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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES-NEIGHBORHOOD

Introduced By: Senators Bell, Quezada, Satchell, Crowley, and Nesselbush

Date Introduced: February 13, 2019

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 45-24-30, 45-24-31, 45-24-33, 45-24-34, 45-24-36, 45-24-37, 45-
2 24-39, 45-24-40, 45-24-42, 45-24-43, 45-24-44, 45-24-46.1, 45-24-46.2, 45-24-46.3, 45-24-46.4,
3 45-24-47, 45-24-48, 45-24-57, 45-24-58 and 45-24-61 of the General Laws in Chapter 45-24
4 entitled "Zoning Ordinances" are hereby amended to read as follows:

5 **45-24-30. General purposes of zoning ordinances.**

6 (a) Zoning regulations shall be developed and maintained in accordance with a
7 comprehensive plan prepared, adopted, and as may be amended, in accordance with chapter 22.2
8 of this title and shall be designed to address the following purposes. The general assembly
9 recognizes these purposes, each with equal priority and numbered for reference purposes only.

10 (1) Respecting the right of housing for every Rhode Islander in any city or town,
11 regardless of their income.

12 ~~(1)~~(2) Promoting the public health, safety, and general welfare.

13 ~~(2)~~(3) Providing for a range of uses and intensities of use appropriate to the character of
14 the city or town and reflecting current and expected future needs.

15 (4) Promoting smart growth: redevelopment of previously developed land and
16 preservation of undeveloped land.

17 ~~(3)~~(5) Providing for orderly growth ~~and~~, development, and redevelopment that
18 recognizes:

19 (i) The goals and patterns of land use contained in the comprehensive plan of the city or

- 1 town adopted pursuant to chapter 22.2 of this title;
- 2 (ii) The natural characteristics of the land, including its suitability for use based on soil
3 characteristics, topography, and susceptibility to surface or groundwater pollution;
- 4 (iii) The values and dynamic nature of coastal and freshwater ponds, the shoreline, and
5 freshwater and coastal wetlands;
- 6 (iv) The values of unique or valuable natural resources and features;
- 7 (v) The availability and capacity of existing and planned public and/or private services
8 and facilities, specifically public and civic spaces, transportation, water, storm water management
9 systems, sewage treatment and disposal, solid waste treatment and disposal, schools, recreation,
10 public facilities, open space, and other public requirements;
- 11 (vi) The need to shape and balance urban and rural development; and
- 12 (vii) The use of innovative development and redevelopment regulations and techniques.
- 13 ~~(4)~~(6) Providing for the control, protection, and/or abatement of air, water, groundwater,
14 and noise pollution, and soil erosion and sedimentation.
- 15 ~~(5)~~(7) Providing for the protection of the natural, historic, cultural, and scenic ~~character~~
16 characteristics of the city or town or areas in the municipality.
- 17 ~~(6)~~(8) Providing for the preservation and promotion of agricultural production, forest,
18 silviculture, aquaculture, timber resources, public and civic spaces, and open space.
- 19 ~~(7)~~(9) Providing for the protection of public investment in transportation, public and civic
20 spaces, water, stormwater management systems, sewage treatment and disposal, solid waste
21 treatment and disposal, schools, recreation, public facilities, open space, and other public
22 requirements.
- 23 ~~(8)~~(10) Promoting a balance of housing choices, for all income levels and groups, to
24 assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe,
25 and sanitary housing.
- 26 ~~(9)~~(11) Providing opportunities for the establishment of low- and moderate-income
27 housing.
- 28 ~~(10)~~(12) Promoting safety from ~~fire~~, flood, and ~~other natural or unnatural disasters~~
29 wildfire.
- 30 ~~(11)~~(13) Promoting a high level of quality in design and construction in the development
31 and redevelopment of private and public facilities.
- 32 ~~(12)~~(14) Promoting implementation of the comprehensive plan of the city or town
33 adopted pursuant to chapter 22.2 of this title.
- 34 ~~(13)~~(15) Providing for coordination of land uses with contiguous municipalities, other

1 municipalities, the state, and other agencies, as appropriate, especially with regard to resources
2 and facilities that extend beyond municipal boundaries or have a direct impact on that
3 municipality.

4 ~~(14)~~(16) Providing for efficient review of development and redevelopment proposals, to
5 clarify and expedite the zoning approval process.

6 ~~(15)~~(17) Providing for procedures for the administration of the zoning ordinance,
7 including, but not limited to, variances, special and special-use permits, and, where adopted,
8 procedures for modifications.

9 ~~(16)~~(18) Providing opportunities for reasonable accommodations in order to comply with
10 the Rhode Island Fair Housing Practices Act, chapter 37 of title 34; the United States Fair
11 Housing Amendments Act of 1988 (FHAA); the Rhode Island Civil Rights of Persons with
12 Disabilities Act, chapter 87 of title 42; and the Americans with Disabilities Act of 1990 (ADA),
13 42 U.S.C. § 12101 et seq.

14 Provided, however, that any zoning ordinance in which a community sets forth standards
15 or requirements for the location, design, construction, or maintenance of on-site wastewater
16 treatment systems shall first be submitted to the director of the department of environmental
17 management for approval as to the technical merits of the ordinance. In addition, any zoning
18 ordinance in which a municipality sets forth standards regarding wetland requirements, shall first
19 be submitted to the director of the department of environmental management for approval as to
20 the technical merits of the ordinance.

21 (b) Upon the effective date of this section, a city or town shall no longer be authorized to
22 adopt as a provision of its zoning ordinance new requirements that specify buffers or setbacks in
23 relation to freshwater wetland, freshwater wetland in the vicinity of the coast, or coastal wetland
24 or that specify setback distances between an onsite wastewater treatment system and a freshwater
25 wetlands, freshwater wetland in the vicinity of the coast, or coastal wetland.

26 (c) Upon promulgation of state regulations to designate wetland buffers and setbacks
27 pursuant to §§ 2-1-18 through 2-1-28, cities and towns shall be prohibited from applying the
28 requirements in existing zoning ordinances pertaining to both wetland buffers and onsite
29 wastewater treatment system setbacks to development applications submitted to a municipality
30 after the effective date of said state regulations. All applications for development that were
31 submitted to a municipality prior to the effective date of state regulations designating wetland
32 buffers and setbacks, will remain subject to, as applicable, the zoning provisions pertaining to
33 wetland buffers or setbacks for onsite wastewater treatment systems that were in effect at the time
34 the application was originally filed or granted approval, subject to the discretion of the

1 municipality to waive such requirements. Nothing herein shall rescind the authority of a city or
2 town to enforce local zoning requirements.

3 (d) Cities and towns shall act to amend their ordinances and regulations to conform to
4 this section within twelve (12) months of the effective date of state regulations referenced herein.

5 **45-24-31. Definitions. [Effective March 1, 2019.]**

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

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

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

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

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

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

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

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

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

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

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

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

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

6 [\(9\) Architectural form. The shape or configuration of a building. Form and its opposite,
7 space, constitute primary elements of architecture. The form of a group of buildings, such as part
8 of a street wall, may include several buildings on separate lots owned by separate owners.](#)

9 [\(10\) Architectural wall. The vertical plane created by a series of architectural forms. See
10 also "street wall."](#)

11 ~~(9)~~[\(11\)](#) Buffer. Land that is maintained in either a natural or landscaped state, and is used
12 to screen or mitigate the impacts of development on surrounding areas, properties, or rights-of-
13 way.

14 ~~(10)~~[\(12\)](#) Building. Any structure used or intended for supporting or sheltering any use or
15 occupancy.

16 ~~(11)~~[\(13\)](#) Building envelope. The three-dimensional space within which a structure is
17 permitted to be built on a lot and that is defined by regulations governing building setbacks,
18 maximum height, and bulk; by other regulations; or by any combination thereof.

