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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2025

A N A C T

RELATING TO TOWN AND CITIES -- LOW AND MODERATE INCOME HOUSING --
COMPREHENSIVE PERMIT PROJECTS IN TIVERTON

Introduced By: Representatives Edwards, and McGaw

Date Introduced: April 04, 2025

Referred To: House Municipal Government & Housing

(Tiverton)

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 45-53-4 of the General Laws in Chapter 45-53 entitled "Low and
2 Moderate Income Housing" is hereby amended to read as follows:

3 **45-53-4. Procedure for approval of construction of low- or moderate-income housing.**

4 (a) Any applicant proposing to build low- or moderate-income housing may submit to the
5 local review board a single application for a comprehensive permit to build that housing in lieu of
6 separate applications to the applicable local boards. This procedure is only available for proposals
7 in which at least twenty-five percent (25%) of the housing is low- or moderate-income housing.

8 (b) Municipal government subsidies, including adjustments and zoning incentives, are to
9 be made available to applications under this chapter to offset the differential costs of the low- or
10 moderate-incoming housing units in a development under this chapter. At a minimum, the
11 following zoning incentives shall be allowed for projects submitted under this chapter:

12 (1) **Density bonus.** A municipality shall provide an applicant with more dwelling units
13 than allowed by right under its zoning ordinance in the form of a density bonus to allow an increase
14 in the allowed dwelling units per acre (DU/A), as well as other incentives and municipal
15 government subsidies as defined in § 45-53-3. Furthermore, a municipality shall provide, at a
16 minimum, the following density bonuses for projects submitted under this chapter, provided that
17 the total land utilized in the density calculation shall exclude wetlands; wetland buffers; area
18 devoted to infrastructure necessary for development; and easements or rights of way of record:

1 (i) For properties connected to public sewer and water, or eligible to be connected to public
2 sewer and water based on written confirmation from each respective service provider, the density
3 bonus for a project that provides at least twenty-five percent (25%) low- and moderate-income
4 housing shall be at least five (5) units per acre;

5 (ii) For properties connected to public sewer and water, or eligible to be connected to public
6 sewer and water based on written confirmation from each respective service provider, the density
7 bonus for a project that provides at least fifty percent (50%) low- and moderate-income housing
8 shall be at least nine (9) units per acre;

9 (iii) For properties connected to public sewer and water, or eligible to be connected to
10 public sewer and water based on written confirmation from each respective service provider, the
11 density bonus for a project that provides one hundred percent (100%) low- and moderate-income
12 housing shall be at least twelve (12) units per acre;

13 (iv) For properties not connected to either public water or sewer or both, but which provide
14 competent evidence as to the availability of water to service the development and/or a permit for
15 on-site wastewater treatment facilities to service the dwelling units from the applicable state
16 agency, the density bonus for a project that provides at least twenty-five percent (25%) low- and
17 moderate-income housing shall be at least three (3) units per acre;

18 (v) For properties not connected to either public water or sewer or both, but which provide
19 competent evidence as to the availability of water to service the development and/or a permit for
20 on-site wastewater treatment facilities to service the dwelling units from the applicable state
21 agency, the density bonus for a project that provides at least fifty percent (50%) low- and moderate-
22 income housing shall be at least five (5) units per acre;

23 (vi) For properties not connected to either public water or sewer or both, but which provide
24 competent evidence as to the availability of water to service the development and/or a permit for
25 on-site wastewater treatment facilities to service the dwelling units from the applicable state
26 agency, the density bonus for a project that provides one hundred percent (100%) low- and
27 moderate-income housing shall be at least eight (8) units per acre;

28 (vii) For properties located within the town of Tiverton, and not connected to either public
29 water or sewer or both, and for which the property is considered hydric, predominately hydric or
30 has a seasonal high-water table, said land shall be excluded from the buildable land density
31 calculation.

