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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2017

A N A C T

RELATING TO TOWNS AND CITIES -- ZONING ORDINANCES

Introduced By: Senators Ciccone, Lombardi, P Fogarty, McCaffrey, and DaPonte

Date Introduced: March 29, 2017

Referred To: Senate Housing & Municipal Government

(Dept. of Administration)

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-24-29, 45-24-31 and 45-24-46 of the General Laws in Chapter
2 45-24 entitled "Zoning Ordinances" are hereby amended to read as follows:

3 **45-24-29. Legislative findings and intent.**

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

7 (2) The general assembly further finds that:

8 (i) The zoning enabling statutes contained in §§45-24-1 through 45-24-26, repealed as of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

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

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

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

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

19 (3) It is therefore found that the preparation and implementation of zoning ordinances is

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

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

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

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

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

19 (4) That the zoning enabling authority contained in this chapter permit each city and town
20 to establish an economic impact commission whose duties would be to advise municipalities on
21 the economic impact new zoning changes would have on cities and towns and private property
22 owners, and to assist municipalities in determining financial impacts when new or changed
23 zoning adversely affects business climate, land use, property value, natural and historic resources,
24 industrial use, or development of private property; and may permit the use of land and buildings
25 within the groundwater protection zones for agricultural purposes and shall encourage the use of
26 farmland in a manner that is consistent with the protection of groundwater 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 also recognizes that the municipal zoning ordinance can assist
30 in timely recovery after a state of emergency or local disaster emergency, and, recognizing that
31 disasters often cause loss of life, human suffering, loss of income, property loss and damage, and
32 disruptions to the normal functioning of governments and communities, and declares that timely
33 disaster recovery requires expedited procedures for reviewing dimensional variances.

34 **45-24-31. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (14) Common Ownership. Either:

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

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

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

1 the following:

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

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

7 (iii) A residence for children providing care or supervision, or both, to not more than
8 eight (8) children, including those of the care giver, and licensed by the state pursuant to chapter
9 72.1 of title 42;

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (28) Floodplains, or Flood Hazard Area. As defined in §45-22.2-4.

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

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

23 (31) Halfway House. A residential facility for adults or children who have been
24 institutionalized for criminal conduct and who require a group setting to facilitate the transition to
25 a functional member of society.

26 (32) Hardship. See §45-24-41.

27 (33) Historic District, or Historic Site. As defined in §45-22.2-4.

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

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

1 the following:

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

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

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

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

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

15 (39) Lot. Either:

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

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

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

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

25 (42) Lot Building Coverage. That portion of the lot that is, or may be, covered by
26 buildings and accessory buildings.

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

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

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

33 (i) Front: the lot line separating a lot from a street right-of-way. A zoning ordinance shall
34 specify the method to be used to determine the front lot line on lots fronting on more than one

1 street, for example, corner and through lots;

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

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

7 (46) Lot Size, Minimum. Shall have the same meaning as "minimum lot area" defined
8 herein.

9 (47) Lot, Through. A lot that fronts upon two (2) parallel streets, or that fronts upon two
10 (2) streets that do not intersect at the boundaries of the lot.

11 (48) Lot Width. The horizontal distance between the side lines of a lot measured at right
12 angles to its depth along a straight line parallel to the front lot line at the minimum front setback
13 line.

14 (49) Mere Inconvenience. See §45-24-41.

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

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

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

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

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

34 (53) Overlay District. A district established in a zoning ordinance that is superimposed on

1 one or more districts or parts of districts. The standards and requirements associated with an
2 overlay district may be more or less restrictive than those in the underlying districts consistent
3 with other applicable state and federal laws.

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

6 (55) Permitted Use. A use by right that is specifically authorized in a particular zoning
7 district.

8 (56) Planned Development. A "land development project", as defined in §45-24-31(38),
9 and developed according to plan as a single entity and containing one or more structures and/or
10 uses with appurtenant common areas.

