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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES

Introduced By: Senator Louis P. DiPalma

Date Introduced: March 31, 2016

Referred To: Senate Judiciary

(Administration)

It is enacted by the General Assembly as follows:

SECTION 1. Sections 45-24-29, 45-24-31 and 45-24-46 of the General Laws in Chapter 45-24 entitled "Zoning Ordinances" are hereby amended to read as follows:

45-24-29. Legislative findings and intent. -- (a) (1) The general assembly recognizes and affirms in §§45-24-27 through 45-24-72 that the findings and goals stated in §45-22.2-3 present findings and goals with which zoning must be consistent.

(2) The general assembly further finds that:

(i) The zoning enabling statutes contained in §§45-24-1 through 45-24-26, repealed as of December 31, 1994, were largely enacted in 1921;

(ii) The character of land development and related public and private services have changed substantially in the intervening years;

(iii) It is necessary to provide for innovative land development practices to enable cities and towns to adequately regulate the use of land and employ modern land development practices;

(iv) It is necessary to take full account of the requirement that each city and town amend its zoning ordinance to conform to, and be consistent with, its comprehensive plan adopted pursuant to chapter 22.2 of this title, and to all the elements contained therein; and

(v) A substantial updating and revision of the original statutory zoning enabling authority is required to meet these changed conditions.

(3) It is therefore found that the preparation and implementation of zoning ordinances is necessary to address the findings and needs identified in this section; to protect the public health,

1 safety, and general welfare; to allow the general assembly to carry out its duty to provide for the
2 conservation of the natural resources of the state; and to adopt all means necessary and proper by
3 law for the preservation, regeneration, and restoration of the natural environment of the state in
4 accordance with R.I. Const., Art. I, Sec. XVI and XVII; to promote good planning practice; and
5 to provide for sustainable economic growth in the state.

6 (b) Therefore, it is the intent of the general assembly:

7 (1) That the zoning enabling authority contained in this chapter provide all cities and
8 towns with adequate opportunity to address current and future community and statewide needs;

9 (2) That the zoning enabling authority contained in this chapter require each city and
10 town to conform its zoning ordinance and zoning map to be consistent with its comprehensive
11 plan developed pursuant to chapter 22.2 of this title;

12 (3) Except as prohibited pursuant to §§45-24-30(b), 45-24-30(c), or 45-24-30(d), that the
13 zoning enabling authority contained in this chapter empower each city and town with the
14 capability to establish and enforce standards and procedures for the proper management and
15 protection of land, air, and water as natural resources, and to employ contemporary concepts,
16 methods, and criteria in regulating the type, intensity, and arrangement of land uses, and provide
17 authority to employ new concepts as they may become available and feasible;

18 (4) That the zoning enabling authority contained in this chapter permit each city and
19 town to establish an economic impact commission whose duties would be to advise
20 municipalities on the economic impact new zoning changes would have on cities and towns and
21 private property owners, and to assist municipalities in determining financial impacts when new
22 or changed zoning adversely affects business climate, land use, property value, natural and
23 historic resources, industrial use, or development of private property; and may permit the use of
24 land and buildings within the groundwater protection zones for agricultural purposes and shall
25 encourage the use of farmland in a manner that is consistent with the protection of groundwater
26 resources; and

27 (5) That each city and town amend its zoning ordinance to comply with the terms of this
28 chapter.

29 (c) The general assembly further recognizes that the municipal zoning ordinance can
30 assist in timely recovery after a state of emergency or local disaster emergency, and, recognizing
31 that disasters often cause loss of life, human suffering, loss of income, property loss and damage,
32 and disruptions to the normal functioning of governments and communities, declares that timely
33 disaster recovery requires expedited procedures for reviewing dimensional variances.

34 **45-24-31. Definitions. --** Where words or terms used in this chapter are defined in §45-

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

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

(2) Accessory Dwelling Unit. - A dwelling unit: (i) rented to and occupied either by one or more members of the family of the occupant or occupants of the principal residence; or (ii) reserved for rental occupancy by a person or a family where the principal residence is owner occupied, and which meets the following provisions:

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

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

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

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

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

(ii) Anyone requiring notice pursuant to this chapter.