32 (2) **Parking.** A municipality shall not require more than one off-street parking space per
33 dwelling unit for units up to and including two (2) bedrooms in applications submitted under this
34 chapter;

1 (3) **Bedrooms.** A municipality shall not limit the number of bedrooms for applications
2 submitted under this chapter to anything less than three (3) bedrooms per dwelling unit for single-
3 family dwelling units;

4 (4) **Floor area.** A municipality shall not utilize floor area requirements to limit any
5 application, except as provided by § 45-24.3-11.

6 (c) A municipality shall not restrict comprehensive permit applications and permits by any
7 locally adopted ordinance or policy that places a limit or moratorium on the development of
8 residential units.

9 (d) The application and review process for a comprehensive permit shall be as follows:

10 (1) **Pre-application conference.** A municipality may require an applicant proposing a
11 project under this chapter to complete, or the applicant proposing a project under this chapter may
12 request a pre-application conference with the local review board, the technical review committee
13 established pursuant to § 45-23-56, or with the administrative officer for the local review board as
14 appropriate. In advance of a pre-application conference, the applicant shall be required to submit
15 only a short description of the project in writing including the number of units, type of housing,
16 density analysis, preliminary list of adjustments needed, as well as a location map, and conceptual
17 site plan. The purpose of the pre-application conference shall be to review a concept plan of the
18 proposed development and to elicit feedback from the reviewing person or board. Upon receipt of
19 a request by an applicant for a pre-application conference, the municipality shall have thirty (30)
20 days to schedule and hold the pre-application conference, unless a different timeframe is agreed to
21 by the applicant in writing. If thirty (30) days has elapsed from the filing of the pre-application
22 submission and no pre-application conference has taken place, nothing shall be deemed to preclude
23 an applicant from thereafter filing and proceeding with an application for preliminary plan review
24 for a comprehensive permit.

25 (2) **Preliminary plan review.**

26 (i) **Submission requirements.** Applications for preliminary plan review under this chapter
27 shall include:

28 (A) A letter of eligibility issued by the Rhode Island housing and mortgage finance
29 corporation, or in the case of projects primarily funded by the U.S. Department of Housing and
30 Urban Development or other state or federal agencies, an award letter indicating the subsidy, or
31 application in such form as may be prescribed for a municipal government subsidy; and

32 (B) A letter signed by the authorized representative of the applicant, setting forth the
33 specific sections and provisions of applicable local ordinances and regulations from which the
34 applicant is seeking adjustments; and

1 (C) A proposed timetable for the commencement of construction and completion of the
2 project; and

3 (D) Those items required by local regulations promulgated pursuant to applicable state law,
4 with the exception of evidence of state or federal permits; and for comprehensive permit
5 applications included in the checklist for the preliminary plan review in the local regulations
6 promulgated pursuant to chapter 23 of this title; and

7 (E) Notwithstanding the submission requirements set forth above, the local review board
8 may request additional, reasonable documentation throughout the public hearing, including, but not
9 limited to, opinions of experts, credible evidence of application for necessary federal and/or state
10 permits, statements and advice from other local boards and officials.

11 (ii) **Certification of completeness.** The preliminary plan application must be certified
12 complete or incomplete by the administrative officer according to the provisions of § 45-23-36;
13 provided, however, that the certificate shall be granted within twenty-five (25) days of submission
14 of the application. The running of the time period set forth herein will be deemed stopped upon the
15 issuance of a written certificate of incompleteness of the application by the administrative officer
16 and will recommence upon the resubmission of a corrected application by the applicant. However,
17 in no event will the administrative officer be required to certify a corrected submission as complete
18 or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies
19 the application as incomplete, the officer shall set forth in writing with specificity the missing or
20 incomplete items.

21 (iii) **Review of applications.** An application filed in accordance with this chapter shall be
22 reviewed in accordance with the following provisions:

23 (A) **Public hearing.** A public hearing shall be noticed and held as soon as practicable after
24 the issuance of a certificate of completeness.

