-
8 46.4, the planning board or commission.

9 (b) The ordinance shall:

10 (1) Specify the uses requiring special-use permits in each district and the dimensions
11 requiring a special dimensional permit in each district. Dimensional requirements in special
12 dimensional permits shall not exceed fifty percent (50%) of the dimensional requirements specified
13 in the zoning ordinance or the average of existing conditions on lots within the notice area as
14 defined in § 45-24-53(d)(2), whichever is greater. A special dimensional permit does not permit
15 moving of lot lines;

16 (2) Describe the conditions and procedures under which special-use permits, of each or the
17 various categories of special-use permits established in the zoning ordinance, may be issued;

18 (3) Establish criteria for the issuance of each category of special-use permit that shall be in
19 conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of
20 the city or town. If a special dimensional permit is granted, neighboring property shall neither be
21 substantially injured nor its appropriate use substantially impaired, specifically the appearance of
22 the subject property from the street in comparison to properties on its left and right, and it does not
23 alter a flood hazard requirement;

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

1 constitute required notice of a public hearing. The cost of notification shall be borne by the
2 applicant;

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

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

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

13 **45-24-43. General provisions -- Special conditions.**

14 In granting a variance or in making any determination upon which it is required to pass
15 after a public hearing under a zoning ordinance, the zoning board of review or other zoning
16 enforcement agency may apply the special conditions that may, in the opinion of the board or
17 agency, be required to promote the intent and purposes of the comprehensive plan and the zoning
18 ordinance of the city or town. Failure to abide by any special conditions attached to a grant
19 constitutes a zoning violation. Those special conditions shall be based on competent credible
20 evidence on the record, be incorporated into the decision, and may include, but are not limited to,
21 provisions for:

22 (1) Minimizing the adverse impact of the development or redevelopment upon other land,
23 including the type, intensity, design, and performance of activities;

24 (2) Controlling the sequence of development or redevelopment, including when it must be
25 commenced and completed;

26 (3) Controlling the duration of use or development and the time within which any
27 temporary structure must be removed;

28 (4) Assuring satisfactory installation and maintenance of required public improvements;

29 (5) Designating the exact location and nature of development or redevelopment; and

30 (6) Establishing detailed records by submission of drawings, maps, plats, or specifications.

31 **45-24-44. General provisions -- Creation of vested rights.**

32 (a) A zoning ordinance provides protection for the consideration of applications for
33 development or redevelopment that are substantially complete and have been submitted for
34 approval to the appropriate review agency in the city or town prior to enactment of the new zoning

1 ordinance or amendment.

2 (b) Zoning ordinances or other land development ordinances or regulations specify the
3 minimum requirements for a development application to be substantially complete for the purposes
4 of this section.

5 (c) Any application considered by a city or town under the protection of this section shall
6 be reviewed according to the regulations applicable in the zoning ordinance in force at the time the
7 application was submitted.

8 (d) If an application for development or redevelopment under the provisions of this section
9 is approved, reasonable time limits shall be set within which development or redevelopment of the
10 property must begin and within which development or redevelopment must be substantially
11 completed.

12 **45-24-46.1. Inclusionary zoning.**

13 (a) A zoning ordinance requiring the inclusion of affordable housing as part of a
14 development or redevelopment shall provide that the housing will be affordable housing, as defined
15 in § 42-128-8.1(d)(1); that the affordable housing will constitute not less than ten percent (10%) of
16 the total units in the development or redevelopment; and that the units will remain affordable for a
17 period of not less than thirty-years (30) from initial occupancy enforced through a land lease and/or
18 deed restriction enforceable by the municipality and the state of Rhode Island.

19 (b) A zoning ordinance that includes inclusionary zoning may provide that the affordable
20 housing must be built on-site or utilize one or more alternative methods of production, including,
21 but not limited to, off-site construction or rehabilitation, donation of land suitable for development
22 of the required affordable units, and/or the payment of a fee in lieu of the construction or provision
23 of affordable housing units. For all projects subject to inclusionary zoning, density bonuses and
24 other incentives shall be established by the community and shall apply to offset differential costs
25 of below-market units.

26 (c) This fee in lieu of the construction or provision of affordable housing shall be the choice
27 of the developer or builder applied on a per-unit basis and may be used for new developments,
28 purchasing property and/or homes, rehabilitating properties, or any other manner that creates
29 additional low-or-moderate income housing as defined in § 45-53-3(9).