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

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

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

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

(9) Buffer. - Land which is maintained in either a natural or landscaped state, and is used

1 to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-
2 of-way.

3 (10) Building. - Any structure used or intended for supporting or sheltering any use or
4 occupancy.

5 (11) Building Envelope. - The three-dimensional space within which a structure is
6 permitted to be built on a lot and which is defined by regulations governing building setbacks,
7 maximum height, and bulk; by other regulations; and/or by any combination thereof.

8 (12) Building Height. - The vertical distance from grade, as determined by the
9 municipality, to the top of the highest point of the roof or structure. The distance may exclude
10 spires, chimneys, flag poles, and the like.

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

20 (14) Common Ownership. - Either:

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

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

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

29 (i) Whenever six (6) or fewer children or adults with retardation reside in any type of
30 residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All
31 requirements pertaining to local zoning are waived for these community residences;

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

34 (iii) A residence for children providing care or supervision, or both, to not more than

eight (8) children including those of the care giver and licensed by the state pursuant to chapter 72.1 of title 42;

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

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

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

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

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

(20) Detailed report. – A written report of a local building official that describes the damage sustained to a property as a result of a state of emergency or local disaster emergency.

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

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

(23) Disaster recovery modification. - Permission granted and administered by the zoning enforcement officer of the city or town, pursuant to the provisions of this chapter, to grant a dimensional variance from the zoning ordinance, as determined by the zoning ordinance of the city or town, following structural damage that is sustained as a result of a state of emergency or local disaster emergency and that is documented in a detailed report.

(24) Disaster recovery variance. - A dimensional variance that is requested following structural damage that is sustained as a result of a state of emergency or local disaster emergency

1 [that is documented in a detailed report.](#)

2 ~~(22)~~[\(25\)](#) District. - See "zoning use district".

3 ~~(23)~~[\(26\)](#) Drainage System. - A system for the removal of water from land by drains,

4 grading, or other appropriate means. These techniques may include runoff controls to minimize

5 erosion and sedimentation during and after construction or development, the means for preserving

6 surface and groundwaters, and the prevention and/or alleviation of flooding.

7 ~~(24)~~[\(27\)](#) Dwelling Unit. - A structure or portion of a structure providing complete,

8 independent living facilities for one or more persons, including permanent provisions for living,

9 sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

10 ~~(25)~~[\(28\)](#) Extractive Industry. - The extraction of minerals, including: solids, such as coal

11 and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also

12 includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation;

13 and other preparation customarily done at the extraction site or as a part of the extractive activity.

14 ~~(26)~~[\(29\)](#) Family. - A person or persons related by blood, marriage, or other legal means.

15 See also "Household".

16 ~~(27)~~[\(30\)](#) Floating Zone. - An unmapped zoning district adopted within the ordinance

17 which is established on the zoning map only when an application for development, meeting the

18 zone requirements, is approved.

19 ~~(28)~~[\(31\)](#) Floodplains, or Flood Hazard Area. - As defined in §45-22.2-4.

20 ~~(29)~~[\(32\)](#) Groundwater. - "Groundwater" and associated terms, as defined in §46-13.1-3.

21 ~~(30)~~[\(33\)](#) Halfway House. - A residential facility for adults or children who have been

22 institutionalized for criminal conduct and who require a group setting to facilitate the transition to

23 a functional member of society.

24 ~~(31)~~[\(34\)](#) Hardship. - See §45-24-41.

25 ~~(32)~~[\(35\)](#) Historic District, or Historic Site. - As defined in §45-22.2-4.

26 ~~(33)~~[\(36\)](#) Home Occupation. - Any activity customarily carried out for gain by a resident,

27 conducted as an accessory use in the resident's dwelling unit.

28 ~~(34)~~[\(37\)](#) Household. - One or more persons living together in a single dwelling unit, with

29 common access to, and common use of, all living and eating areas and all areas and facilities for

30 the preparation and storage of food within the dwelling unit. The term "household unit" is

31 synonymous with the term "dwelling unit" for determining the number of units allowed within

32 any structure on any lot in a zoning district. An individual household shall consist of any one of

33 the following:

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

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

3 ~~(35)~~[\(38\)](#) Incentive Zoning. - The process whereby the local authority may grant
4 additional development capacity in exchange for the developer's provision of a public benefit or
5 amenity as specified in local ordinances.