25 (B) **Notice.** Public notice for the public hearing will be the same notice required under local
26 regulations for a public hearing for a preliminary plan promulgated in accordance with § 45-23-42.
27 The cost of notice shall be paid by the applicant.

28 (C) **Timeframe for review.** The local review board shall render a decision on the
29 preliminary plan application within ninety (90) days of the date the application is certified
30 complete, or within a further amount of time that may be consented to by the applicant through the
31 submission of a written consent.

32 (D) **Failure to act.** Failure of the local review board to act within the prescribed period
33 constitutes approval of the preliminary plan, and a certificate of the administrative officer as to the
34 failure of the local review board to act within the required time and the resulting approval shall be

1 issued on request of the applicant. Further, if the public hearing is not convened or a decision is not
2 rendered within the time allowed in subsections (d)(2)(iii)(A) and (d)(2)(iii)(C) of this section, the
3 application is deemed to have been allowed and the preliminary plan approval shall be issued
4 immediately.

5 (E) **Required findings for approval.** In approving an application, the local review board
6 shall make positive findings, supported by legally competent evidence on the record that discloses
7 the nature and character of the observations upon which the fact finders acted, on each of the
8 following standard provisions, where applicable:

9 (I) The proposed development is consistent with local needs as identified in the local
10 comprehensive community plan with particular emphasis on the community's affordable housing
11 plan and/or has satisfactorily addressed the issues where there may be inconsistencies.

12 (II) The proposed development is in compliance with the standards and provisions of the
13 municipality's zoning ordinance and subdivision regulations, and/or where adjustments are
14 requested by the applicant, that local concerns that have been affected by the relief granted do not
15 outweigh the state and local need for low- and moderate-income housing.

16 (III) All low- and moderate-income housing units proposed are integrated throughout the
17 development; are compatible in scale and architectural style to the market rate units within the
18 project; and will be built and occupied prior to, or simultaneous with the construction and
19 occupancy of any market rate units.

20 (IV) There will be no significant negative impacts on the health and safety of current or
21 future residents of the community, in areas including, but not limited to, safe circulation of
22 pedestrian and vehicular traffic, provision of emergency services, sewerage disposal, availability
23 of potable water, adequate surface water run-off, and the preservation of natural, historical, or
24 cultural features that contribute to the attractiveness of the community.

25 (V) All proposed land developments and all subdivisions lots will have adequate and
26 permanent physical access to a public street in accordance with the requirements of § 45-23-
27 60(a)(5).

28 (VI) The proposed development will not result in the creation of individual lots with any
29 physical constraints to development that building on those lots according to pertinent regulations
30 and building standards would be impracticable, unless created only as permanent open space or
31 permanently reserved for a public purpose on the approved, recorded plans.

32 (F) **Required findings for denial.** In reviewing the comprehensive permit request, the
33 local review board may deny the request for any of the following reasons: (I) If the city or town
34 has an approved affordable housing plan and is meeting housing needs, and the proposal is

1 inconsistent with the affordable housing plan; provided that, the local review board also finds that
2 the municipality has made significant progress in implementing that housing plan; (II) The proposal
3 is not consistent with local needs, including, but not limited to, the needs identified in an approved
4 comprehensive plan, and/or local zoning ordinances and procedures promulgated in conformance
5 with the comprehensive plan; (III) The proposal is not in conformance with the comprehensive
6 plan; (IV) The community has met or has plans to meet the goal of ten percent (10%) of the year-
7 round units or, in the case of an urban town or city, fifteen percent (15%) of the occupied rental
8 housing units as defined in § 45-53-3(5)(i) being low- and moderate-income housing; provided
9 that, the local review board also finds that the community has achieved or has made significant
10 progress towards meeting the goals required by this section; or (V) Concerns for the environment
11 and the health and safety of current residents have not been adequately addressed.