19 ~~(12)~~[\(14\)](#) Building height. For a vacant parcel of land, building height shall be measured
20 from the average, existing-grade elevation where the foundation of the structure is proposed. For
21 an existing structure, building height shall be measured from average grade taken from the
22 outermost four (4) corners of the existing foundation. In all cases, building height shall be
23 measured to the top of the highest point of the existing or proposed roof or structure. This
24 distance shall exclude spires, chimneys, flag poles, and the like. For any property or structure
25 located in a special flood hazard area, as shown on the official FEMA Flood Insurance Rate Maps
26 (FIRMs), building height shall be measured from base flood elevation, and where freeboard, as
27 defined in this section, is being utilized or proposed, such freeboard area, not to exceed five feet
28 (5'), shall be excluded from the building height calculation; provided, however that the Rhode
29 Island coastal resources management council design elevation maps may be used by an owner or
30 applicant to establish a base flood elevation for a property that is higher than the official FEMA
31 FIRMs.

32 [\(15\) Civic Space. See "public and civic space".](#)

33 ~~(13)~~[\(16\)](#) Cluster. A site-planning technique that concentrates buildings in specific areas
34 on the site to allow the remaining land to be used for [public and civic space](#), recreation, common

1 open space, and/or preservation of environmentally, historically, culturally, or other sensitive
2 features and/or structures. The techniques used to concentrate buildings shall be specified in the
3 ordinance and may include, but are not limited to, reduction in lot areas, setback requirements,
4 and/or bulk requirements, with the resultant open land being devoted by deed restrictions for one
5 or more uses. Under cluster development, there is no increase in the number of lots that would be
6 permitted under conventional development except where ordinance provisions include incentive
7 bonuses for certain types or conditions of development.

8 ~~(14)~~(17) Common ownership. Either:

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

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

13 ~~(15)~~(18) Community residence. A home or residential facility where children and/or
14 adults reside in a family setting and may or may not receive supervised care. This does not
15 include halfway houses or substance-use-disorder-treatment facilities. This does include, but is
16 not limited to, the following:

17 (i) Whenever six (6) or fewer children or adults with intellectual and/or developmental
18 disability reside in any type of residence in the community, as licensed by the state pursuant to
19 chapter 24 of title 40.1. All requirements pertaining to local zoning are waived for these
20 community residences;

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

23 (iii) A residence for children providing care or supervision, or both, to not more than
24 eight (8) children, including those of the caregiver, and licensed by the state pursuant to chapter
25 72.1 of title 42;

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

34 ~~(16)~~(19) Comprehensive plan. The comprehensive plan adopted and approved pursuant to

1 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in
2 compliance.

3 ~~(17)~~(20) Day care -- Day-care center. Any other day-care center that is not a family day-
4 care home.

5 ~~(18)~~(21) Day care -- Family day-care home. Any home, other than the individual's home,
6 in which day care in lieu of parental care or supervision is offered at the same time to six (6) or
7 less individuals who are not relatives of the caregiver, but may not contain more than a total of
8 eight (8) individuals receiving day care.

9 ~~(19)~~(22) Density, residential. The number of dwelling units per unit of land.

10 ~~(20)~~(23) Development. The construction, reconstruction, conversion, [facade redesign](#),
11 structural alteration, relocation, or enlargement of any structure; any mining, excavation, landfill,
12 or land disturbance; or any change in use, or alteration or extension of the use, of land.

13 ~~(21)~~(24) Development plan review. The process whereby authorized, local officials
14 review the site plans, maps, and other documentation of a development to determine the
15 compliance with the stated purposes and standards of the ordinance.

16 ~~(22)~~(25) District. See "zoning-use [and form](#) district".

17 ~~(23)~~(26) Drainage system. A system for the removal of water from land by drains,
18 grading, or other appropriate means. These techniques may include runoff controls to minimize
19 erosion and sedimentation during and after construction or development; the means for preserving
20 surface and groundwaters; and the prevention and/or alleviation of flooding.

21 ~~(24)~~(27) Dwelling unit. A structure, or portion of a structure, providing complete,
22 independent living facilities for one or more persons, including permanent provisions for living,
23 sleeping, eating, cooking, and sanitation, and containing a separate means of ingress and egress.

24 ~~(25)~~(28) Extractive industry. The extraction of minerals, including: solids, such as coal
25 and ores; liquids, such as crude petroleum; and gases, such as natural gases. The term also
26 includes quarrying; well operation; milling, such as crushing, screening, washing, and flotation;
27 and other preparation customarily done at the extraction site or as a part of the extractive activity.

28 ~~(26)~~(29) Family. A person, or persons, related by blood, marriage, or other legal means.
29 See also "household".

30 ~~(27)~~(30) Floating zone. An unmapped zoning district adopted within the ordinance that is
31 established on the zoning map only when an application for development, meeting the zone
32 requirements, is approved.

33 ~~(28)~~(31) Floodplains, or Flood hazard area. As defined in § 45-22.2-4.

34 ~~(29)~~(32) Form. See "[architectural form](#)".

1 ~~(29)~~(33) Freeboard. A factor of safety expressed in feet above the base flood elevation of
2 a flood hazard area for purposes of floodplain management. Freeboard compensates for the many
3 unknown factors that could contribute to flood heights, such as wave action, bridge openings, and
4 the hydrological effect of urbanization of the watershed.

5 ~~(30)~~(34) Groundwater. "Groundwater" and associated terms, as defined in § 46-13.1-3.

6 ~~(31)~~(35) Halfway house. A residential facility for adults or children who have been
7 institutionalized for criminal conduct and who require a group setting to facilitate the transition to
8 a functional member of society.

9 ~~(32)~~(36) Hardship. See § 45-24-41.

10 ~~(33)~~(37) Historic district or historic site. As defined in § 45-22.2-4.

11 ~~(34)~~(38) Home occupation. Any activity customarily carried out for gain by a resident,
12 conducted as an accessory use in the resident's dwelling unit.

13 ~~(35)~~(39) Household. One or more persons living together in a single-dwelling unit, with
14 common access to, and common use of, all living and eating areas and all areas and facilities for
15 the preparation and storage of food within the dwelling unit. The term "household unit" is
16 synonymous with the term "dwelling unit" for determining the number of units allowed within
17 any structure on any lot in a zoning district. An individual household shall consist of any one of
18 the following:

- 19 (i) A family, which may also include servants and employees living with the family; or
- 20 (ii) A person or group of unrelated persons living together. The maximum number may
21 be set by local ordinance, but this maximum shall not be less than three (3).

22 ~~(36)~~(40) Incentive zoning. The process whereby the local authority may grant additional
23 development capacity in exchange for the developer's provision of a public benefit or amenity as
24 specified in local ordinances.

25 ~~(37)~~(41) Infrastructure. Facilities and services needed to sustain residential, commercial,
26 industrial, institutional, and other activities.

27 ~~(38)~~(42) Land-development project. A project in which one or more lots, tracts, or parcels
28 of land are developed or redeveloped as a coordinated site for one or more uses, units, or
29 structures, including, but not limited to, planned development or cluster development for
30 residential, commercial, institutional, recreational, open space, or mixed uses as provided in the
31 zoning ordinance.

32 ~~(39)~~(43) Lot. Either:

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

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

4 ~~(40)~~[\(44\)](#) Lot area. The total area within the boundaries of a lot, excluding any street right-
5 of-way, usually reported in acres or square feet.

6 ~~(41)~~[\(45\)](#) Lot area, minimum. The smallest land area established by the local zoning
7 ordinance upon which a use, building, or structure may be located in a particular zoning district.

8 ~~(42)~~[\(46\)](#) Lot building coverage. That portion of the lot that is, or may be, covered by
9 buildings and accessory buildings.

10 ~~(43)~~[\(47\)](#) Lot depth. The distance measured from the front lot line to the rear lot line. For
11 lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

12 ~~(44)~~[\(48\)](#) Lot frontage. That portion of a lot abutting a street. A zoning ordinance shall
13 specify how noncontiguous frontage will be considered with regard to minimum frontage
14 requirements.

15 ~~(45)~~[\(49\)](#) Lot line. A line of record, bounding a lot, that divides one lot from another lot or
16 from a public or private street or any other public or private space and shall include:

17 (i) Front: the lot line separating a lot from a street right-of-way. A zoning ordinance shall
18 specify the method to be used to determine the front lot line on lots fronting on more than one
19 street, for example, corner and through lots;

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

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

25 ~~(46)~~[\(50\)](#) Lot size, minimum. Shall have the same meaning as "minimum lot area" defined
26 herein.

27 ~~(47)~~[\(51\)](#) Lot, through. A lot that fronts upon two (2) parallel streets, or that fronts upon
28 two (2) streets that do not intersect at the boundaries of the lot.