6 ~~(36)~~[\(39\)](#) Infrastructure. - Facilities and services needed to sustain residential,
7 commercial, industrial, institutional, and other activities.

8 ~~(37)~~[\(40\)](#) Land Development Project. - A project in which one or more lots, tracts, or
9 parcels of land are developed or redeveloped as a coordinated site for one or more uses, units, or
10 structures, including, but not limited to, planned development and/or cluster development for
11 residential, commercial, institutional, recreational, open space, and/or mixed uses as provided in
12 the zoning ordinance.

13 [\(41\) Local disaster emergency. – Declaration by the principal executive officer of the](#)
14 [municipality stating that a disaster has occurred or that the threat thereof is imminent pursuant to](#)
15 [§30-15-13.](#)

16 ~~(38)~~[\(42\)](#) Lot. - Either:

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

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

22 ~~(39)~~[\(43\)](#) Lot Area. - The total area within the boundaries of a lot, excluding any street
23 right-of-way, usually reported in acres or square feet.

24 ~~(40)~~[\(44\)](#) Lot Area, Minimum. - The smallest land area established by the local zoning
25 ordinance upon which a use, building or structure may be located in a particular zoning district.

26 ~~(41)~~[\(45\)](#) Lot Building Coverage. - That portion of the lot that is or may be covered by
27 buildings and accessory buildings.

28 ~~(42)~~[\(46\)](#) Lot Depth. - The distance measured from the front lot line to the rear lot line.
29 For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

30 ~~(43)~~[\(47\)](#) Lot Frontage. - That portion of a lot abutting a street. A zoning ordinance shall
31 specify how noncontiguous frontage will be considered with regard to minimum frontage
32 requirements.

33 ~~(44)~~[\(48\)](#) Lot Line. - A line of record, bounding a lot, which divides one lot from another
34 lot or from a public or private street or any other public or private space and shall include:

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

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

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

9 ~~(45)~~(49) Lot Size, Minimum. - Shall have the same meaning as "minimum lot area"
10 defined herein.

11 ~~(46)~~(50) Lot, Through. - A lot which fronts upon two (2) parallel streets, or which fronts
12 upon two (2) streets which do not intersect at the boundaries of the lot.

13 ~~(47)~~(51) Lot Width. - The horizontal distance between the side lines of a lot measured at
14 right angles to its depth along a straight line parallel to the front lot line at the minimum front
15 setback line.

16 ~~(48)~~(52) Mere Inconvenience. - See §45-24-41.

17 ~~(49)~~(53) Mixed Use. - A mixture of land uses within a single development, building, or
18 tract.

19 ~~(50)~~(54) Modification. - Permission granted and administered by the zoning enforcement
20 officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional
21 variance other than lot area requirements from the zoning ordinance to a limited degree as
22 determined by the zoning ordinance of the city or town, but not to exceed twenty-five percent
23 (25%) of each of the applicable dimensional requirements.

24 (55) Municipal chief executive officer. – The mayor, town or city manager, or town or
25 city administrator, or in municipalities where none such exists, the town or city council president.

26 ~~(51)~~(56) Nonconformance. - A building, structure, or parcel of land, or use thereof,
27 lawfully existing at the time of the adoption or amendment of a zoning ordinance and not in
28 conformity with the provisions of that ordinance or amendment. Nonconformance is of only two
29 (2) types:

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

34 (ii) Nonconforming by dimension: a building, structure, or parcel of land not in

1 compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations
2 include all regulations of the zoning ordinance, other than those pertaining to the permitted uses.
3 A building or structure containing more dwelling units than are permitted by the use regulations
4 of a zoning ordinance is nonconforming by use; a building or structure containing a permitted
5 number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot
6 area per dwelling unit regulations, is nonconforming by dimension.

7 ~~(52)~~[\(57\)](#) Overlay District. - A district established in a zoning ordinance that is
8 superimposed on one or more districts or parts of districts. The standards and requirements
9 associated with an overlay district may be more or less restrictive than those in the underlying
10 districts consistent with other applicable state and federal laws.

