

2020 -- H 7629

=====  
LC004453  
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

—————  
A N A C T

RELATING TO TOWNS AND CITIES - SUBDIVISION OF LAND - ZONING  
ORDINANCES

Introduced By: Representatives Shekarchi, Craven, Ucci, Blazejewski, and Shanley

Date Introduced: February 14, 2020

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-23-63 of the General Laws in Chapter 45-23 entitled  
2 "Subdivision of Land" is hereby amended to read as follows:

3 **45-23-63. Procedure -- Meetings -- Votes -- Decisions and records.**

4 (a) All records of the planning board proceedings and decisions shall be written and kept  
5 permanently available for public review. Completed applications for proposed land development  
6 and subdivisions projects under review by the planning board shall be available for public review.

7 (b) Participation in a planning board meeting or other proceedings by any party is not a  
8 cause for civil action or liability except for acts not in good faith, intentional misconduct,  
9 knowing violation of law, transactions where there is an improper personal benefit, or malicious,  
10 wanton, or willful misconduct.

11 (c) All final written comments to the planning board from the administrative officer,  
12 municipal departments, the technical review committee, state and federal agencies, and local  
13 commissions are part of the permanent record of the development application.

14 (d) Votes. All votes of the planning board shall be made part of the permanent record and  
15 show the members present and their votes. A decision by the planning board to approve any land  
16 development or subdivision application requires a vote for approval by a majority of ~~the current~~  
17 ~~planning board membership~~ planning board members present at the time of the vote. A decision  
18 by the planning board to approve a variance or special-use permit pursuant to any adopted unified

1 development review regulations requires a vote for approval by a majority of the planning board  
2 members that were present at the public hearing at which the request was heard.

3 (e) All written decisions of the planning board shall be recorded in the land evidence  
4 records within twenty (20) days after the planning board vote. A copy of the recorded decision  
5 shall be mailed within one business day of recording, by any method that provides confirmation  
6 of receipt, to the applicant and to any objector who has filed a written request for notice with the  
7 administrative officer.

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

10 **45-24-56. Administration -- Zoning board of review -- Establishment and**  
11 **procedures.**

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

21 (b) The zoning board of review consists of five (5) members, each to hold office for the  
22 term of five (5) years; provided, that the original appointments are made for terms of one, two (2),  
23 three (3), four (4), and five (5) years, respectively. The zoning board of review also includes two  
24 (2) alternates to be designated as the first and second alternate members, their terms to be set by  
25 the ordinance, but not to exceed five (5) years. These alternate members shall sit and may actively  
26 participate in hearings. The first alternate shall vote if a member of the board is unable to serve at  
27 a hearing and the second shall vote if two (2) members of the board are unable to serve at a  
28 hearing. In the absence of the first alternate member, the second alternate member shall serve in  
29 the position of the first alternate. A minimum of four (4) members, which may include alternates,  
30 shall form a duly constituted quorum. No member or alternate may vote on any matter before the  
31 board unless they have attended all hearings concerning that matter. Where not provided for in  
32 the city or town charter, the zoning ordinance shall specify procedures for filling vacancies in  
33 unexpired terms of zoning board members, and for removal of members for due cause.

34 (c) Notwithstanding the provisions of subsection (b), the zoning board of review of the

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

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

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

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

34 (g) Notwithstanding the provisions of subsection (b) of this section, the zoning board of

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

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

26 (i) Notwithstanding the provisions of subsection (b) of this section, the zoning board of  
27 review of the town of Middletown shall consist of five (5) members, each to hold office for a  
28 term of five (5) years. The zoning board of review of the town of Middletown shall also include  
29 three (3) alternates to be designated as the first (1st), second (2nd) and third (3rd) alternate  
30 members, their terms to be set by ordinance but not to exceed (5) years. These alternate members  
31 shall sit and may actively participate in the hearing. The first alternate shall vote if a member of  
32 the board is unable to serve at the hearing; the second alternate shall vote if two (2) members of  
33 the board are unable to serve at the hearing; and the third alternate shall vote if three (3) members  
34 of the board are unable to serve at the hearing. In the absence of the first alternate member, the

1 second alternate member shall serve in the position of the first alternate. No member or alternate  
2 may vote on any matter before the board unless they have attended all hearings concerning that  
3 matter. Where not provided for in the town charter the zoning ordinance shall specify procedures  
4 for filling vacancies in unexpired terms of zoning board members and for removal of members  
5 for due cause.

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

21 **45-24-57. Administration -- Powers and duties of zoning board of review.**

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

24 (1) Have the following powers and duties:

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

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

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

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

1 (v) To authorize, upon application, in specific cases, special-use permits, pursuant to §  
2 45-24-42, where the zoning board of review is designated as a permit authority for special-use  
3 permits;

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

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

12 (viii) To determine, upon application, whether a claimed nonconforming use exists; and

13 (ix) To hear and decide other matters, according to the terms of the ordinance or other  
14 statutes, and upon which the board may be authorized to pass under the ordinance or other  
15 statutes; and

16 (2) Be required to vote as follows:

17 (i) ~~Five (5)~~ Four (4) active members, which may include alternates, are necessary to  
18 conduct a hearing. As soon as a conflict occurs for a member, that member shall recuse himself or  
19 herself, shall not sit as an active member, and shall take no part in the conduct of the hearing.  
20 ~~Only~~ A maximum of five (5) active members, which may include alternates, are entitled to vote  
21 on any issue;

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

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

29 SECTION 3. This act shall take effect on January 1, 2021, and shall be prospective only  
30 and not applicable to any current zoning or planning hearing or appeal.

=====  
LC004453  
=====

EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO TOWNS AND CITIES - SUBDIVISION OF LAND - ZONING  
ORDINANCES

\*\*\*

1 This act would provide that:

2 (1) Planning board votes for approval require a majority vote of the members present at  
3 the time of the vote; and

4 (2) A quorum of the zoning board of review would be four (4) members authorized to  
5 vote which may include alternate members.

6 This act would take effect on January 1, 2021 and would be prospective only and not  
7 applicable to any current zoning or planning hearing or appeal.

=====  
LC004453  
=====