29 ~~(48)~~[\(52\)](#) Lot width. The horizontal distance between the side lines of a lot measured at
30 right angles to its depth along a straight line parallel to the front lot line at the minimum front
31 setback line.

32 ~~(49)~~[\(53\)](#) Mere inconvenience. See § 45-24-41.

33 ~~(50)~~[\(54\)](#) Mixed use. A mixture of land uses within a single development, building, or
34 tract. [Also referred to as traditional development. Typically ground floor commercial with](#)

1 [residential above.](#)

2 ~~(51) Modification. Permission granted and administered by the zoning enforcement~~
3 ~~officer of the city or town, and pursuant to the provisions of this chapter to grant a dimensional~~
4 ~~variance other than lot area requirements from the zoning ordinance to a limited degree as~~
5 ~~determined by the zoning ordinance of the city or town, but not to exceed twenty five percent~~
6 ~~(25%) of each of the applicable dimensional requirements.~~

7 ~~(52)~~[\(55\)](#) Nonconformance. A building, structure, or parcel of land, or use thereof,
8 lawfully existing at the time of the adoption or amendment of a zoning ordinance [or in existence](#)
9 [for at least six \(6\) years](#) and not in conformity with the provisions of that ordinance or
10 amendment. Nonconformance is of only two (2) types:

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

14 (ii) Nonconforming by dimension: a building, structure, or parcel of land not in
15 compliance with the dimensional regulations of the zoning ordinance. Dimensional regulations
16 include all regulations of the zoning ordinance, other than those pertaining to the permitted uses.
17 A building or structure containing more dwelling units than are permitted by the use regulations
18 of a zoning ordinance is nonconforming by use; a building or structure containing a permitted
19 number of dwelling units by the use regulations of the zoning ordinance, but not meeting the lot
20 area per dwelling unit regulations, is nonconforming by dimension.

21 ~~(53)~~[\(56\)](#) Overlay district. A district established in a zoning ordinance that is
22 superimposed on one or more districts or parts of districts. The standards and requirements
23 associated with an overlay district may be more or less restrictive than those in the underlying
24 districts consistent with other applicable state and federal laws.

25 ~~(54)~~[\(57\)](#) Performance standards. A set of criteria or limits relating to elements that a
26 particular use or process must either meet or may not exceed.

27 ~~(55)~~[\(58\)](#) Permitted use. A use by right that is specifically authorized in a particular
28 zoning district.

29 ~~(56)~~[\(59\)](#) Planned development. A "land-development project", as defined in subsection
30 (38), and developed according to plan as a single entity and containing one or more structures or
31 uses with appurtenant common areas.

32 ~~(57)~~[\(60\)](#) Plant agriculture. The growing of plants for food or fiber, to sell or consume.

33 ~~(58)~~[\(61\)](#) Preapplication conference. A review meeting of a proposed development held
34 between applicants and reviewing agencies as permitted by law and municipal ordinance, before

1 formal submission of an application for a permit or for development approval.

2 (62) Public and civic space. An extension of the community, serving as a stage for our
3 public lives. The space enriches the lives of its users and enhances its surrounding buildings and
4 neighborhood. Public and civic space includes atria, boardwalks, courtyards, forecourts,
5 overlooks, plazas, paths, and squares.

6 (63) Reconstruction. The act or process of depicting, by means of new construction, the
7 form features, and detailing of a non-surviving site, landscape, building, structure, or object for
8 the purpose of replicating its appearance at a specific period of time and in its historic location.

9 (64) Redevelopment. Alteration to previously developed land, structures, or buildings.
10 May include adaptive reuse, reconstruction, conversion, facade redesign, structural alteration,
11 relocation, or enlargement of any structure or building.

12 (65) Rural. Sparsely populated and lacking in public services. Primarily open space and
13 agriculture with interstitial development.

14 ~~(59)~~(66) Setback line or lines. A line, or lines, parallel to a lot line at the minimum
15 distance of the required setback for the zoning district in which the lot is located that establishes
16 the area within which the principal structure must be erected or placed.

17 ~~(60)~~(67) Site plan. The development plan for one or more lots on which is shown the
18 existing and/or the proposed conditions of the lot.

19 ~~(61)~~(68) Slope of land. The grade, pitch, rise, or incline of the topographic landform or
20 surface of the ground.

21 ~~(62)~~(69) Special ~~use~~ permit. A regulated use or dimension that is permitted pursuant to
22 the special-use permit issued by the authorized governmental entity, pursuant to § 45-24-42.
23 Formerly referred to as a special use permit or modification, or special exception. There are only
24 two (2) categories of special permit, a special use permit or a special dimensional permit.

25 (i) Special use permit. A regulated use that is permitted pursuant to the special use permit
26 issued by the authorized governmental entity, pursuant to § 45-24-42. Special use permits are
27 typically utilized for uses that may have an outside impact on the surrounding area, such as
28 schools or drive-through windows.

29 (ii) Special dimensional permit. A regulated dimension that is permitted pursuant to the
30 special dimensional permit issued by the authorized governmental entity, pursuant to § 45-24-42.
31 Special dimensional permits allow the involvement of the public and the discretion of the
32 authorized governmental entity in allowing small deviations from a zoning ordinance.

33 (70) Street wall. The architectural wall on either side of a street. A street wall requires
34 relatively consistent setbacks, building heights, building envelopes, and landscaping to function.

1 ~~(63)~~(71) Structure. A combination of materials to form a construction for use, occupancy,
2 or ornamentation, whether installed on, above, or below the surface of land or water.

3 ~~(64)~~(72) Substandard lot of record. Any lot lawfully existing at the time of adoption or
4 amendment of a zoning ordinance and not in conformance with the dimensional or area
5 provisions of that ordinance.

6 (73) Urban. Densely populated with defined and balanced public and private realms,
7 primarily with public and civic spaces, people-centric design, continuous, coherent, and
8 harmonious architectural wall, extensive public services, including transportation, water,
9 stormwater management systems, sewage treatment and disposal, solid waste treatment and
10 disposal, schools, recreation, public facilities, interstitial open space and agriculture, and other
11 public requirements, Generally defined by the division of planning as village centers and areas
12 within the urban services boundary, on a map maintained by the division of planning.

13 ~~(65)~~(74) Use. The purpose or activity for which land or buildings are designed, arranged,
14 or intended, or for which land or buildings are occupied or maintained.

15 ~~(66)~~(75) Variance. Permission to depart from the literal requirements of a zoning
16 ordinance. An authorization for the construction or maintenance of a building or structure, or for
17 the establishment or maintenance of a use of land, that is prohibited by a zoning ordinance. There
18 are only two (2) categories of variance, a use variance or a dimensional variance.

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

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

29 ~~(67)~~(76) Waters. As defined in § 46-12-1(23).

30 ~~(68)~~(77) Wetland, coastal. As defined in § 45-22.2-4.

31 ~~(69)~~(78) Wetland, freshwater. As defined in § 2-1-20.

32 ~~(70)~~(78) Zoning certificate. A document signed by the zoning-enforcement officer, as
33 required in the zoning ordinance, that acknowledges that a use, structure, building, or lot either
34 complies with, or is legally nonconforming to, the provisions of the municipal zoning ordinance

1 or is an authorized variance or modification therefrom.

2 ~~(71)~~(79) Zoning map. The map, or maps, that are a part of the zoning ordinance and that
3 delineate the boundaries of all mapped zoning districts within the physical boundary of the city or
4 town.

5 ~~(72)~~(80) Zoning ordinance. An ordinance enacted by the legislative body of the city or
6 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the
7 city or town's legislative or home rule charter, if any, that establish regulations and standards
8 relating to the nature and extent of uses of land and structures; that is consistent with the
9 comprehensive plan of the city or town as defined in chapter 22.2 of this title; that includes a
10 zoning map; and that complies with the provisions of this chapter.

11 ~~(73)~~(81) Zoning-use and form district. The basic unit in zoning, either mapped or
12 unmapped, to which a uniform set of regulations applies, or a uniform set of regulations for a
13 specified use. Zoning-use and form districts include, but are not limited to: agricultural,
14 commercial, industrial, institutional, mixed-use, open space, and residential, as well as urban
15 core, urban center, general urban, inner suburban, outer suburban, exurban, and rural. Each
16 district may include sub-districts. Districts may be combined.