11 ~~(53)~~[\(58\)](#) Performance Standards. - A set of criteria or limits relating to elements which a
12 particular use or process must either meet or may not exceed.

13 ~~(54)~~[\(59\)](#) Permitted Use. - A use by right which is specifically authorized in a particular
14 zoning district.

15 ~~(55)~~[\(60\)](#) Planned Development. - A "land development project", as defined in §45-24-
16 31(37), and developed according to plan as a single entity and containing one or more structures
17 and/or uses with appurtenant common areas.

18 ~~(56)~~[\(61\)](#) Plant Agriculture. - The growing of plants for food or fiber, to sell or consume.

19 ~~(57)~~[\(62\)](#) Preapplication Conference. - A review meeting of a proposed development held
20 between applicants and reviewing agencies as permitted by law and municipal ordinance, before
21 formal submission of an application for a permit or for development approval.

22 ~~(58)~~[\(63\)](#) Setback Line or Lines. - A line or lines parallel to a lot line at the minimum
23 distance of the required setback for the zoning district in which the lot is located that establishes
24 the area within which the principal structure must be erected or placed.

25 ~~(59)~~[\(64\)](#) Slope of Land. - The grade, pitch, rise or incline of the topographic landform or
26 surface of the ground.

27 ~~(60)~~[\(65\)](#) Site Plan. - The development plan for one or more lots on which is shown the
28 existing and/or the proposed conditions of the lot.

29 ~~(61)~~[\(66\)](#) Special Use. - A regulated use which is permitted pursuant to the special-use
30 permit issued by the authorized governmental entity, pursuant to §45-24-42. Formerly referred to
31 as a special exception.

32 [\(67\) State of emergency. – Declaration by executive order or proclamation of the](#)
33 [governor of Rhode Island, stating that a disaster has occurred or that the occurrence or the threat](#)
34 [thereof is imminent, pursuant to §30-15-9.](#)

1 ~~(62)~~(68) Structure. - A combination of materials to form a construction for use,
2 occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.

3 ~~(63)~~(69) Substandard Lot of Record. - Any lot lawfully existing at the time of adoption
4 or amendment of a zoning ordinance and not in conformance with the dimensional and/or area
5 provisions of that ordinance.

6 ~~(64)~~(70) Use. - The purpose or activity for which land or buildings are designed,
7 arranged, or intended, or for which land or buildings are occupied or maintained.

8 ~~(65)~~(71) Variance. - Permission to depart from the literal requirements of a zoning
9 ordinance. An authorization for the construction or maintenance of a building or structure, or for
10 the establishment or maintenance of a use of land, which is prohibited by a zoning ordinance.
11 There are only two (2) categories of variance, a use variance or a dimensional variance.

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

16 (ii) Dimensional Variance. - Permission to depart from the dimensional requirements of
17 a zoning ordinance, where the applicant for the requested relief has shown, by evidence upon the
18 record, that there is no other reasonable alternative way to enjoy a legally permitted beneficial use
19 of the subject property unless granted the requested relief from the dimensional regulations.
20 However, the fact that a use may be more profitable or that a structure may be more valuable after
21 the relief is granted are not grounds for relief.

22 ~~(66)~~(72) Waters. - As defined in §46-12-1(23).

23 ~~(67)~~(73) Wetland, Coastal. - As defined in §45-22.2-4.

24 ~~(68)~~(74) Wetland, Freshwater. - As defined in §2-1-20.

25 ~~(69)~~(75) Zoning Certificate. - A document signed by the zoning enforcement officer, as
26 required in the zoning ordinance, which acknowledges that a use, structure, building, or lot either
27 complies with or is legally nonconforming to the provisions of the municipal zoning ordinance or
28 is an authorized variance or modification therefrom.

29 ~~(70)~~(76) Zoning Map. - The map or maps which are a part of the zoning ordinance and
30 which delineate the boundaries of all mapped zoning districts within the physical boundary of the
31 city or town.