30 (1) For affordable, single-family homes and condominium units, the per-unit fee shall be
31 the difference between the maximum affordable sales price for a family of four (4) earning eighty
32 percent (80%) of the area median income as determined annually by the U.S. Department of
33 Housing and Urban Development and the average cost of developing a single unit of affordable
34 housing. The average cost of developing a single unit of affordable housing shall be determined

1 annually based on the average, per-unit development cost of affordable homes financed by Rhode
2 Island housing over the previous three (3) years, excluding existing units that received preservation
3 financing.

4 (2) Notwithstanding subsection (c)(1) of this section, in no case shall the per-unit fee for
5 affordable single family homes and condominium units be less than forty thousand dollars
6 (\$40,000).

7 (d) The municipality shall deposit all in-lieu payments into restricted accounts that shall be
8 allocated and spent only for the creation and development of affordable-housing within the
9 municipality serving individuals or families at or below eighty percent (80%) of the area median
10 income. The municipality shall maintain a local affordable housing board to oversee the funds in
11 the restricted accounts and shall allocate the funds within two (2) years. The municipality shall
12 include in the housing element of their local comprehensive plan, if applicable, the process it will
13 use to allocate the funds.

14 (e) As an alternative to the provisions of subsection (d), the municipality may elect to
15 transfer in-lieu payments promptly upon receipt or within the two-year (2) period after receipt to
16 the housing resources commission or Rhode Island housing for the purpose of developing
17 affordable housing within that community.

18 (f) Rhode Island housing shall report to the general assembly and the housing resources
19 commission the amount of fees in lieu collected by community; the projects that were provided
20 funding with the fees, the dollar amounts allocated to the projects and the number of units created.

21 **45-24-46.2. Special provisions -- Transfer of development rights -- North Kingstown.**

22 (a) In addition to other powers granted to towns and cities by this chapter to establish and
23 administer transfer of development rights programs, the town council of the town of North
24 Kingstown may provide by ordinance for the transfer of development rights, as a voluntary program
25 available to developers and property owners, in the manner set forth in this section.

26 (b) The establishment, as provided for by this section, of a system for transfer of
27 development rights within or between zoning districts, or a portion thereof, designated in the zoning
28 ordinance shall be:

29 (1) For the purpose of providing developers and property owners the ability to establish,
30 certify, purchase, sell, convey, and/or hold land development rights; and

31 (2) For one or more of the following purposes:

32 (i) Preserving sensitive resource areas in the community such as groundwater reserves,
33 wildlife habitat, agricultural lands, and public access to surface waters;

34 (ii) Directing development away from sensitive resource areas to places better suited to

1 increased levels of development [and redevelopment](#) such as established or proposed mixed use,
2 commercial, village, or residential centers;

3 (iii) Directing development to areas served by existing infrastructure such as established
4 roadways, public water supply systems, centralized sewer collection systems, public transit and
5 other utilities; or

6 (iv) Shaping and balancing urban and rural development; and/or promoting a high level of
7 quality in design in the development [and redevelopment](#) of private and public facilities and spaces.

8 (c) For purposes of this section the following terms shall have the following meaning:

9 (1) "Receiving area district" means a zoning district, which is established and mapped
10 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning
11 use [and form](#) districts or portions thereof that is eligible to receive development rights through a
12 major land development project review. As may be necessary or desirable to achieve the intended
13 uses, density and intensity of use, a receiving area district may allow for additional development
14 [and redevelopment](#) capacity and for increased lot building coverage and building envelope that are
15 greater than those of the underlying zoning.

16 (2) "Sending area district" means a zoning district, which is established and mapped
17 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning
18 use [and form](#) districts or a portion thereof, that is eligible to establish development rights that may
19 eventually be transferred to a receiving area.

20 **45-24-46.3. Special provisions -- Transfer of development rights -- Exeter.**

21 (a) In addition to other powers granted to towns and cities by this chapter to establish and
22 administer transfer of development rights programs, the town council of the town of Exeter may
23 provide by ordinance for the transfer of development rights, as a voluntary program available to
24 developers and property owners, in the manner set forth in this section.