17 (82) Zoning use that raises pollution risk. A use that raises potential for residents and
18 visitors of the surrounding area to experience the negative effects of air, groundwater,
19 stormwater, noise, smell, auditory, or vibrational activities associated with the primary or
20 accessory use of the subject property. Includes, but is not limited to, the burning of materials
21 other than biomass; open wells, pits, and cesspools; earthworks; surface parking lots or other
22 expansive surface areas; the use of heavy machinery; industrial, or intense, continuous,
23 commercial cooking, frying, and/or baking; dry cleaners and laundromats; amplified sound and
24 the use of power tools and generators; the industrial or continuous commercial use of hazardous
25 materials, such as gasoline or other petroleum distillates; and additional categories identified by
26 the division of planning.

27 **45-24-33. Standard provisions.**

28 (a) A zoning ordinance addresses each of the purposes stated in § 45-24-30 and
29 addresses, through reasonable objective standards and criteria, the following general provisions
30 which are numbered for reference purposes only except as prohibited by §§ 45-24-30(b), 45-24-
31 30(c), or 45-24-30(d):

32 (1) Permitting, prohibiting, limiting, and restricting the development and redevelopment
33 of land and structures in zoning districts, and regulating those land and structures according to
34 their type and the nature and extent of their use;

1 (2) Regulating the nature and extent of the use of land for residential, commercial,
2 industrial, institutional, recreational, agricultural, open space, or other use or combination of uses,
3 as the need for land for those purposes is determined by the city or town's comprehensive plan;

4 (3) Permitting, prohibiting, limiting, and restricting buildings, structures, land uses, and
5 other development [and redevelopment](#) by performance standards, or other requirements, related
6 to air and water and groundwater quality, noise and glare, energy consumption, soil erosion and
7 sedimentation, and/or the availability and capacity of existing and planned public or private
8 services, [specifically transportation, water, stormwater management systems, sewage treatment](#)
9 [and disposal, solid waste treatment and disposal, schools, recreation, public facilities, open space,](#)
10 [and other public requirements](#);

11 (4) Regulating within each district and designating requirements for:

12 (i) The height, number of stories, ~~and~~ size, [fenestration, and proportions](#) of buildings;

13 (ii) The dimensions, size, lot coverage, ~~floor area ratios~~, and layout of lots or
14 development areas;

15 (iii) The density and intensity of use;

16 (iv) Access to ~~air and light~~, views, and solar access;

17 (v) Open space, yards, courts, and buffers;

18 (vi) Parking areas, road design, ~~and, where appropriate~~, pedestrian, bicycle, and other
19 circulator systems;

20 (vii) Landscaping, fencing, and lighting;

21 (viii) Appropriate drainage requirements and methods to manage stormwater runoff;

22 (ix) Public access to waterbodies, rivers, and streams; and

23 (x) Other requirements in connection with any use of land or structure;

24 (5) Permitting, prohibiting, limiting, and restricting development [and redevelopment](#) in
25 flood plains or flood hazard areas and designated significant natural areas;

26 (6) Promoting the conservation of energy and promoting energy-efficient patterns of
27 development [and redevelopment](#);

28 (7) Providing for the protection of existing and planned public drinking water supplies,
29 their tributaries and watersheds, and the protection of Narragansett Bay, its tributaries and
30 watershed;

31 (8) Providing for adequate, safe, and efficient transportation systems; and avoiding
32 congestion by relating types and levels of development [and redevelopment](#) to the capacity of the
33 circulation system, and maintaining a safe level of service of the system;

34 (9) Providing for the preservation and enhancement of the recreational resources of the

1 city or town;

2 (10) Promoting an economic climate that increases quality job opportunities and the
3 overall economic well-being of the city or town and the state;

4 (11) Providing for ~~pedestrian~~ [transportation](#) access to and between public and private
5 facilities, including, but not limited to, schools, employment centers, shopping areas, recreation
6 areas, and residences;

7 (12) Providing standards for, and requiring the provision of, adequate and properly
8 designed physical improvements, including plantings, and the proper maintenance of property;

9 (13) Permitting, prohibiting, limiting, and restricting land use in areas where development
10 [and redevelopment](#) is deemed to create a hazard to the public health or safety;

11 (14) Permitting, prohibiting, limiting, and restricting extractive industries and earth
12 removal and requiring restoration of land after these activities;

13 (15) Regulating sanitary landfill, except as otherwise provided by state statute;

14 (16) Permitting, prohibiting, limiting, and restricting signs and billboards and other
15 outdoor advertising devices;

16 (17) Designating airport hazard areas under the provisions of chapter 3 of title 1, and
17 enforcement of airport hazard area zoning regulations under the provisions established in that
18 chapter;

19 (18) Designating areas of historic, cultural, and/or archaeological value and regulating
20 development [and redevelopment](#) in those areas under the provisions of chapter 24.1 of this title;

21 (19) Providing standards and requirements for the regulation, review, and approval of any
22 proposed development [and redevelopment](#) in connection with those uses of land, buildings, or
23 structures specifically designated as subject to development plan review in a zoning ordinance;

24 (20) Designating special protection areas for water supply and limiting or prohibiting
25 development [and redevelopment](#) in these areas, except as otherwise provided by state statute;

26 (21) Specifying requirements for safe road access to developments [and redevelopments](#)
27 from existing streets, including limiting the number, design, and location of curb cuts, and
28 provisions for internal circulation systems, [including pedestrian and bicycle ways](#), for new
29 developments [and redevelopments](#), ~~and provisions for pedestrian and bicycle ways~~; and

30 (22) Reducing unnecessary delay in approving or disapproving development applications
31 through provisions for preapplication conferences and other means.

32 (23) Providing for the application of the Rhode Island Fair Housing Practices Act,
33 chapter 37 of title 34, the United States Fair Housing Amendments Act of 1988 (FHAA); the
34 Rhode Island Civil Rights People with Disabilities Act, chapter 37 of title 42; and the Americans

1 with Disabilities Act of 1990 (ADA), 42 U.S.C. § 12101 et seq.

2 (24) Regulating drive-through windows of varied intensity of use when associated with
3 land-use activities and providing standards and requirements for the regulation, review, and
4 approval of the drive-through windows, including, but not limited to:

5 (i) Identifying within which zoning districts drive-through windows may be permitted,
6 prohibited, or permitted by ~~special-use~~ special permit;

7 (ii) Specifying requirements for adequate traffic circulation; and

8 (iii) Providing for adequate pedestrian safety and access, including issues concerning
9 safety and access for those with disabilities.

10 (b) A zoning ordinance may include special provisions for any or all of the following:

11 (1) Authorizing development incentives, including, but not limited to, additional
12 permitted uses, increased development and density, or additional design or dimensional flexibility
13 in exchange for:

14 (i) Increased open space;

15 (ii) Increased housing choices;

16 (iii) Traffic and pedestrian improvements;

17 (iv) Public and/or private facilities; and/or

18 (v) Other amenities as desired by the city or town and consistent with its comprehensive
19 plan. The provisions in the ordinance shall include maximum allowable densities of population
20 and/or intensities of use and shall indicate the type of improvements, amenities, and/or
21 conditions. Conditions may be made for donation in lieu of direct provisions for improvements or
22 amenities;

23 (2) Establishing a system for transfer of development rights within or between zoning
24 districts designated in the zoning ordinance; and

25 (3) Regulating the development and redevelopment adjacent to designated scenic
26 highways, scenic waterways, major thoroughfares, public greenspaces, or other areas of special
27 public investment or valuable natural resources.

28 (c) Slope of land shall not be excluded from the calculation of the buildable lot area or
29 the minimum lot size, or in the calculation of the number of buildable lots or units.

30 (d) Nothing in this section shall be construed to restrict a municipality's right, within state
31 and local regulations, to establish its own minimum lot size per zoning district in its town or city.

