

2019 -- H 5696 SUBSTITUTE A

LC001625/SUB A/2

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO TOWNS AND CITIES -- LOCAL PLANNING BOARD OR COMMISSION--
ZONING ORDINANCES

Introduced By: Representatives Shekarchi, Morin, Ucci, Phillips, and Casey

Date Introduced: February 27, 2019

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-24-56 and 45-24-57 of the General Laws in Chapter 45-24
2 entitled "Zoning Ordinances" are hereby amended to read as follows:

3 **45-24-56. Administration -- Zoning board of review -- Establishment and**
4 **procedures.**

5 (a) A zoning ordinance adopted pursuant to this chapter shall provide for the creation of a
6 zoning board of review and for the appointment of members, including alternate members, and
7 for the organization of the board, as specified in the zoning ordinance, or, in cities and towns with
8 home rule or legislative charters, as provided in the charter. A zoning ordinance may provide for
9 remuneration to the zoning board of review members and for reimbursement for expenses
10 incurred in the performance of official duties. A zoning board of review may engage legal,
11 technical, or clerical assistance to aid in the discharge of its duties. The board shall establish
12 written rules of procedure, a mailing address to which appeals and correspondence to the zoning
13 board of review are sent, and an office where records and decisions are filed.

14 (b) The zoning board of review consists of five (5) members, each to hold office for the
15 term of five (5) years; provided, that the original appointments are made for terms of one, two (2),
16 three (3), four (4), and five (5) years, respectively. The zoning board of review also includes two
17 (2) alternates to be designated as the first and second alternate members, their terms to be set by
18 the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively

1 participate in hearings. The first alternate shall vote if a member of the board is unable to serve at
2 a hearing and the second shall vote if two (2) members of the board are unable to serve at a
3 hearing. In the absence of the first alternate member, the second alternate member shall serve in
4 the position of the first alternate. A quorum shall consist of a majority of the number of members
5 authorized by this section. Three (3) members, which may include alternates, shall form a duly
6 constituted quorum. No member or alternate may vote on any matter before the board unless they
7 have attended all hearings concerning that matter. Where not provided for in the city or town
8 charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired terms of
9 zoning board members, and for removal of members for due cause.

10 (c) Notwithstanding the provisions of subsection (b), the zoning board of review of the
11 town of Jamestown consists of five (5) members, each to hold office for the term of five (5)
12 years; provided, that the original appointments are made for terms of one, two (2), three (3), four
13 (4) and five (5) years respectively. The zoning board of review of the town of Jamestown also
14 includes three (3) alternates to be designated as the first, second, and third alternate members,
15 their terms to be set by the ordinance, but not to exceed five (5) years. These alternate members
16 shall sit and may actively participate in hearings. The first alternate shall vote if a member of the
17 board is unable to serve at a hearing; the second shall vote if two (2) members of the board are
18 unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable
19 to serve at a hearing. In the absence of the first alternate member, the second alternate member
20 shall serve in the position of the first alternate. No member or alternate may vote on any matter
21 before the board unless they have attended all hearings concerning that matter. Where not
22 provided for in the town charter, the zoning ordinance shall specify procedures for filling
23 vacancies in unexpired terms of zoning board members, and for removal of members for due
24 cause.

25 (d) Members of zoning boards of review serving on the effective date of adoption of a
26 zoning ordinance under this chapter are exempt from the provisions of this chapter respecting
27 terms of originally appointed members until the expiration of their current terms.

28 (e) The chairperson, or in his or her absence, the acting chairperson, may administer
29 oaths and compel the attendance of witnesses by the issuance of subpoenas.

30 (f) Notwithstanding the provisions of subsection (b) of this section, the zoning board of
31 review for the town of Little Compton shall consist of five (5) members, each to hold office for
32 the term of five (5) years. The zoning board of review for the town of Little Compton shall also
33 include three (3) alternates to be designated as the first, second and third alternate members, their
34 terms to be set by the ordinance, but not to exceed five (5) years. These alternate members shall

1 sit and may actively participate in the hearings. The first alternate shall vote if a member of the
2 board is unable to serve at a hearing; the second shall vote if two (2) members of the board are
3 unable to serve at a hearing; and the third shall vote if three (3) members of the board are unable
4 to serve at a hearing. In the absence of the first alternate member, the second alternate member
5 shall serve in the position of the first alternate. No member or alternate may vote on any matter
6 before the board unless they have attended all hearings concerning that matter. Where not
7 provided for in the town charter, the zoning ordinance shall specify procedures for filling
8 vacancies in unexpired terms of zoning board members, and for removal of members for due
9 cause.

10 (g) Notwithstanding the provisions of subsection (b) of this section, the zoning board of
11 review for the town of Charlestown shall consist of five (5) members, each to hold office for the
12 term of five (5) years. The zoning board of review for the town of Charlestown shall also include
13 three (3) alternates to be designated as the first, second, and third alternate members, their terms
14 to be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and
15 may actively participate in the hearings. The first alternate shall vote if a member of the board is
16 unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to
17 serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at
18 a hearing. In the absence of the first alternate member, the second alternate member shall serve in
19 the position of the first alternate. No member or alternate may vote on any matter before the
20 board unless they have attended all hearings concerning that matter. Where not provided for in
21 the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired
22 terms of zoning board members, and for removal of members for due cause.