25 (b) For purposes of this section the following terms shall have the following meaning:

26 (1) "Receiving area district" means a zoning district, which is established and mapped
27 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning
28 use [and form](#) districts or portions thereof, that is eligible to receive development rights through a
29 major land development project review. As may be necessary or desirable to achieve the intended
30 uses, density and intensity of use, a receiving area district may allow for additional development
31 capacity and for increased lot building coverage and building envelope that are greater than those
32 of the underlying zoning.

33 (2) "Sending area district" means a zoning district, which is established and mapped
34 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning

1 use [and form](#) districts or a portion thereof, that is eligible to establish development rights that may
2 eventually be transferred to a receiving area.

3 (c) The establishment, as provided for by this section, of a system for transfer of
4 development rights within or between zoning districts, or a portion thereof, designated in the zoning
5 ordinance shall be:

6 (1) For the purpose of providing developers and property owners the ability to establish,
7 certify, purchase, sell, convey, and/or hold land development rights; and

8 (2) For one or more of the following purposes:

9 (i) Preserving sensitive resource areas in the community such as groundwater reserves,
10 wildlife habitat, agricultural lands, and public access to surface waters;

11 (ii) Directing development away from sensitive resource areas to places better suited to
12 increased levels of development [and redevelopment](#) such as established or proposed mixed use,
13 commercial, village, or residential centers;

14 (iii) Directing development to areas served by existing infrastructure such as established
15 roadways, public water supply systems, centralized sewer collection systems, public transit and
16 other utilities; or

17 (iv) Shaping and balancing urban and rural development, and/or promoting a high level of
18 quality in design in the development [and redevelopment](#) of private and public facilities and spaces.

19 **45-24-46.4. Special provisions -- Unified development review.**

20 (a) A zoning ordinance may provide that review and approval of dimensional variances,
21 use variances, [special dimensional permits](#), and/or special-use permits for properties undergoing
22 review by the planning board or commission as land-development or subdivision projects pursuant
23 to § 45-23-36, be conducted and decided by the planning board or commission. This process is to
24 be known as unified development review.

25 (b) If unified development review is desired, such review must be enabled within the
26 zoning ordinance, in accordance with this section, and the local subdivision and land-development
27 regulations must be brought into conformance, pursuant to § 45-23-50.1.

28 (c) A zoning ordinance that provides for unified development review shall:

29 (1) Specify which types of zoning approval the planning board or commission shall be
30 empowered to grant for which types of projects; and

31 (2) Provide that any person, group, agency, or corporation that files an application for an
32 included land development or subdivision project may also file requests for relief from the literal
33 requirements of a zoning ordinance on the subject property, pursuant to § 45-24-41, and/or for the
34 issuance of special-use permits for the subject property, pursuant to § 45-24-42, by including such

1 within the application to the administrative officer of the planning board or commission with the
2 other required application materials, pursuant to § 45-23-50.1(b).

3 (d) A zoning ordinance that provides for unified development review may specify design,
4 use, public benefit, or other relevant criteria that must be met in order for an application to qualify
5 for review under the unified development review provisions of the zoning ordinance. Certification
6 as to whether an application meets the established criteria shall be conducted in conjunction with,
7 and following the time lines outlined for, certification of completeness of the application, pursuant
8 to §§ 45-23-38(c), 45-23-40(b), or 45-23-41(b).

9 (e) All land development and subdivision applications that include requests for variances
10 and/or special-use permits submitted pursuant to this section shall require a public hearing that
11 meets the requirements of §§ 45-23-50.1(b) and 45-23-50.1(c).

12 (f) In granting requests for dimensional and use variances, the planning board or
13 commission shall be bound to the requirements of §§ 45-24-41(d) and 45-24-41(e) relative to
14 entering evidence into the record in satisfaction of the applicable standards.

15 (g) In reviewing requests for special-~~use~~ permits, the planning board or commission shall
16 be bound to the conditions and procedures under which a special-~~use~~ permit may be issued and the
17 criteria for the issuance of such permits, as found within the zoning ordinance pursuant to §§ 45-
18 24-42(b)(1), 45-24-42(b)(2) and 45-24-42(b)(3), and shall be required to provide for the recording
19 of findings of fact and written decisions as described in the zoning ordinance pursuant to § 45-24-
20 42(b)(5).

21 (h) An appeal from any decision made pursuant to this section may be taken pursuant to §
22 45-23-66.