32 **45-24-34. General provisions -- Purpose and consistency with comprehensive plan.**

33 (a) A zoning ordinance adopted pursuant to this chapter shall provide a statement of its
34 purposes. Those purposes shall be consistent with § 45-24-30. A zoning ordinance adopted or

1 amended pursuant to this chapter shall include a statement that the zoning ordinance is consistent
2 with the comprehensive plan of the city or town adopted pursuant to chapter 22.2 of this title, or
3 as otherwise provided below and shall provide that in the instance of uncertainty in the
4 construction or application of any section of the ordinance, the ordinance shall be construed in a
5 manner that will further the implementation of, and not be contrary to, the goals and policies and
6 applicable elements of the comprehensive plan.

7 (b) The city or town shall bring the zoning ordinance or amendment into conformance
8 with its comprehensive plan as approved by the chief of the division of planning of the
9 department of administration or the superior court in accordance with its implementation schedule
10 as set forth in said plan, [a period no longer than three \(3\) years](#). A zoning ordinance shall address
11 and specify requirements for the coordination between contiguous communities, the state, and
12 other agencies, as required by chapter 22.2 of this title.

13 **45-24-36. General provisions -- Division into districts.**

14 A zoning ordinance divides a city or town into zoning use [and form](#) districts, which may
15 include overlay districts and floating zone districts, of the number, kind, type, shape, and area
16 suitable to carry out the purposes of this chapter. Regulations and standards shall be consistent for
17 each land use, type of development [and redevelopment](#), or type of building or structure within a
18 district, but may differ from those in other districts. Zoning use [and form](#) districts shall be
19 depicted by type and location on the zoning map.

20 **45-24-37. General provisions -- Permitted uses.**

21 (a) The zoning ordinance provides a listing of all land uses and/or performance standards
22 for uses that are permitted within the zoning use [and form](#) districts of the municipality.

23 (b) Notwithstanding any other provision of this chapter, the following uses are permitted
24 uses within all residential zoning use [and form](#) districts of a municipality and all industrial and
25 commercial zoning use [and form](#) districts except where residential use is prohibited for public
26 health or safety reasons:

- 27 (1) Households;
28 (2) Community residences; and
29 (3) Family day care homes.

30 (c) Any time a building or other structure used for residential purposes, or a portion of a
31 building containing residential units, is rendered uninhabitable by virtue of a casualty such as fire
32 or flood, the owner of the property is allowed to park, temporarily, mobile and manufactured
33 home, or homes, as the need may be, elsewhere upon the land, for use and occupancy of the
34 former occupants for a period of up to twelve (12) months, or until the building or structure is

1 rehabilitated and otherwise made fit for occupancy. The property owner, or a properly designated
2 agent of the owner, is only allowed to cause the mobile and manufactured home, or homes, to
3 remain temporarily upon the land by making timely application to the local building official for
4 the purposes of obtaining the necessary permits to ~~repair or rebuild~~ [redevelop](#) the structure.

5 (d) Notwithstanding any other provision of this chapter, appropriate access for people
6 with disabilities to residential structures is allowed as a reasonable accommodation for any
7 person(s) residing, or intending to reside, in the residential structure.

8 (e) Notwithstanding any other provision of this chapter, an accessory family dwelling
9 unit in an owner-occupied, single-family residence shall be permitted as a reasonable
10 accommodation for family members with disabilities or who are sixty-two (62) years of age or
11 older. The appearance of the structure shall remain that of a single-family residence and there
12 shall be an internal means of egress between the principal unit and the accessory family dwelling
13 unit. If possible, no additional exterior entrances should be added. Where additional entrance is
14 required, placement should generally be in the rear or side of the structure. When the structure is
15 serviced by an individual, sewage-disposal system, the applicant shall have the existing or any
16 new system approved by the department of environmental management. The zoning-enforcement
17 officer shall require that a declaration of the accessory family dwelling unit for the family
18 member, or members, and its restrictions be recorded in the land-evidence records and filed with
19 the zoning-enforcement officer and the building official. Once the family member, or members,
20 with disabilities or who are sixty-two (62) years of age or older, no longer reside(s) in the
21 premises on a permanent basis, or the title is transferred, the property owner shall notify the
22 zoning official in writing, and the accessory family-dwelling unit shall no longer be permitted,
23 unless there is a subsequent, valid application.

24 (f) When used in this section the terms "people with disabilities" or "member, or
25 members, with disabilities" means a person(s) who has a physical or mental impairment that
26 substantially limits one or more major life activities, as defined in § 42-87-1(7) of the general
27 laws.

28 (g) Notwithstanding any other provisions of this chapter, plant agriculture is a permitted
29 use within all zoning districts of a municipality, including all industrial and commercial zoning
30 districts, except where prohibited for public health or safety reasons or the protection of wildlife
31 habitat.

32 **45-24-39. General provisions -- Nonconforming development.**

33 (a) Any city or town adopting or amending a zoning ordinance under this chapter shall
34 make provision for any use, activity, structure, building, or sign or other improvement, lawfully

1 existing at the time of the adoption or amendment of the zoning ordinance, but which is
2 nonconforming by use or nonconforming by dimension. The zoning ordinance may regulate
3 development which is nonconforming by dimension differently than that which is nonconforming
4 by use.

5 (b) The zoning ordinance shall permit the continuation of nonconforming development;
6 however, this does not prohibit the regulation of nuisances.

7 (c) A zoning ordinance ~~may~~ shall provide that, if a nonconforming use is abandoned, it
8 may not be reestablished. Abandonment of a ~~nonconforming use~~ zoning use that raises pollution
9 risk consists of some overt act, or failure to act, which leads one to believe that the owner of the
10 nonconforming use neither claims nor retains any interest in continuing the nonconforming use
11 unless the owner can demonstrate an intent not to abandon the use. If any zoning use that raises
12 pollution risk halted for a period of three (3) years, the owner of the nonconforming use is
13 presumed to have abandoned the nonconforming use, even if there is no intent to abandon the use.
14 ~~An involuntary interruption of nonconforming use, as by fire and natural catastrophe, does not~~
15 ~~establish the intent to abandon the nonconforming use; however, if~~ If any nonconforming use is
16 halted for a period of ~~one year~~ twenty (20) years, the owner of the nonconforming use is
17 presumed to have abandoned the nonconforming use, unless that presumption is rebutted by the
18 presentation of sufficient evidence of intent not to abandon the use. A use that is nonconforming
19 by use because the building or structure contains more dwelling units than are permitted by the
20 use regulations of a zoning ordinance shall never be considered abandoned, unless the zoning use
21 and form district does not permit any residential use.

22 (d) Abandonment of a nonconforming accessory use shall not be construed to imply
23 abandonment of other uses of the site.

24 (e) A nonconforming development by dimension never abandons its nonconformance by
25 dimension. In reconstructing a development that is nonconforming by dimension, the activity
26 shall be reviewed as an alteration of nonconforming development.

27 **45-24-40. General provisions -- Alteration of nonconforming development.**

28 (a) A zoning ordinance ~~may~~ shall permit a nonconforming development to be altered
29 under ~~either of~~ the following conditions:

30 ~~(1) The ordinance may establish a special use permit, authorizing the alteration, which~~
31 ~~must be approved by the zoning board of review following the procedure established in this~~
32 ~~chapter and in the zoning ordinance; or~~

33 ~~(2)~~(1) The ordinance ~~may~~ shall allow the reconstruction, addition and enlargement,
34 expansion, intensification, or change in use, of nonconforming development either by special

1 permit or by right and may distinguish between the foregoing actions by zoning districts.

2 ~~(b) The ordinance may require that the alteration more closely adheres to the intent and~~
3 ~~purposes of the zoning ordinance.~~

4 ~~(e)(b)~~ A use established by variance or special use permit shall not acquire the rights of
5 this section.

6 ~~45-24-42. General provisions -- Special-use permits.~~ **General provisions -- Special**
7 **permits.**

8 (a) A zoning ordinance shall provide for the issuance of special-use permits approved by
9 the zoning board of review, or, where unified development review is enabled pursuant to § 45-24-
10 46.4, the planning board or commission.