12 (iv) **Vesting.** The approved preliminary plan is vested for a period of two (2) years with
13 the right to extend for two (2), one-year extensions upon written request by the applicant, who must
14 appear before the planning board for each annual review and provide proof of valid state or federal
15 permits as applicable. Thereafter, vesting may be extended for a longer period, for good cause
16 shown, if requested, in writing by the applicant, and approved by the local review board. The
17 vesting for the preliminary plan approval includes all ordinance provisions and regulations at the
18 time of the approval, general and specific conditions shown on the approved preliminary plan
19 drawings and supporting material.

20 (3) **Final plan review.** The second and final stage of review for the comprehensive permit
21 project shall be done administratively, unless an applicant has requested and been granted any
22 waivers from the submission of checklist items for preliminary plan review, and then, at the local
23 review board's discretion, it may vote to require the applicant to return for final plan review and
24 approval.

25 (i) **Submission requirements.** Applications for final plan review under this chapter shall
26 include:

27 (A) All required state and federal permits must be obtained prior to the final plan approval
28 or the issuance of a building permit; and

29 (B) A draft monitoring agreement which identifies an approved entity that will monitor the
30 long-term affordability of the low- and moderate-income units pursuant to § 45-53-3.2; and

31 (C) A sample land lease or deed restriction with affordability liens that will restrict use as
32 low- and moderate-income housing in conformance with the guidelines of the agency providing
33 the subsidy for the low- and moderate-income housing, but for a period of not less than thirty (30)
34 years; and

(D) Those items required by local regulations promulgated pursuant to applicable state law included in the checklist for final plan review in the local regulations promulgated pursuant to chapter 23 of this title, including, but not limited to:

(I) Arrangements for completion of the required public improvements, including construction schedule and/or financial guarantees; and

(II) Certification by the tax collector that all property taxes are current; and

(III) For phased projects, the final plan for phases following the first phase, shall be accompanied by copies of as-built drawings not previously submitted of all existing public improvements for prior phases.

(ii) Certification of completeness. The final plan application must be certified complete or incomplete by the administrative officer according to the provisions of § 45-23-36; provided however, that the certificate shall be granted within twenty-five (25) days of submission of the application. The running of the time period set forth herein will be deemed stopped upon the issuance of a written certificate of incompleteness of the application by the administrative officer and will recommence upon the resubmission of a corrected application by the applicant. However, in no event will the administrative officer be required to certify a corrected submission as complete or incomplete less than ten (10) days after its resubmission. If the administrative officer certifies the application as incomplete, the officer shall set forth in writing with specificity the missing or incomplete items.

(iii) Review of applications.

(A) Timeframe for review. The reviewing authority shall render a decision on the final plan application within forty-five (45) days of the date the application is certified complete.

(B) Modifications and changes to plans:

(I) Minor changes, as defined in the local regulations, to the plans approved at preliminary plan may be approved administratively, by the administrative officer, whereupon final plan approval may be issued. The changes may be authorized without additional public hearings, at the discretion of the administrative officer. All changes shall be made part of the permanent record of the project application. This provision does not prohibit the administrative officer from requesting a recommendation from either the technical review committee or the local review board. Denial of the proposed change(s) shall be referred to the local review board for review as a major change.

(II) Major changes, as defined in the local regulations, to the plans approved at preliminary plan may be approved only by the local review board and must follow the same review and public hearing process required for approval of preliminary plans as described in subsection (d)(2)(iii) of this section.

1 (III) The administrative officer shall notify the applicant in writing within fourteen (14)
2 days of submission of the final plan application if the administrative officer is referring the
3 application to the local review board under this subsection.

4 (C) **Decision on final plan.** An application filed in accordance with this chapter shall be
5 approved by the administrative officer unless such application does not satisfy conditions set forth
6 in the preliminary plan approval decision or such application does not have the requisite state and/or
7 federal approvals or other required submissions, does not post the required improvement bonds, or
8 such application is a major modification of the plans approved at preliminary plan.