23 **45-24-47. Special provisions -- Land development projects.**

24 (a) A zoning ordinance may provide for land development projects which are projects in
25 which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a coordinated
26 site for a complex of uses, units, or structures, including, but not limited to, planned development
27 and/or cluster development for residential, commercial, institutional, industrial, recreational, open
28 space, and/or mixed uses as may be provided for in the zoning ordinance.

29 (b) A zoning ordinance adopted pursuant to this chapter which permits or requires the
30 creation of land development projects in one or more zoning districts shall require that any land
31 development project is referred to the city or town planning board or commission for approval, in
32 accordance with the procedures established by chapter 23 of this title, including those for appeal
33 and judicial review, and with any ordinances or regulations adopted pursuant to the procedures,
34 whether or not the land development project constitutes a "subdivision", as defined in chapter 23

1 of this title. No land development project shall be initiated until a plan of the project has been
2 submitted to the planning board or commission and approval has been granted by the planning
3 board or commission. In reviewing, hearing, and deciding upon a land development project, the
4 city or town planning board or commission may be empowered to allow zoning incentives within
5 the project; provided, that standards for the adjustments are described in the zoning ordinance, and
6 may be empowered to apply any special conditions and stipulations to the approval that may, in the
7 opinion of the planning board or commission, be required to maintain harmony with neighboring
8 uses and promote the objectives and purposes of the comprehensive plan and zoning ordinance.

9 (c) In regulating land development projects, an ordinance adopted pursuant to this chapter
10 may include, but is not limited to, regulations governing the following:

11 (1) A minimum area or site size for a land development project;

12 (2) Uses to be permitted within the development;

13 (3) Ratios of residential to nonresidential uses where applicable;

14 (4) Maximum density per lot and maximum density for the entire development, with
15 provisions for adjustment of applicable lot density and dimensional standards where open space is
16 to be permanently set aside for public or common use, and/or where the physical characteristics,
17 location, or size of the site require an adjustment, and/or where the location, size, and type of
18 housing, commercial, industrial, or other use require an adjustment, and/or where housing for low
19 and moderate income families is to be provided, or where other amenities not ordinarily required
20 are provided, as stipulated in the zoning ordinance. Provision may be made for adjustment of
21 applicable lot density and dimensional standards for payment or donation of other land or facilities
22 in lieu of an on-site provision of an amenity that would, if provided on-site, enable an adjustment;
23 (5) Roads, driveways, utilities, parking, and other facilities; regulations may distinguish
24 between those facilities intended to remain in private ownership or to be dedicated to the public;
25 and

26 (6) Buffer areas, landscaping, screening, and shading.

27 (d)(1) A zoning ordinance requiring open land in a cluster development or other land
28 development project for public or common use, shall provide that such open land either: (i) be
29 conveyed to the city or town and accepted by it for park, open space, agricultural, or other specified
30 use or uses, or (ii) be conveyed to a nonprofit organization, the principal purpose of which is the
31 conservation of open space or resource protection, or (iii) be conveyed to a corporation or trust
32 owned or to be owned by the owners of lots or units within the development [or redevelopment](#), or
33 owners of shares within a cooperative development [or redevelopment](#). If such a corporation or trust
34 is used, ownership shall pass with conveyances of the lots or units, or (iv) remain in private

1 ownership if the use is limited to agriculture, habitat or forestry, and the city or town has set forth
2 in its community comprehensive plan and zoning ordinance that private ownership is necessary for
3 the preservation and management of the agricultural, habitat or forest resources.

4 (2) In any case where the land is not conveyed to the city or town:

5 (i) A restriction, in perpetuity, enforceable by the city or town or by any owner of property
6 in the cluster or other land development project in which the land is located shall be recorded
7 providing that the land is kept in the authorized condition(s) and not built upon or developed for
8 accessory uses such as parking or roadway; and

9 (ii) The developmental rights and other conservation easements on the land may be held,
10 in perpetuity, by a nonprofit organization, the principal purpose of which is the conservation of
11 open space or resource protection.

12 (3) All open space land provided by a cluster development or other land development
13 project shall be subject to a community approved management plan that will specify the permitted
14 uses for the open space.