11 (b) The ordinance shall:

12 (1) Specify the uses requiring special-use permits in each district and the dimensions
13 requiring a special dimensional permit in each district. Dimensional requirements in special
14 dimensional permits shall not exceed fifty percent (50%) of the dimensional requirements
15 specified in the zoning ordinance or the average of existing conditions on lots within the notice
16 area as defined in § 45-24-53(d)(2), whichever is greater. A special dimensional permit does not
17 permit moving of lot lines;

18 (2) Describe the conditions and procedures under which special-use permits, of each or
19 the various categories of special-use permits established in the zoning ordinance, may be issued;

20 (3) Establish criteria for the issuance of each category of special-use permit that shall be
21 in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance
22 of the city or town. If a special dimensional permit is granted, neighboring property shall neither
23 be substantially injured nor its appropriate use substantially impaired, specifically the appearance
24 of the subject property from the street in comparison to properties on its left and right, and it does
25 not alter a flood hazard requirement;

26 (4) Provide for public hearings and notification of the date, time, place, and purpose of
27 those hearings to interested parties. Special-use permit requests submitted under a zoning
28 ordinance's unified development review provisions shall be heard and noticed in conjunction with
29 the subdivision or land-development application, according to the requirements of § 45-23-50.1.
30 Public notice for special-use permits that are not submitted under a zoning ordinance's unified
31 development review provisions shall be given at least fourteen (14) days prior to the date of the
32 hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent
33 by first-class mail to the applicant, and to all those who would require notice under § 45-24-53.
34 The notice shall also include the street address of the subject property. A zoning ordinance may

1 require that a supplemental notice, that an application for a special-use permit is under
2 consideration, be posted at the location in question. The posting is for information purposes only
3 and does not constitute required notice of a public hearing. The cost of notification shall be borne
4 by the applicant;

5 (5) Provide for the recording of findings of fact and written decisions; and

6 (6) Provide that appeals may be taken pursuant to §§ 45-24-70 or 45-23-66, dependent on
7 the board to which application was made.

8 (c) The ordinance additionally ~~may~~ shall provide that an applicant may apply for, and be
9 issued, a ~~dimensional~~ variance in conjunction with a special-~~use~~ permit. If the special ~~use~~ permit
10 could not exist without the ~~dimensional~~ variance, the zoning board of review, or, where unified
11 development review is enabled pursuant to § 45-24-46.4(b), the planning board or commission
12 shall consider the special-~~use~~ permit and the ~~dimensional~~ variance together to determine if
13 granting the special ~~use~~ permit is appropriate based on both the special ~~use~~ permit criteria and the
14 ~~dimensional~~ variance evidentiary standards.

15 **45-24-43. General provisions -- Special conditions.**

16 In granting a variance or in making any determination upon which it is required to pass
17 after a public hearing under a zoning ordinance, the zoning board of review or other zoning
18 enforcement agency may apply the special conditions that may, in the opinion of the board or
19 agency, be required to promote the intent and purposes of the comprehensive plan and the zoning
20 ordinance of the city or town. Failure to abide by any special conditions attached to a grant
21 constitutes a zoning violation. Those special conditions shall be based on competent credible
22 evidence on the record, be incorporated into the decision, and may include, but are not limited to,
23 provisions for:

24 (1) Minimizing the adverse impact of the development or redevelopment upon other land,
25 including the type, intensity, design, and performance of activities;

26 (2) Controlling the sequence of development or redevelopment, including when it must
27 be commenced and completed;

28 (3) Controlling the duration of use or development or redevelopment and the time within
29 which any temporary structure must be removed;

30 (4) Assuring satisfactory installation and maintenance of required public improvements;

31 (5) Designating the exact location and nature of development or redevelopment; and

32 (6) Establishing detailed records by submission of drawings, maps, plats, or
33 specifications.

34 **45-24-44. General provisions -- Creation of vested rights.**

1 (a) A zoning ordinance provides protection for the consideration of applications for
2 development [or redevelopment](#) that are substantially complete and have been submitted for
3 approval to the appropriate review agency in the city or town prior to enactment of the new
4 zoning ordinance or amendment.

5 (b) Zoning ordinances or other land development ordinances or regulations specify the
6 minimum requirements for a development application to be substantially complete for the
7 purposes of this section.

8 (c) Any application considered by a city or town under the protection of this section shall
9 be reviewed according to the regulations applicable in the zoning ordinance in force at the time
10 the application was submitted.

11 (d) If an application for development [or redevelopment](#) under the provisions of this
12 section is approved, reasonable time limits shall be set within which development [or](#)
13 [redevelopment](#) of the property must begin and within which development [or redevelopment](#) must
14 be substantially completed.

15 **45-24-46.1. Inclusionary zoning.**

16 (a) A zoning ordinance requiring the inclusion of affordable housing as part of a
17 development [or redevelopment](#) shall provide that the housing will be affordable housing, as
18 defined in § 42-128-8.1(d)(1); that the affordable housing will constitute not less than ten percent
19 (10%) of the total units in the development [or redevelopment](#); and that the units will remain
20 affordable for a period of not less than thirty-years (30) from initial occupancy enforced through a
21 land lease and/or deed restriction enforceable by the municipality and the state of Rhode Island.

22 (b) A zoning ordinance that includes inclusionary zoning may provide that the affordable
23 housing must be built on-site or utilize one or more alternative methods of production, including,
24 but not limited to, off-site construction or rehabilitation, donation of land suitable for
25 development of the required affordable units, and/or the payment of a fee in lieu of the
26 construction or provision of affordable housing units. For all projects subject to inclusionary
27 zoning, density bonuses and other incentives shall be established by the community and shall
28 apply to offset differential costs of below-market units.

29 (c) This fee in lieu of the construction or provision of affordable housing shall be the
30 choice of the developer or builder applied on a per-unit basis and may be used for new
31 developments, purchasing property and/or homes, rehabilitating properties, or any other manner
32 that creates additional low-or-moderate income housing as defined in § 45-53-3(9).

33 (1) For affordable, single-family homes and condominium units, the per-unit fee shall be
34 the difference between the maximum affordable sales price for a family of four (4) earning eighty

1 percent (80%) of the area median income as determined annually by the U.S. Department of
2 Housing and Urban Development and the average cost of developing a single unit of affordable
3 housing. The average cost of developing a single unit of affordable housing shall be determined
4 annually based on the average, per-unit development cost of affordable homes financed by Rhode
5 Island housing over the previous three (3) years, excluding existing units that received
6 preservation financing.

7 (2) Notwithstanding subsection (c)(1) of this section, in no case shall the per-unit fee for
8 affordable single family homes and condominium units be less than forty thousand dollars
9 (\$40,000).

10 (d) The municipality shall deposit all in-lieu payments into restricted accounts that shall
11 be allocated and spent only for the creation and development of affordable-housing within the
12 municipality serving individuals or families at or below eighty percent (80%) of the area median
13 income. The municipality shall maintain a local affordable housing board to oversee the funds in
14 the restricted accounts and shall allocate the funds within two (2) years. The municipality shall
15 include in the housing element of their local comprehensive plan, if applicable, the process it will
16 use to allocate the funds.

17 (e) As an alternative to the provisions of subsection (d), the municipality may elect to
18 transfer in-lieu payments promptly upon receipt or within the two-year (2) period after receipt to
19 the housing resources commission or Rhode Island housing for the purpose of developing
20 affordable housing within that community.

21 (f) Rhode Island housing shall report to the general assembly and the housing resources
22 commission the amount of fees in lieu collected by community; the projects that were provided
23 funding with the fees, the dollar amounts allocated to the projects and the number of units
24 created.

25 **45-24-46.2. Special provisions -- Transfer of development rights -- North Kingstown.**

26 (a) In addition to other powers granted to towns and cities by this chapter to establish and
27 administer transfer of development rights programs, the town council of the town of North
28 Kingstown may provide by ordinance for the transfer of development rights, as a voluntary
29 program available to developers and property owners, in the manner set forth in this section.

30 (b) The establishment, as provided for by this section, of a system for transfer of
31 development rights within or between zoning districts, or a portion thereof, designated in the
32 zoning ordinance shall be:

33 (1) For the purpose of providing developers and property owners the ability to establish,
34 certify, purchase, sell, convey, and/or hold land development rights; and

1 (2) For one or more of the following purposes:

2 (i) Preserving sensitive resource areas in the community such as groundwater reserves,
3 wildlife habitat, agricultural lands, and public access to surface waters;

4 (ii) Directing development away from sensitive resource areas to places better suited to
5 increased levels of development [and redevelopment](#) such as established or proposed mixed use,
6 commercial, village, or residential centers;

7 (iii) Directing development to areas served by existing infrastructure such as established
8 roadways, public water supply systems, centralized sewer collection systems, public transit and
9 other utilities; or

10 (iv) Shaping and balancing urban and rural development; and/or promoting a high level
11 of quality in design in the development [and redevelopment](#) of private and public facilities and
12 spaces.