32 ~~(71)~~(77) Zoning Ordinance. - An ordinance enacted by the legislative body of the city or
33 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the
34 city or town's legislative or home rule charter, if any, which establish regulations and standards

1 relating to the nature and extent of uses of land and structures, which is consistent with the
2 comprehensive plan of the city or town as defined in chapter 22.2 of this title, which includes a
3 zoning map, and which complies with the provisions of this chapter.

4 ~~(72)~~(78) Zoning Use District. - The basic unit in zoning, either mapped or unmapped, to
5 which a uniform set of regulations applies, or a uniform set of regulations for a specified use.
6 Zoning use districts include, but are not limited to: agricultural, commercial, industrial,
7 institutional, open space, and residential. Each district may include sub-districts. Districts may be
8 combined.

9 **45-24-46. Special provisions -- Modification. --** (a) A zoning ordinance may provide for
10 the issuance of modifications or adjustments from the literal dimensional requirements of the
11 zoning ordinance in the instance of the construction, alteration, or structural modification of a
12 structure or lot of record. If the ordinance allows modifications then the zoning enforcement
13 officer is authorized to grant modification permits. The zoning ordinance establishes the
14 maximum percent allowed for a modification, which shall not exceed twenty-five percent (25%),
15 of any of the dimensional requirements specified in the zoning ordinance. A modification does
16 not permit moving of lot lines. The zoning ordinance shall specify which dimensional
17 requirements or combinations of these requirements are allowable under a modification. These
18 requirements may differ by use or zoning district.

19 (b) Within ten (10) days of the receipt of a request for a modification, the zoning
20 enforcement officer shall make a decision as to the suitability of the requested modification based
21 on the following determinations:

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

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

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

28 (4) The modification requested does not require a variance of ~~a flood hazard requirement~~
29 the floodplain development standards.

30 ~~(b)~~(c) Upon an affirmative determination, the zoning enforcement officer shall notify, by
31 registered or ~~certified~~ first class mail, all property owners abutting the property which is the
32 subject of the modification request, and shall indicate the street address of the subject property in
33 the notice, and shall publish in a newspaper of general circulation within the city or town that the
34 modification will be granted unless written objection is received within thirty (30) days of the

1 public notice. If written objection is received within thirty (30) days, the request for a
2 modification shall be denied. In that case the changes requested will be considered a request for a
3 variance and may only be issued by the zoning board of review following the standard procedures
4 for variances. If no written objections are received within thirty (30) days, the zoning
5 enforcement officer shall grant the modification. The zoning enforcement officer may apply any
6 special conditions to the permit as may, in the opinion of the officer, be required to conform to
7 the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public
8 records of all requests for modifications, and of findings, determinations, special conditions, and
9 any objections received. Costs of any notice required under this subsection shall be borne by the
10 applicant requesting the modification.

11 SECTION 2. Chapter 45-24 of the General Laws entitled "Zoning Ordinances" is hereby
12 amended by adding thereto the following sections:

13 **45-24-41.1. Variances - Disaster recovery. --** (a) A zoning ordinance may provide that
14 the zoning board of review and zoning enforcement officer shall follow the procedures outlined in
15 subsections (b) through (g) of this section in the review of disaster recovery variance applications
16 following the declaration of a state of emergency or local disaster emergency. If disaster recovery
17 variance provisions exist within the zoning ordinance, the zoning ordinance shall identify which
18 of the following mechanism(s) shall invoke the use of the provisions:

19 (1) Declaration of a state of emergency or declaration of a state of emergency followed
20 by a proclamation by the municipal chief executive officer that the effects of the state of
21 emergency on the municipality are of significant impact to warrant the utilization of the disaster
22 recovery variance process; and /or

23 (2) Declaration of a local disaster emergency.

24 (b) Owners of real property may file an application for a disaster recovery variance with
25 the zoning enforcement officer or agency that describes the request and provides any data and
26 evidence that may be required by the terms of the ordinance. The zoning enforcement officer or
27 agency shall determine whether the application shall be eligible for review under this section and
28 shall transmit eligible applications to the zoning board of review. Such applications shall be
29 received by the zoning enforcement officer or agency for a limited period following the activation
30 of the disaster recovery variance procedures as provided by the ordinance, which shall be a period
31 of not less than six (6) months.