15 **45-24-48. Special provisions -- Preapplication conference.**

16 A zoning ordinance may provide for a preapplication conference for specific types of
17 development [and redevelopment](#) proposals. A preapplication conference is intended to allow the
18 designated agency to:

19 (1) Acquaint the applicant with the comprehensive plan and any specific plans that apply
20 to the parcel, as well as the zoning and other ordinances that affect the proposed development [or](#)
21 [redevelopment](#);

22 (2) Suggest improvements to the proposed design on the basis of a review of the sketch
23 plan;

24 (3) Advise the applicant to consult appropriate authorities on the character and placement
25 of public utility services; and

26 (4) Help the applicant to understand the steps to be taken to receive approval.

27 **45-24-57. Administration -- Powers and duties of zoning board of review.**

28 A zoning ordinance adopted pursuant to this chapter shall provide that the zoning board of
29 review shall:

30 (1) Have the following powers and duties:

31 (i) To hear and decide appeals within sixty-five (65) days of the date of the filing of the
32 appeal where it is alleged there is an error in any order, requirement, decision, or determination
33 made by an administrative officer or agency in the enforcement or interpretation of this chapter, or
34 of any ordinance adopted pursuant hereto;

1 (ii) To hear and decide appeals from a party aggrieved by a decision of an historic district
2 commission, pursuant to §§ 45-24.1-7.1 and 45-24.1-7.2;

3 (iii) To hear and decide appeals where the zoning board of review is appointed as the board
4 of appeals for airport zoning regulations, pursuant to § 1-3-19;

5 (iv) To authorize, upon application, in specific cases of hardship, variances in the
6 application of the terms of the zoning ordinance, pursuant to § 45-24-41;

7 (v) To authorize, upon application, in specific cases, special-use permits, pursuant to § 45-
8 24-42, where the zoning board of review is designated as a permit authority for special-use permits;

9 (vi) To refer matters to the planning board or commission, or to other boards or agencies
10 of the city or town as the zoning board of review may deem appropriate, for findings and
11 recommendations;

12 (vii) To provide for the issuance of conditional zoning approvals where a proposed
13 application would otherwise be approved except that one or more state or federal agency approvals
14 that are necessary are pending. A conditional zoning approval shall be revoked in the instance
15 where any necessary state or federal agency approvals are not received within a specified time
16 period; and

17 (viii) To hear and decide other matters, according to the terms of the ordinance or other
18 statutes, and upon which the board may be authorized to pass under the ordinance or other statutes;
19 and

20 (2) Be required to vote as follows:

21 (i) Five (5) active members are necessary to conduct a hearing. As soon as a conflict occurs
22 for a member, that member shall recuse himself or herself, shall not sit as an active member, and
23 shall take no part in the conduct of the hearing. Only five (5) active members are entitled to vote
24 on any issue;

25 (ii) The concurring vote of three (3) of the five (5) members of the zoning board of review
26 sitting at a hearing are necessary to reverse any order, requirement, decision, or determination of
27 any zoning administrative officer from whom an appeal was taken; and

28 (iii) The concurring vote of four (4) of the five (5) members of the zoning board of review
29 sitting at a hearing is required to decide in favor of an applicant on any matter within the discretion
30 of the board upon which it is required to pass under the ordinance, including variances and special-
31 use permits.

32 **45-24-58. Administration -- Application procedure.**

33 The zoning ordinance establishes the various application procedures necessary for the
34 filing of appeals, requests for variances, special-use permits, development plan reviews, site plan

1 reviews, and other applications that may be specified in the zoning ordinance, with the zoning board
2 of review, consistent with the provisions of this chapter. The zoning ordinance provides for the
3 creation of appropriate forms, and for the submission and resubmission requirements, for each type
4 of application required. A zoning ordinance may establish that a time period of a certain number of
5 months is required to pass before a successive similar application may be filed.

6 **45-24-61. Administration -- Decisions and records of zoning board of review.**

7 (a) Following a public hearing, the zoning board of review shall render a decision within
8 fifteen (15) days. The zoning board of review shall include in its decision all findings of fact and
9 conditions, showing the vote of each participating member, and the absence of a member or his or
10 her failure to vote. Decisions shall be recorded and filed in the office of the city or town clerk within
11 thirty (30) days from the date when the decision was rendered, and is a public record. The zoning
12 board of review shall keep written minutes of its proceedings, showing the vote of each member
13 upon each question, or, if absent or failing to vote, indicating that fact, and shall keep records of its
14 examinations, findings of fact, and other official actions, all of which shall be recorded and filed in
15 the office of the zoning board of review in an expeditious manner upon completion of the
16 proceeding. For any proceeding in which the right of appeal lies to the superior or supreme court,
17 the zoning board of review shall have the minutes taken either by a competent stenographer or
18 recorded by a sound-recording device.