13 (c) For purposes of this section the following terms shall have the following meaning:

14 (1) "Receiving area district" means a zoning district, which is established and mapped
15 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning
16 use [and form](#) districts or portions thereof that is eligible to receive development rights through a
17 major land development project review. As may be necessary or desirable to achieve the intended
18 uses, density and intensity of use, a receiving area district may allow for additional development
19 [and redevelopment](#) capacity and for increased lot building coverage and building envelope that
20 are greater than those of the underlying zoning.

21 (2) "Sending area district" means a zoning district, which is established and mapped
22 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning
23 use [and form](#) districts or a portion thereof, that is eligible to establish development rights that may
24 eventually be transferred to a receiving area.

25 **45-24-46.3. Special provisions -- Transfer of development rights -- Exeter.**

26 (a) In addition to other powers granted to towns and cities by this chapter to establish and
27 administer transfer of development rights programs, the town council of the town of Exeter may
28 provide by ordinance for the transfer of development rights, as a voluntary program available to
29 developers and property owners, in the manner set forth in this section.

30 (b) For purposes of this section the following terms shall have the following meaning:

31 (1) "Receiving area district" means a zoning district, which is established and mapped
32 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning
33 use [and form](#) districts or portions thereof, that is eligible to receive development rights through a
34 major land development project review. As may be necessary or desirable to achieve the intended

1 uses, density and intensity of use, a receiving area district may allow for additional development
2 capacity and for increased lot building coverage and building envelope that are greater than those
3 of the underlying zoning.

4 (2) "Sending area district" means a zoning district, which is established and mapped
5 pursuant to a transfer of development rights ordinance and superimposed on one or more zoning
6 use [and form](#) districts or a portion thereof, that is eligible to establish development rights that may
7 eventually be transferred to a receiving area.

8 (c) The establishment, as provided for by this section, of a system for transfer of
9 development rights within or between zoning districts, or a portion thereof, designated in the
10 zoning ordinance shall be:

11 (1) For the purpose of providing developers and property owners the ability to establish,
12 certify, purchase, sell, convey, and/or hold land development rights; and

13 (2) For one or more of the following purposes:

14 (i) Preserving sensitive resource areas in the community such as groundwater reserves,
15 wildlife habitat, agricultural lands, and public access to surface waters;

16 (ii) Directing development away from sensitive resource areas to places better suited to
17 increased levels of development [and redevelopment](#) such as established or proposed mixed use,
18 commercial, village, or residential centers;

19 (iii) Directing development to areas served by existing infrastructure such as established
20 roadways, public water supply systems, centralized sewer collection systems, public transit and
21 other utilities; or

22 (iv) Shaping and balancing urban and rural development, and/or promoting a high level
23 of quality in design in the development [and redevelopment](#) of private and public facilities and
24 spaces.

25 **45-24-46.4. Special provisions -- Unified development review.**

26 (a) A zoning ordinance may provide that review and approval of dimensional variances,
27 use variances, [special dimensional permits](#), and/or special-use permits for properties undergoing
28 review by the planning board or commission as land-development or subdivision projects
29 pursuant to § 45-23-36, be conducted and decided by the planning board or commission. This
30 process is to be known as unified development review.

31 (b) If unified development review is desired, such review must be enabled within the
32 zoning ordinance, in accordance with this section, and the local subdivision and land-
33 development regulations must be brought into conformance, pursuant to § 45-23-50.1.

34 (c) A zoning ordinance that provides for unified development review shall:

1 (1) Specify which types of zoning approval the planning board or commission shall be
2 empowered to grant for which types of projects; and

3 (2) Provide that any person, group, agency, or corporation that files an application for an
4 included land development or subdivision project may also file requests for relief from the literal
5 requirements of a zoning ordinance on the subject property, pursuant to § 45-24-41, and/or for the
6 issuance of special-use permits for the subject property, pursuant to § 45-24-42, by including such
7 within the application to the administrative officer of the planning board or commission with the
8 other required application materials, pursuant to § 45-23-50.1(b).

9 (d) A zoning ordinance that provides for unified development review may specify design,
10 use, public benefit, or other relevant criteria that must be met in order for an application to qualify
11 for review under the unified development review provisions of the zoning ordinance.
12 Certification as to whether an application meets the established criteria shall be conducted in
13 conjunction with, and following the time lines outlined for, certification of completeness of the
14 application, pursuant to §§ 45-23-38(c), 45-23-40(b), or 45-23-41(b).

15 (e) All land development and subdivision applications that include requests for variances
16 and/or special-use permits submitted pursuant to this section shall require a public hearing that
17 meets the requirements of §§ 45-23-50.1(b) and 45-23-50.1(c).

18 (f) In granting requests for dimensional and use variances, the planning board or
19 commission shall be bound to the requirements of §§ 45-24-41(d) and 45-24-41(e) relative to
20 entering evidence into the record in satisfaction of the applicable standards.

21 (g) In reviewing requests for special-use permits, the planning board or commission shall
22 be bound to the conditions and procedures under which a special-use permit may be issued and
23 the criteria for the issuance of such permits, as found within the zoning ordinance pursuant to §§
24 45-24-42(b)(1), 45-24-42(b)(2) and 45-24-42(b)(3), and shall be required to provide for the
25 recording of findings of fact and written decisions as described in the zoning ordinance pursuant
26 to § 45-24-42(b)(5).

27 (h) An appeal from any decision made pursuant to this section may be taken pursuant to §
28 45-23-66.

29 **45-24-47. Special provisions -- Land development projects.**

30 (a) A zoning ordinance may provide for land development projects which are projects in
31 which one or more lots, tracts, or parcels of land are to be developed or redeveloped as a
32 coordinated site for a complex of uses, units, or structures, including, but not limited to, planned
33 development and/or cluster development for residential, commercial, institutional, industrial,
34 recreational, open space, and/or mixed uses as may be provided for in the zoning ordinance.

1 (b) A zoning ordinance adopted pursuant to this chapter which permits or requires the
2 creation of land development projects in one or more zoning districts shall require that any land
3 development project is referred to the city or town planning board or commission for approval, in
4 accordance with the procedures established by chapter 23 of this title, including those for appeal
5 and judicial review, and with any ordinances or regulations adopted pursuant to the procedures,
6 whether or not the land development project constitutes a "subdivision", as defined in chapter 23
7 of this title. No land development project shall be initiated until a plan of the project has been
8 submitted to the planning board or commission and approval has been granted by the planning
9 board or commission. In reviewing, hearing, and deciding upon a land development project, the
10 city or town planning board or commission may be empowered to allow zoning incentives within
11 the project; provided, that standards for the adjustments are described in the zoning ordinance,
12 and may be empowered to apply any special conditions and stipulations to the approval that may,
13 in the opinion of the planning board or commission, be required to maintain harmony with
14 neighboring uses and promote the objectives and purposes of the comprehensive plan and zoning
15 ordinance.

16 (c) In regulating land development projects, an ordinance adopted pursuant to this chapter
17 may include, but is not limited to, regulations governing the following:

- 18 (1) A minimum area or site size for a land development project;
- 19 (2) Uses to be permitted within the development;
- 20 (3) Ratios of residential to nonresidential uses where applicable;
- 21 (4) Maximum density per lot and maximum density for the entire development, with
22 provisions for adjustment of applicable lot density and dimensional standards where open space is
23 to be permanently set aside for public or common use, and/or where the physical characteristics,
24 location, or size of the site require an adjustment, and/or where the location, size, and type of
25 housing, commercial, industrial, or other use require an adjustment, and/or where housing for low
26 and moderate income families is to be provided, or where other amenities not ordinarily required
27 are provided, as stipulated in the zoning ordinance. Provision may be made for adjustment of
28 applicable lot density and dimensional standards for payment or donation of other land or
29 facilities in lieu of an on-site provision of an amenity that would, if provided on-site, enable an
30 adjustment;
- 31 (5) Roads, driveways, utilities, parking, and other facilities; regulations may distinguish
32 between those facilities intended to remain in private ownership or to be dedicated to the public;
33 and
- 34 (6) Buffer areas, landscaping, screening, and shading.