9 (D) **Failure to act.** Failure of the reviewing authority to act within the prescribed period
10 constitutes approval of the final plan, and a certificate of the administrative officer as to the failure
11 to act within the required time and the resulting approval shall be issued on request of the applicant.

12 (iv) **Vesting.** The approved final plan is vested for a period of two (2) years with the right
13 to extend for one one-year extension upon written request by the applicant, who must appear before
14 the planning board for the extension request. Thereafter, vesting may be extended for a longer
15 period, for good cause shown, if requested, in writing by the applicant, and approved by the local
16 review board.

17 (4) **Infeasibility of conditions of approval.** The burden is on the applicant to show, by
18 competent evidence before the local review board, that proposed conditions of approval are
19 infeasible, as defined in § 45-53-3. Upon request, the applicant shall be provided a reasonable
20 opportunity to respond to such proposed conditions prior to a final vote on the application.

21 (5) **Fees.** Municipalities may impose fees on comprehensive permit applications that are
22 consistent with but do not exceed fees that would otherwise be assessed for a project of the same
23 scope and type, but not proceeding under this chapter; provided, however, the imposition of such
24 fees shall not preclude a showing by an applicant that the fees make the project financially
25 infeasible.

26 (6) **Recording of written decisions.** All written decisions on applications under this
27 chapter shall be recorded in the land evidence records within twenty (20) days after the local review
28 board's vote or the administrative officer's decision, as applicable. A copy of the recorded decision
29 shall be mailed within one business day of recording, by any method that provides confirmation of
30 receipt, to the applicant and to any objector who has filed a written request for notice with the
31 administrative officer.

32 (7) **Local review board powers.** The local review board has the same power to issue
33 permits or approvals that any local board or official who would otherwise act with respect to the
34 application, including, but not limited to, the power to attach to the permit or approval, conditions,

1 and requirements with respect to height, site plan, size or shape, or building materials, as are
2 consistent with the terms of this section.

3 (8) **Majority vote required.** All local review board decisions on comprehensive permits
4 shall be by majority vote of the members present at the proceeding.

5 (9) **Construction timetable.** A comprehensive permit shall expire unless construction is
6 started within twelve (12) months and completed within sixty (60) months of the recording of the
7 final plan unless a longer and/or phased period for development is agreed to by the local review
8 board and the applicant. Low- and moderate-income housing units shall be built and occupied prior
9 to, or simultaneous with the construction and occupancy of market rate units.

10 (10) **For-profit developers — Limits.** A town with an approved affordable housing plan
11 and that is meeting local housing needs, as defined in this chapter, may by council action limit the
12 annual total number of dwelling units in comprehensive permit applications from for-profit
13 developers to an aggregate of one percent (1%) of the total number of year-round housing units in
14 the town, as recognized in the affordable housing plan and notwithstanding the timetables set forth
15 elsewhere in this section, the local review board shall have the authority to consider comprehensive
16 permit applications from for-profit developers, which are made pursuant to this paragraph,
17 sequentially in the order in which they are submitted.

18 (11) **Report.** The local review board of a town with an approved affordable housing plan
19 shall report the status of implementation to the housing resources commission, including the
20 disposition of any applications made under the plan, as of June 30, 2006, by September 1, 2006,
21 and for each June 30 thereafter by September 1 through 2010. The housing resources commission
22 shall prepare by October 15 and adopt by December 31, a report on the status of implementation,
23 which shall be submitted to the governor, the speaker and the president of the senate, and shall find
24 which towns are not in compliance with implementation requirements.

25 (12) **Remanded applications.** Notwithstanding the provisions of § 45-53-4 in effect on
26 February 13, 2004, a local review board shall commence hearings within thirty (30) days of
27 receiving an application remanded pursuant to § 45-53-5 or, effective January 1, 2024, § 45-53-
28 5.1. In any town with more than one remanded application, applications may be scheduled for
29 hearing in the order in which they were received, and may be taken up sequentially, with the thirty-
30 day (30) requirement for the initiation of hearings, commencing upon the decision of the earlier
31 filed application.