19 (b) Any decision by the zoning board of review, including any special conditions attached
20 to the decision, shall be mailed within one business day of recording, by any method that provides
21 confirmation of receipt to the applicant, to any objector who has filed a written request for notice
22 with the zoning enforcement officer, and to the zoning enforcement officer of the city or town. Any
23 decision evidencing the granting of a variance, modification, or special ~~use~~ permit shall also be
24 recorded in the land evidence records of the city or town and mailed within one business day of
25 recording, by any method that provides confirmation of receipt, to the applicant, to any objector
26 who has filed a written request for notice with the zoning enforcement officer, and to the zoning
27 officer. A copy of the recorded decision shall be mailed within one business day of recording, by
28 any method that provides confirmation of receipt, to the applicant, and to any objector who has
29 filed a written request for notice with the zoning enforcement officer, as well as a copy to the zoning
30 enforcement officer.

31 SECTION 2. Section 45-24-46 of the General Laws in Chapter 45-24 entitled "Zoning
32 Ordinances" is hereby repealed.

33 **~~45-24-46. Special provisions -- Modification.~~**

34 ~~(a) A zoning ordinance may provide for the issuance of modifications or adjustments from~~

1 ~~the literal dimensional requirements of the zoning ordinance in the instance of the construction,~~
2 ~~alteration, or structural modification of a structure or lot of record. If the ordinance allows~~
3 ~~modifications then the zoning enforcement officer is authorized to grant modification permits. The~~
4 ~~zoning ordinance establishes the maximum percent allowed for a modification, which shall not~~
5 ~~exceed twenty five percent (25%), of any of the dimensional requirements specified in the zoning~~
6 ~~ordinance. A modification does not permit moving of lot lines. The zoning ordinance shall specify~~
7 ~~which dimensional requirements or combinations of these requirements are allowable under a~~
8 ~~modification. These requirements may differ by use or zoning district. Within ten (10) days of the~~
9 ~~receipt of a request for a modification, the zoning enforcement officer shall make a decision as to~~
10 ~~the suitability of the requested modification based on the following determinations:~~

11 ~~(1) The modification requested is reasonably necessary for the full enjoyment of the~~
12 ~~permitted use;~~

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

15 ~~(3) The modification requested is in harmony with the purposes and intent of the~~
16 ~~comprehensive plan and zoning ordinance of the city or town; and~~

17 ~~(4) The modification requested does not require a variance of a flood hazard requirement.~~

18 ~~(b) Upon an affirmative determination, the zoning enforcement officer shall notify, by~~
19 ~~registered or certified mail, all property owners abutting the property which is the subject of the~~
20 ~~modification request, and shall indicate the street address of the subject property in the notice, and~~
21 ~~shall publish in a newspaper of general circulation within the city or town that the modification will~~
22 ~~be granted unless written objection is received within thirty (30) days of the public notice. If written~~
23 ~~objection is received within thirty (30) days, the request for a modification shall be denied. In that~~
24 ~~case the changes requested will be considered a request for a variance and may only be issued by~~
25 ~~the zoning board of review following the standard procedures for variances. If no written objections~~
26 ~~are received within thirty (30) days, the zoning enforcement officer shall grant the modification.~~
27 ~~The zoning enforcement officer may apply any special conditions to the permit as may, in the~~
28 ~~opinion of the officer, be required to conform to the intent and purposes of the zoning ordinance.~~
29 ~~The zoning enforcement officer shall keep public records of all requests for modifications, and of~~
30 ~~findings, determinations, special conditions, and any objections received. Costs of any notice~~
31 ~~required under this subsection shall be borne by the applicant requesting the modification.~~

32 SECTION 3. This act shall take effect upon passage.

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

1 This act would amend several sections of the Rhode Island Zoning Enabling Act of 1991
2 with the intent of preserving neighborhood character and promoting smart growth.

3 This act would take effect upon passage.

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LC002140
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