1 (d)(1) A zoning ordinance requiring open land in a cluster development or other land
2 development project for public or common use, shall provide that such open land either: (i) be
3 conveyed to the city or town and accepted by it for park, open space, agricultural, or other
4 specified use or uses, or (ii) be conveyed to a nonprofit organization, the principal purpose of
5 which is the conservation of open space or resource protection, or (iii) be conveyed to a
6 corporation or trust owned or to be owned by the owners of lots or units within the development
7 [or redevelopment](#), or owners of shares within a cooperative development [or redevelopment](#). If
8 such a corporation or trust is used, ownership shall pass with conveyances of the lots or units, or
9 (iv) remain in private ownership if the use is limited to agriculture, habitat or forestry, and the
10 city or town has set forth in its community comprehensive plan and zoning ordinance that private
11 ownership is necessary for the preservation and management of the agricultural, habitat or forest
12 resources.

13 (2) In any case where the land is not conveyed to the city or town:

14 (i) A restriction, in perpetuity, enforceable by the city or town or by any owner of
15 property in the cluster or other land development project in which the land is located shall be
16 recorded providing that the land is kept in the authorized condition(s) and not built upon or
17 developed for accessory uses such as parking or roadway; and

18 (ii) The developmental rights and other conservation easements on the land may be held,
19 in perpetuity, by a nonprofit organization, the principal purpose of which is the conservation of
20 open space or resource protection.

21 (3) All open space land provided by a cluster development or other land development
22 project shall be subject to a community approved management plan that will specify the permitted
23 uses for the open space.

24 **45-24-48. Special provisions -- Preapplication conference.**

25 A zoning ordinance may provide for a preapplication conference for specific types of
26 development [and redevelopment](#) proposals. A preapplication conference is intended to allow the
27 designated agency to:

28 (1) Acquaint the applicant with the comprehensive plan and any specific plans that apply
29 to the parcel, as well as the zoning and other ordinances that affect the proposed development [or](#)
30 [redevelopment](#);

31 (2) Suggest improvements to the proposed design on the basis of a review of the sketch
32 plan;

33 (3) Advise the applicant to consult appropriate authorities on the character and placement
34 of public utility services; and

1 (4) Help the applicant to understand the steps to be taken to receive approval.

2 **45-24-57. Administration -- Powers and duties of zoning board of review.**

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

5 (1) Have the following powers and duties:

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

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

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

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

16 (v) To authorize, upon application, in specific cases, special-use permits, pursuant to §
17 45-24-42, where the zoning board of review is designated as a permit authority for special-use
18 permits;

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

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

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

30 (2) Be required to vote as follows:

31 (i) Five (5) active members are necessary to conduct a hearing. As soon as a conflict
32 occurs for a member, that member shall recuse himself or herself, shall not sit as an active
33 member, and shall take no part in the conduct of the hearing. Only five (5) active members are
34 entitled to vote on any issue;

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

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

8 **45-24-58. Administration -- Application procedure.**

9 The zoning ordinance establishes the various application procedures necessary for the
10 filing of appeals, requests for variances, special-use permits, development plan reviews, site plan
11 reviews, and other applications that may be specified in the zoning ordinance, with the zoning
12 board of review, consistent with the provisions of this chapter. The zoning ordinance provides for
13 the creation of appropriate forms, and for the submission and resubmission requirements, for each
14 type of application required. A zoning ordinance may establish that a time period of a certain
15 number of months is required to pass before a successive similar application may be filed.

16 **45-24-61. Administration -- Decisions and records of zoning board of review.**

17 (a) Following a public hearing, the zoning board of review shall render a decision within
18 fifteen (15) days. The zoning board of review shall include in its decision all findings of fact and
19 conditions, showing the vote of each participating member, and the absence of a member or his or
20 her failure to vote. Decisions shall be recorded and filed in the office of the city or town clerk
21 within thirty (30) days from the date when the decision was rendered, and is a public record. The
22 zoning board of review shall keep written minutes of its proceedings, showing the vote of each
23 member upon each question, or, if absent or failing to vote, indicating that fact, and shall keep
24 records of its examinations, findings of fact, and other official actions, all of which shall be
25 recorded and filed in the office of the zoning board of review in an expeditious manner upon
26 completion of the proceeding. For any proceeding in which the right of appeal lies to the superior
27 or supreme court, the zoning board of review shall have the minutes taken either by a competent
28 stenographer or recorded by a sound-recording device.

29 (b) Any decision by the zoning board of review, including any special conditions attached
30 to the decision, shall be mailed within one business day of recording, by any method that provides
31 confirmation of receipt to the applicant, to any objector who has filed a written request for notice
32 with the zoning enforcement officer, and to the zoning enforcement officer of the city or town.
33 Any decision evidencing the granting of a variance, modification, or special ~~use~~ [permit](#) shall also
34 be recorded in the land evidence records of the city or town and mailed within one business day

1 of recording, by any method that provides confirmation of receipt, to the applicant, to any
2 objector who has filed a written request for notice with the zoning enforcement officer, and to the
3 zoning officer. A copy of the recorded decision shall be mailed within one business day of
4 recording, by any method that provides confirmation of receipt, to the applicant, and to any
5 objector who has filed a written request for notice with the zoning enforcement officer, as well as
6 a copy to the zoning enforcement officer.

7 SECTION 2. Section 45-24-46 of the General Laws in Chapter 45-24 entitled "Zoning
8 Ordinances" is hereby repealed.

9 ~~**45-24-46. Special provisions -- Modification.**~~

10 ~~(a) A zoning ordinance may provide for the issuance of modifications or adjustments~~
11 ~~from the literal dimensional requirements of the zoning ordinance in the instance of the~~
12 ~~construction, alteration, or structural modification of a structure or lot of record. If the ordinance~~
13 ~~allows modifications then the zoning enforcement officer is authorized to grant modification~~
14 ~~permits. The zoning ordinance establishes the maximum percent allowed for a modification,~~
15 ~~which shall not exceed twenty five percent (25%), of any of the dimensional requirements~~
16 ~~specified in the zoning ordinance. A modification does not permit moving of lot lines. The zoning~~
17 ~~ordinance shall specify which dimensional requirements or combinations of these requirements~~
18 ~~are allowable under a modification. These requirements may differ by use or zoning district.~~
19 ~~Within ten (10) days of the receipt of a request for a modification, the zoning enforcement officer~~
20 ~~shall make a decision as to the suitability of the requested modification based on the following~~
21 ~~determinations:~~

22 ~~(1) The modification requested is reasonably necessary for the full enjoyment of the~~
23 ~~permitted use;~~

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

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

28 ~~(4) The modification requested does not require a variance of a flood hazard requirement.~~

29 ~~(b) Upon an affirmative determination, the zoning enforcement officer shall notify, by~~
30 ~~registered or certified mail, all property owners abutting the property which is the subject of the~~
31 ~~modification request, and shall indicate the street address of the subject property in the notice,~~
32 ~~and shall publish in a newspaper of general circulation within the city or town that the~~
33 ~~modification will be granted unless written objection is received within thirty (30) days of the~~
34 ~~public notice. If written objection is received within thirty (30) days, the request for a~~

1 ~~modification shall be denied. In that case the changes requested will be considered a request for a~~
2 ~~variance and may only be issued by the zoning board of review following the standard procedures~~
3 ~~for variances. If no written objections are received within thirty (30) days, the zoning~~
4 ~~enforcement officer shall grant the modification. The zoning enforcement officer may apply any~~
5 ~~special conditions to the permit as may, in the opinion of the officer, be required to conform to~~
6 ~~the intent and purposes of the zoning ordinance. The zoning enforcement officer shall keep public~~
7 ~~records of all requests for modifications, and of findings, determinations, special conditions, and~~
8 ~~any objections received. Costs of any notice required under this subsection shall be borne by the~~
9 ~~applicant requesting the modification.~~

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

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES-NEIGHBORHOOD

1 This act would amend several sections of the Rhode Island Zoning Enabling Act of 1991
2 with the intent of preserving neighborhood character and promoting smart growth.

3 This act would take effect upon passage.

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