

2022 -- S 2504 SUBSTITUTE A

LC004350/SUB A

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2022

A N A C T

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

Introduced By: Senator Michael J. McCaffrey

Date Introduced: March 01, 2022

Referred To: Senate 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 "Subdivision
2 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, knowing
9 violation of law, transactions where there is an improper personal benefit, or malicious, wanton, or
10 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 by
18 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 shall
5 be mailed within one business day of recording, by any method that provides confirmation of
6 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 procedures.**

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

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

33 (c) Notwithstanding the provisions of subsection (b), the zoning board of review of the
34 town of Jamestown consists of five (5) members, each to hold office for the term of five (5) years;

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

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

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

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

31 (g) Notwithstanding the provisions of subsection (b) of this section, the zoning board of
32 review for the town of Charlestown shall consist of five (5) members, each to hold office for the
33 term of five (5) years. The zoning board of review for the town of Charlestown shall also include
34 three (3) alternates to be designated as the first, second, and third alternate members, their terms to

1 be set by the ordinance, but not to exceed five (5) years. These alternate members shall sit and may
2 actively participate in the hearings. The first alternate shall vote if a member of the board is unable
3 to serve at a hearing; the second shall vote if two (2) members of the board are unable to serve at a
4 hearing; and the third shall vote if three (3) members of the board are unable to serve at a hearing.
5 In the absence of the first alternate member, the second alternate member shall serve in the position
6 of the first alternate. 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 town charter, the
8 zoning ordinance shall specify procedures for filling vacancies in unexpired terms of zoning board
9 members, and for removal of members for due cause.

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

23 (i) Notwithstanding the provisions of subsection (b) of this section, the zoning board of
24 review of the town of Middletown shall consist of five (5) members, each to hold office for a term
25 of five (5) years. The zoning board of review of the town of Middletown shall also include three
26 (3) alternates to be designated as the first (1st), second (2nd) and third (3rd) alternate members,
27 their terms to be set by ordinance but not to exceed (5) years. These alternate members shall sit and
28 may actively participate in the hearing. The first alternate shall vote if a member of the board is
29 unable to serve at the hearing; the second alternate shall vote if two (2) members of the board are
30 unable to serve at the hearing; and the third alternate shall vote if three (3) members of the board
31 are unable to serve at the hearing. In the absence of the first alternate member, the second alternate
32 member shall serve in the position of the first alternate. No member or alternate may vote on any
33 matter before the board unless they have attended all hearings concerning that matter. Where not
34 provided for in the town charter the zoning ordinance shall specify procedures for filling vacancies

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

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

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

29 **45-24-57. Administration -- Powers and duties of zoning board of review.**

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

32 (1) Have the following powers and duties:

33 (i) To hear and decide appeals within sixty-five (65) days of the date of the filing of the
34 appeal where it is alleged there is an error in any order, requirement, decision, or determination

made by an administrative officer or agency in the enforcement or interpretation of this chapter, or of any ordinance adopted pursuant hereto;

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

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

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

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

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

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

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

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

(2) Be required to vote as follows:

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

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

(iii) The concurring vote of ~~four (4) of the five (5)~~ a majority of members of the zoning board of review sitting at a hearing is required to decide in favor of an applicant on any matter within the discretion of the board upon which it is required to pass under the ordinance, including

1 variances and special-use permits.

2 SECTION 3. Section 45-53-5 of the General Laws in Chapter 45-53 entitled "Low and
3 Moderate Income Housing" is hereby amended to read as follows:

4 **45-53-5. Appeals to state housing appeals board -- Judicial review.**

5 (a) Whenever an application filed under the provisions of § 45-53-4 is denied, or is granted
6 with conditions and requirements that make the building or operation of the housing infeasible, the
7 applicant has the right to appeal to the state housing appeals board established by § 45-53-7, for a
8 review of the application. The appeal shall be taken within twenty (20) days after the date of the
9 notice of the decision by the local review board by filing with the appeals board a statement of the
10 prior proceedings and the reasons upon which the appeal is based.

11 (b) The appeals board shall immediately notify the local review board of the filing of the
12 petition for review and the latter shall, within ten (10) days of the receipt of the notice, transmit a
13 copy of its decision and the reasons for that decision to the appeals board.

14 (c) The appeal shall be heard by the appeals board within twenty (20) days after the receipt
15 of the applicant's statement. Four (4) active members, which may include an alternate, are necessary
16 to conduct a hearing on an appeal. A stenographic record of the proceedings shall be kept and the
17 appeals board shall render a written decision and order, based upon a majority vote of members
18 present and voting, stating its findings of fact, and its conclusions and the reasons for those
19 conclusions, within thirty (30) days after the termination of the hearing, unless the time has been
20 extended by mutual agreement between the appeals board and the applicant. The decision and order
21 may be appealed in the superior court within twenty (20) days of the issuance of the decision. The
22 review shall be conducted by the superior court without a jury. The court shall consider the record
23 of the hearing before the state housing appeals board and, if it appears to the court that additional
24 evidence is necessary for the proper disposition of the matter, it may allow any party to the appeal
25 to present that evidence in open court, which evidence, along with the report, constitutes the record
26 upon which the determination of the court is made.

27 (d) The court shall not substitute its judgment for that of the state housing appeals board as
28 to the weight of the evidence on questions of fact. The court may affirm the decision of the state
29 housing appeals board or remand the case for further proceedings, or may reverse or modify the
30 decision if substantial rights of the appellant have been prejudiced because of findings, inferences,
31 conclusions, or decisions which are:

32 (1) In violation of constitutional, statutory, or ordinance provisions;

33 (2) In excess of the authority granted to the state housing appeal board by statute or
34 ordinance;

- 1 (3) Made upon unlawful procedure;
- 2 (4) Affected by other error of law;
- 3 (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the
- 4 whole record; or
- 5 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted
- 6 exercise of discretion.
- 7 (e) Any appeal from the superior court to the supreme court pursuant to this section shall
- 8 be by writ of certiorari.

9 SECTION 4. This act shall take effect on January 1, 2023, and shall be prospective only

10 and not applicable to any current zoning or planning hearing or appeal.

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LC004350/SUB A
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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 the
3 time of the vote; and

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

6 This act would take effect on January 1, 2023, and would be prospective only and not
7 applicable to any current zoning or planning hearing or appeal.

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