32 (c) The zoning board of review shall hold a public hearing on any eligible application for
33 a disaster recovery variance. Public hearings at which disaster recovery variances will be
34 considered shall be held within thirty (30) days of receipt, in proper form, of an application.

1 (1) All public hearings at which disaster recovery variances will be considered shall be
2 publicly noticed not less than seven (7) calendar days prior to the date of the hearing as follows:

3 (i) Public notice of the hearing shall be given in a newspaper of general circulation in the
4 city or town or on the municipal website.

5 (ii) Notice shall be sent, by first class mail, to the owners of all property within a two
6 hundred foot (200') radius of the property for which relief is being sought.

7 (iii) Notice shall be posted at the location under consideration in the form of a sign
8 measuring a minimum of thirty-six inches (36") by twenty-four inches (24") and using a type size
9 whereby the text of the sign can be read from the property frontage.

10 (2) All notices required under §45-24-41.1(c)(1) shall:

11 (i) Specify the place of the hearing and the date and time of its commencement;

12 (ii) Indicate that a variance from the dimensional requirements of the zoning ordinance
13 following damage sustained as a result of a state of emergency or local disaster emergency, is
14 under consideration;

15 (iii) Contain a statement of the proposed dimensional variance being requested;

16 (iv) Advise those interested where and when a copy of the matter under consideration
17 may be obtained or examined and copied.

18 (3) The cost of all required notice shall be borne by the applicant.

19 (d) When considering disaster recovery variance applications, the zoning board of review
20 shall be required to hold hearings and vote as follows:

21 (1) Three (3) active members are necessary to conduct a hearing. As soon as a conflict
22 occurs for a member, that member shall recuse themselves, shall not sit as an active member, and
23 shall take no part in the conduct of the hearing.

24 (2) The concurring vote of a majority of the members of the zoning board of review
25 sitting at a hearing is required to decide on a disaster recovery variance application.

26 (e) In granting a disaster recovery variance, the zoning board of review and zoning
27 enforcement officer shall require that evidence to the satisfaction of the following standards is
28 entered into the record of the proceedings:

29 (1) That damage to the property has been formally recognized in a detailed report by a
30 local building official and that the hardship from which the applicant seeks relief is due to the
31 declared state of emergency or local disaster emergency.

32 (2) That the hardship is due to the unique characteristics of the subject land or structure
33 and is not due to a physical or economic disability of the applicant, excepting those physical
34 disabilities addressed in §45-24-30(16).

1 (3) That the hardship is not the result of any prior action of the applicant and does not
2 result primarily from the desire of the applicant to realize greater financial gain.

3 (4) That the granting of the requested dimensional variance will not impair the intent or
4 purpose of the zoning ordinance or the comprehensive plan upon which the ordinance is based.

5 (5) That the relief to be granted does not require a variance of the floodplain development
6 standards.

7 (6) That the hardship suffered by the owner of the subject property if the disaster
8 recovery variance is not granted amounts to more than a mere inconvenience. The fact that a use
9 may be more profitable or that a structure may be more valuable after the relief is granted is not
10 grounds for relief.

11 (f) A zoning ordinance that authorizes the review of disaster recovery variances may
12 specify which dimensional requirements or combinations of these requirements are allowable
13 under a disaster recovery variance, but shall include, at a minimum, relief of front yard setback
14 and building height requirements. The zoning ordinance may stipulate additional restrictions on
15 the granting of disaster recovery variances as is necessary to protect the public health, safety and
16 welfare.

17 (g) Applicants wishing to appeal decisions made pursuant to this section by the zoning
18 board of review shall follow the procedures outlined in §45-24-69.

19 **45-24-46.4. Special provisions – Disaster recovery modification. --** (a) A zoning
20 ordinance may provide that the zoning enforcement officer shall follow the procedures outlined in
21 subsections (b) through (g) of this section in the review of disaster recovery modification
22 applications following the declaration of a state of emergency or local disaster emergency. If
23 disaster recovery modification provisions exist within the zoning ordinance, the zoning ordinance
24 shall identify which of the following mechanism(s) shall incite the use of the provisions:

25 (1) Declaration of a state of emergency or declaration of a state of emergency followed
26 by a proclamation by the chief executive officer of the municipality that the effects of the state of
27 emergency on the municipality are of significant impact to warrant the utilization of the disaster
28 recovery modification process; and/or

29 (2) Declaration of a local disaster emergency.