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

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

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

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

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

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

27 (64) Substandard Lot of Record. Any lot lawfully existing at the time of adoption or
28 amendment of a zoning ordinance and not in conformance with the dimensional and/or area
29 provisions of that ordinance.

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

32 (66) Variance. Permission to depart from the literal requirements of a zoning ordinance.
33 An authorization for the construction or maintenance of a building or structure, or for the
34 establishment or maintenance of a use of land, that is prohibited by a zoning ordinance. There are

1 only two (2) categories of variance, a use variance or a dimensional variance.

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

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

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

13 (68) Wetland, Coastal. As defined in §45-22.2-4.

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

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

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

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

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

32 [\(74\) Detailed Report. A written report of a local building official that describes the](#)
33 [damage sustained to a property as a result of a state of emergency or local disaster emergency.](#)

34 [\(75\) Disaster Recovery Modification. Permission granted and administered by the zoning](#)

1 [enforcement officer of the city or town, pursuant to the provisions of this chapter, to grant a](#)
2 [dimensional variance from the zoning ordinance, as determined by the zoning ordinance of the](#)
3 [city or town, following structural damage that is sustained as a result of a state of emergency or](#)
4 [local disaster emergency and that is documented in a detailed report.](#)

5 [\(76\) Disaster Recovery Variance. A dimensional variance that is requested following](#)
6 [structural damage that is sustained as a result of a state of emergency or local disaster emergency](#)
7 [and that is documented in a detailed report.](#)

8 [\(77\) Local Disaster Emergency. Declaration by the municipal chief executive officer,](#)
9 [stating that a disaster has occurred or that the threat thereof is imminent, pursuant to §30-15-13.](#)

10 [\(78\) Municipal chief executive officer. The mayor, town or city manager, or town or city](#)
11 [administrator, or in municipalities where nonesuch exists, the town or city council president.](#)

12 [\(79\) State of Emergency. Declaration by executive order or proclamation of the governor](#)
13 [of Rhode Island, stating that a disaster has occurred or that the occurrence or the threat thereof is](#)
14 [imminent, pursuant to §30-15-9.](#)

15 **45-24-46. Special provisions -- Modification.**

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

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

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

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

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

34 (4) The modification requested does not require a variance of [the floodplain development](#)

1 standards ~~a flood hazard requirement~~.

2 ~~(b)~~(c) Upon an affirmative determination, the zoning enforcement officer shall notify, by
3 registered or ~~certified~~ first class mail, all property owners abutting the property which is the
4 subject of the modification request, and shall indicate the street address of the subject property in
5 the notice, and shall publish in a newspaper of general circulation within the city or town that the
6 modification will be granted unless written objection is received within thirty (30) days of the
7 public notice. If written objection is received within thirty (30) days, the request for a
8 modification shall be denied. In that case the changes requested will be considered a request for a
9 variance and may only be issued by the zoning board of review following the standard procedures
10 for variances. If no written objections are received within thirty (30) days, the zoning
11 enforcement officer shall grant the modification. The zoning enforcement officer may apply any
12 special conditions to the permit as may, in the opinion of the officer, be required to conform to
13 the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public
14 records of all requests for modifications, and of findings, determinations, special conditions, and
15 any objections received. Costs of any notice required under this subsection shall be borne by the
16 applicant requesting the modification.

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

19 **45-24-41.1. Variances -- Disaster recovery.**

20 (a) A zoning ordinance may provide that the zoning board of review and zoning
21 enforcement officer shall follow the procedures outlined in subsections (b) through (g) of this
22 section in the review of disaster recovery variance applications following the declaration of a
23 state of emergency or local disaster emergency. If disaster recovery variance provisions exist
24 within the zoning ordinance, the zoning ordinance shall identify which of the following
25 mechanism(s) shall invoke the use of the provisions:

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

30 (2) Declaration of a local disaster emergency.