23 (h) Notwithstanding the provisions of subsection (b) of this section, the zoning board of
24 review for the town of Scituate shall consist of five (5) members, each to hold office for the term
25 of five (5) years. The zoning board of review for the town of Scituate shall also include three (3)
26 alternates to be designated as the first, second and third alternate members, their terms to be set
27 by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may
28 actively participate in the hearings. The first alternate shall vote if a member of the board is
29 unable to serve at a hearing; the second shall vote if two (2) members of the board are unable to
30 serve at a hearing; and the third shall vote if three (3) members of the board are unable to serve at
31 a hearing. In the absence of the first alternate member, the second alternate member shall serve in
32 the position of the first alternate. No member or alternate may vote on any matter before the
33 board unless they have attended all hearings concerning that matter. Where not provided for in
34 the town charter, the zoning ordinance shall specify procedures for filling vacancies in unexpired

1 terms of zoning board members, and for removal of members for due cause.

2 (i) Notwithstanding the provisions of subsection (b) of this section, the zoning board of
3 review of the town of Middletown shall consist of five (5) members, each to hold office for a
4 term of five (5) years. The zoning board of review of the town of Middletown shall also include
5 three (3) alternates to be designated as the first (1st), second (2nd) and third (3rd) alternate
6 members, their terms to be set by ordinance but not to exceed (5) years. These alternate members
7 shall sit and may actively participate in the hearing. The first alternate shall vote if a member of
8 the board is unable to serve at the hearing; the second alternate shall vote if two (2) members of
9 the board are unable to serve at the hearing; and the third alternate shall vote if three (3) members
10 of the board are unable to serve at the hearing. In the absence of the first alternate member, the
11 second alternate member shall serve in the position of the first alternate. No member or alternate
12 may vote on any matter before the board unless they have attended all hearings concerning that
13 matter. Where not provided for in the town charter the zoning ordinance shall specify procedures
14 for filling vacancies in unexpired terms of zoning board members and for removal of members
15 for due cause.

16 (j) Notwithstanding the provisions of subsection (b) of this section, the zoning board of
17 review of the city of Cranston shall consist of five (5) members, each to hold office for a term of
18 five (5) years. The zoning board of review of the city of Cranston shall also include four (4)
19 alternates to be designated as the first (1st), second (2nd), third (3rd), and fourth (4th), alternate
20 members, to be appointed for a term of one year. These alternate members shall sit and may
21 actively participate in all zoning hearings. The first alternate shall vote if a member of the board
22 is unable to serve at the hearing; the second alternate shall vote if two (2) members of the board
23 are unable to serve at the hearing; the third alternate shall vote if three (3) members of the board
24 are unable to serve at the hearing; and the fourth alternate shall vote if four (4) members of the
25 board are unable to serve at the hearing. In the absence of the first alternate member, the second
26 alternate member shall serve in the position of the first alternate. No member or alternate may
27 vote on any matter before the board unless they have attended all hearings concerning that matter.
28 Where not provided for in the city charter, the zoning ordinance shall specify procedures for
29 filling vacancies during the unexpired terms of zoning board members and for removal of
30 members for due cause.

31 **45-24-57. Administration -- Powers and duties of zoning board of review.**

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

34 (1) Have the following powers and duties:

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

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

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

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

11 (v) To authorize, upon application, in specific cases, special-use permits, pursuant to §
12 45-24-42, where the zoning board of review is designated as a permit authority for special-use
13 permits;

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

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

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

25 (2) Be required to vote as follows:

26 (i) ~~Five (5)~~ Three (3) active members, which may include alternates, are necessary to
27 conduct a hearing. As soon as a conflict occurs for a member, that member shall recuse himself or
28 herself, shall not sit as an active member, and shall take no part in the conduct of the hearing.
29 ~~Only~~ A maximum of five (5) active members, which may include alternates, are entitled to vote
30 on any issue;

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

34 (iii) The concurring vote of ~~four (4) of the five (5)~~ a majority of members of the zoning

1 board of review sitting at a hearing is required to decide in favor of an applicant on any matter
2 within the discretion of the board upon which it is required to pass under the ordinance, including
3 variances and special-use permits.

4 SECTION 2. This act shall take effect on January 1, 2020 and shall be prospective only
5 and not applicable to any current zoning or planning hearing or appeal.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO TOWNS AND CITIES -- LOCAL PLANNING BOARD OR COMMISSION--
ZONING ORDINANCES

1 This act would provide that a quorum of the zoning board of review shall be a majority of
2 members authorized to vote which may include alternate members.

3 This act would take effect on January 1, 2020 and would be prospective only and not
4 applicable to any current zoning or planning hearing or appeal.

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