30 (b) The zoning ordinance shall establish the maximum percent allowed for a disaster
31 recovery modification, which shall not exceed fifty percent (50%) of any of the dimensional
32 requirements specified in the zoning ordinance. The percentages allowed for disaster recovery
33 modifications may differ by dimensional requirement, use or zoning district. The zoning
34 ordinance shall specify which dimensional requirements or combinations of these requirements

1 are allowable under a disaster recovery modification, but shall include, at a minimum,
2 modification of front yard setback and building height requirements.

3 (c) Owners of real property may file an application for a disaster recovery modification
4 with the zoning enforcement officer that describes the request and provides any data and evidence
5 that may be required by the terms of the ordinance. The zoning enforcement officer shall
6 determine whether the application shall be eligible for review under this section. Such
7 applications shall be received by the zoning enforcement officer for a limited period following the
8 activation of the disaster recovery modification procedures as provided by the ordinance, which
9 shall be a period of not less than six (6) months.

10 (d) Within ten (10) days of the receipt of a request for a disaster recovery modification,
11 the zoning enforcement officer shall make a decision as to the suitability of the requested disaster
12 recovery modification based on the following determinations:

13 (1) The disaster recovery modification requested is reasonably necessary for the full
14 enjoyment of the permitted use;

15 (2) If the disaster recovery modification is granted, neighboring property will neither be
16 substantially injured nor its appropriate use substantially impaired;

17 (3) The disaster recovery modification requested is in harmony with the purposes and
18 intent of the comprehensive plan and zoning ordinance of the city or town; and

19 (4) The disaster recovery modification requested does not require a variance of the
20 floodplain development standards.

21 (e) Upon an affirmative determination as to the suitability of the requested disaster
22 recovery modification, and not more than fifteen (15) days from the original receipt of the request
23 for a disaster recovery modification, the zoning enforcement officer shall:

24 (1) Provide notice of the request via first class mail to all property owners within a
25 seventy-five (75) foot radius of the property which is the subject of the disaster recovery
26 modification request;

27 (2) Publish notice of the request in a newspaper of general circulation within the city or
28 town or on the municipal website; and

29 (3) Post notice of the request at the location in the form of a sign measuring a minimum
30 of thirty-six inches (36") by twenty-four inches (24") and using a type size whereby the text of
31 the sign can be read from the property frontage.

32 (f) All public notices of disaster recovery modification requests shall:

33 (1) Include the street address of the subject property;

34 (2) Contain a statement of the proposed disaster recovery modification being requested

1 and the zoning enforcement officer's determination:

2 (3) Indicate that the disaster recovery modification will be granted unless written

3 objection is received by the date that is ten (10) days from the date of the public notice; and

4 (4) Advise those interested where and when a copy of the application may be obtained or

5 examined and copied.

6 (g) If written objection is received within ten (10) days of the public notice, the request

7 for a disaster recovery modification shall be denied. In that case, the changes requested will be

8 considered a request for a variance, or, if the zoning ordinance provides for such, a disaster

9 recovery variance, and may only be issued by the zoning board of review following the standard

10 procedures for variances outlined in §45-24-41 or following the procedures for disaster recovery

11 variances outlined in §45-24-41.1. If no written objections are received within ten (10) days, the

12 zoning enforcement officer shall grant the disaster recovery modification. The zoning

13 enforcement officer may apply any special conditions to the permit as may, in the opinion of the

14 officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning

15 enforcement officer shall keep public records of all requests for disaster recovery modifications,

16 and of findings, determinations, special conditions, any objections received, and all public notices

17 published. Costs of any notice required under this subsection shall be borne by the applicant

18 requesting the disaster recovery modification.

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

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LC005085
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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 for an expedited procedure for zoning variances to help manage
2 various states of emergency.
3 This act would take effect upon passage.

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LC005085

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