31 (b) Owners of real property may file an application for a disaster recovery variance with
32 the zoning enforcement officer or agency that describes the request and provides any data and
33 evidence that may be required by the terms of the ordinance. The zoning enforcement officer or
34 agency shall determine whether the application shall be eligible for review under this section and

1 shall transmit eligible applications to the zoning board of review. Such applications shall be
2 received by the zoning enforcement officer or agency for a limited period following the activation
3 of the disaster recovery variance procedures as provided by the ordinance, which shall be a period
4 of not less than six (6) months.

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

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

10 (i) Public notice of the hearing shall be given in a newspaper of general circulation in the
11 city or town or on the municipality's website.

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

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

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

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

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

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

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

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

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

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

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

33 (e) In granting a disaster recovery variance, the zoning board of review and zoning
34 enforcement officer shall require that evidence to the satisfaction of the following standards is

1 entered into the record of the proceedings:

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

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

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

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

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

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

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

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

26 **45-24-46.5. Special provisions -- Disaster recovery modification.**

27 (a) A zoning ordinance may provide that the zoning enforcement officer shall follow the
28 procedures outlined in subsections (b) through (g) of this section in the review of disaster
29 recovery modification applications following the declaration of a state of emergency or local
30 disaster emergency. If disaster recovery modification provisions exist within the zoning
31 ordinance, the zoning ordinance shall identify which of the following mechanism(s) shall incite
32 the use of the provisions:

33 (1) Declaration of a state of emergency or declaration of a state of emergency followed
34 by a proclamation by the municipal chief executive officer that the effects of the state of

1 emergency on the municipality are of significant impact to warrant the utilization of the disaster
2 recovery modification process; and/or

3 (2) Declaration of a local disaster emergency.

4 (b) The zoning ordinance shall establish the maximum percent allowed for a disaster
5 recovery modification, which shall not exceed fifty percent (50%) of any of the dimensional
6 requirements specified in the zoning ordinance. The percentages allowed for disaster recovery
7 modifications may differ by dimensional requirement, use or zoning district. The zoning
8 ordinance shall specify which dimensional requirements or combinations of these requirements
9 are allowable under a disaster recovery modification, but shall include, at a minimum,
10 modification of front yard setback and building height requirements.

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

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

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

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

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

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

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

32 (i) Provide notice of the request via first class mail to all property owners within a
33 seventy-five foot (75') radius of the property which is the subject of the disaster recovery
34 modification request.

1 (ii) Publish notice of the request in a newspaper of general circulation within the city or
2 town or on the municipality's website.

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

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

7 (i) Include the street address of the subject property;

8 (ii) Contain a statement of the proposed disaster recovery modification being requested
9 and the zoning enforcement officers determination;

10 (iii) Indicate that the disaster recovery modification will be granted unless written
11 objection is received by the date that is ten (10) days from the date of the public notice; and

12 (iv) Advise those interested where and when a copy of the application may be obtained or
13 examined and copied.

14 (g) If written objection is received within ten (10) days of the public notice, the request
15 for a disaster recovery modification shall be denied. In that case, the changes requested will be
16 considered a request for a variance, or, if the zoning ordinance provides for such, a disaster
17 recovery variance, and may only be issued by the zoning board of review following the standard
18 procedures for variances outlined in §45-24-41 or following the procedures for disaster recovery
19 variances outlined in §45-24-41.1. If no written objections are received within ten (10) days, the
20 zoning enforcement officer shall grant the disaster recovery modification. The zoning
21 enforcement officer may apply any special conditions to the permit as may, in the opinion of the
22 officer, be required to conform to the intent and purposes of the zoning ordinance. The zoning
23 enforcement officer shall keep public records of all requests for disaster recovery modifications,
24 and of findings, determinations, special conditions, any objections received, and all public notices
25 published. Costs of any notice required under this subsection shall be borne by the applicant
26 requesting the disaster recovery modification.

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

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LC001349
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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 establish a separate variance process for certain properties that sustain
2 damages as a result of a state emergency or local disaster emergency.

3 This act would take effect upon passage.

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LC001349
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