32 (e)(1) The general assembly finds and declares that in January 2004 towns throughout
33 Rhode Island have been confronted by an unprecedented volume and complexity of development
34 applications as a result of private for-profit developers using the provisions of this chapter and that

1 in order to protect the public health and welfare in communities and to provide sufficient time to
2 establish a reasonable and orderly process for the consideration of applications made under the
3 provisions of this chapter, and to have communities prepare plans to meet low- and moderate-
4 income housing goals, that it is necessary to impose a moratorium on the use of comprehensive
5 permit applications as herein provided by private for-profit developers; a moratorium is hereby
6 imposed on the use of the provisions of this chapter by private for-profit developers, which
7 moratorium shall be effective on passage and shall expire on January 31, 2005, and may be revisited
8 prior to expiration and extended to such other date as may be established by law. Notwithstanding
9 the provisions of subsection (a) of this section, private for-profit developers may not utilize the
10 procedure of this chapter until the expiration of the moratorium.

11 (2) No for-profit developer shall submit a new application for comprehensive permits until
12 July 1, 2005, except by mutual agreement with the local review board.

13 (3) Notwithstanding the provisions of subsection (e)(2) of this section, a local review board
14 in a town which has submitted a plan in accordance with subsection (f) of this section, shall not be
15 required to accept an application for a new comprehensive permit from a for-profit developer until
16 October 1, 2005.

17 (f) Towns and cities that are not in conformity with the provisions of § 45-53-3(5)(i) shall
18 prepare by December 31, 2004, a comprehensive plan housing element for low- and moderate-
19 income housing as specified by § 45-53-3(5)(ii), consistent with applicable law and regulation.
20 That the secretary of the planning board or commission of each city or town subject to the
21 requirements of this paragraph shall report in writing the status of the preparation of the housing
22 element for low- and moderate-income housing on or before June 30, 2004, and on or before
23 December 31, 2004, to the secretary of the state planning council, to the chair of the house
24 committee on corporations and to the chair of the senate committee on commerce, housing and
25 municipal government.

26 (g) If any provision of this section or the application thereof shall for any reason be judged
27 invalid, the judgment shall not affect, impair, or invalidate the remainder of this section or of any
28 other provision of this chapter, but shall be confined in its effect to the provision or application
29 directly involved in the controversy giving rise to the judgment, and a moratorium on the
30 applications of for-profit developers pursuant to this chapter shall remain and continue to be in
31 effect for the period commencing on the day this section becomes law [February 13, 2004] and
32 continue until it shall expire on January 31, 2005, or until amended further.

33 (h) In planning for, awarding, and otherwise administering programs and funds for housing
34 and for community development, state departments, agencies, boards and commissions, and public

1 corporations, as defined in chapter 18 of title 35, shall among the towns subject to the provision of
2 § 45-53-3(5)(ii), give priority to the maximum extent allowable by law to towns with an approved
3 affordable housing plan. The director of administration shall adopt not later than January 31, 2005,
4 regulations to implement the provisions of this section.

5 (i) Multi-family rental units built under a comprehensive permit may be calculated towards
6 meeting the requirements of a municipality's low- or moderate-income housing inventory, as long
7 as the units meet and are in compliance with the provisions of § 45-53-3.1.

8 SECTION 2. This act shall take effect upon passage.

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LC002688
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TOWN AND CITIES -- LOW AND MODERATE INCOME HOUSING --
COMPREHENSIVE PERMIT PROJECTS IN TIVERTON

- 1
- This act would provide that applications filed in the town of Tiverton, for comprehensive
- 2
- permit projects, involving property not connected to either public water or sewer or both, and for
- 3
- which the property is considered hydric, predominately hydric or has a seasonal high-water table,
- 4
- said land be excluded from the buildable land calculation.
- 5
- This act would take effect upon passage.

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