

**2016 -- S 2561 SUBSTITUTE A**

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**STATE OF RHODE ISLAND**

**IN GENERAL ASSEMBLY**

**JANUARY SESSION, A.D. 2016**

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A N A C T

RELATING TO TOWNS AND CITIES - ZONING ORDINANCES

Introduced By: Senators McCaffrey, and Lombardi

Date Introduced: February 25, 2016

Referred To: Senate Housing & Municipal Government

It is enacted by the General Assembly as follows:

1           SECTION 1. Section 45-24-31 of the General Laws in Chapter 45-24 entitled "Zoning  
2 Ordinances" is hereby amended to read as follows:

3           **45-24-31. Definitions.** -- Where words or terms used in this chapter are defined in § 45-  
4 22.2-4, or 45-23-32, they have the meanings stated in that section. In addition, the following  
5 words have the following meanings. Additional words and phrases may be used in developing  
6 local ordinances under this chapter; however, the words and phrases defined in this section are  
7 controlling in all local ordinances created under this chapter:

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

10           (2) Accessory Dwelling Unit. - A dwelling unit: (i) rented to and occupied either by one  
11 or more members of the family of the occupant or occupants of the principal residence; or (ii)  
12 reserved for rental occupancy by a person or a family where the principal residence is owner  
13 occupied, and which meets the following provisions:

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

16           (B) An accessory dwelling unit shall include separate cooking and sanitary facilities,  
17 with its own legal means of ingress and egress and is a complete, separate dwelling unit. The  
18 accessory dwelling unit shall be within or attached to the principal dwelling unit structure or  
19 within an existing structure, such as a garage or barn, and designed so that the appearance of the

1 principal structure remains that of a one-family residence.

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

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

7 (i) Any person or persons or entity or entities who can demonstrate that their property  
8 will be injured by a decision of any officer or agency responsible for administering the zoning  
9 ordinance of a city or town; or

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

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

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

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

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

18 (9) Buffer. - Land which is maintained in either a natural or landscaped state, and is used  
19 to screen and/or mitigate the impacts of development on surrounding areas, properties, or rights-  
20 of-way.

21 (10) Building. - Any structure used or intended for supporting or sheltering any use or  
22 occupancy.

23 (11) Building Envelope. - The three-dimensional space within which a structure is  
24 permitted to be built on a lot and which is defined by regulations governing building setbacks,  
25 maximum height, and bulk; by other regulations; and/or by any combination thereof.

26 (12) Building Height. - ~~The vertical distance from grade, as determined by the~~  
27 ~~municipality, to the top of the highest point of the roof or structure. The distance may exclude~~  
28 ~~spires, chimneys, flag poles, and the like. For a vacant parcel of land, building height shall be~~  
29 measured from the average existing grade elevation where the foundation of the structure is  
30 proposed. For an existing structure, building height shall be measured from average grade taken  
31 from the outermost four (4) corners of the existing foundation. In all cases, building height shall  
32 be measured to the top of the highest point of the existing or proposed roof or structure. This  
33 distance shall exclude spires, chimneys, flag poles, and the like. For any property or structure  
34 located in a Special flood hazard area, as shown on the official FEMA Flood Insurance Rate

1 Maps (FIRMs), where freeboard as defined in this section, is being utilized or proposed, such  
2 freeboard area, not to exceed five feet (5'), shall be excluded from the building height calculation.

3 (13) Cluster. - A site planning technique that concentrates buildings in specific areas on  
4 the site to allow the remaining land to be used for recreation, common open space, and/or  
5 preservation of environmentally, historically, culturally, or other sensitive features and/or  
6 structures. The techniques used to concentrate buildings shall be specified in the ordinance and  
7 may include, but are not limited to, reduction in lot areas, setback requirements, and/or bulk  
8 requirements, with the resultant open land being devoted by deed restrictions for one or more  
9 uses. Under cluster development there is no increase in the number of lots that would be  
10 permitted under conventional development except where ordinance provisions include incentive  
11 bonuses for certain types or conditions of development.

12 (14) Common Ownership. - Either:

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

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

17 (15) Community Residence. - A home or residential facility where children and/or adults  
18 reside in a family setting and may or may not receive supervised care. This does not include  
19 halfway houses or substance abuse treatment facilities. This does include, but is not limited, to the  
20 following:

21 (i) Whenever six (6) or fewer children or adults with retardation reside in any type of  
22 residence in the community, as licensed by the state pursuant to chapter 24 of title 40.1. All  
23 requirements pertaining to local zoning are waived for these community residences;

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

26 (iii) A residence for children providing care or supervision, or both, to not more than  
27 eight (8) children including those of the care giver and licensed by the state pursuant to chapter  
28 72.1 of title 42;

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

1 fostering independence, self-sufficiency, and eventual transition to a permanent living situation.

2 (16) Comprehensive Plan. - The comprehensive plan adopted and approved pursuant to  
3 chapter 22.2 of this title and to which any zoning adopted pursuant to this chapter shall be in  
4 compliance.

5 (17) Day Care -- Day Care Center. - Any other day care center which is not a family day  
6 care home.

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

11 (19) Density, Residential. - The number of dwelling units per unit of land.

12 (20) Development. - The construction, reconstruction, conversion, structural alteration,  
13 relocation, or enlargement of any structure; any mining, excavation, landfill or land disturbance;  
14 or any change in use, or alteration or extension of the use, of land.

15 (21) Development Plan Review. - The process whereby authorized local officials review  
16 the site plans, maps, and other documentation of a development to determine the compliance with  
17 the stated purposes and standards of the ordinance.

18 (22) District. - See "zoning use district".

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

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

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

30 (26) Family. - A person or persons related by blood, marriage, or other legal means. See  
31 also "Household".

32 (27) Floating Zone. - An unmapped zoning district adopted within the ordinance which  
33 is established on the zoning map only when an application for development, meeting the zone  
34 requirements, is approved.

1 (28) Floodplains, or Flood Hazard Area. - As defined in § 45-22.2-4.

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

6 ~~(29)~~(30) Groundwater. - "Groundwater" and associated terms, as defined in § 46-13.1-3.

7 ~~(30)~~(31) Halfway House. - A residential facility for adults or children who have been  
8 institutionalized for criminal conduct and who require a group setting to facilitate the transition to  
9 a functional member of society.

10 ~~(31)~~(32) Hardship. - See § 45-24-41.

11 ~~(32)~~(33) Historic District, or Historic Site. - As defined in § 45-22.2-4.

12 ~~(33)~~(34) Home Occupation. - Any activity customarily carried out for gain by a resident,  
13 conducted as an accessory use in the resident's dwelling unit.

14 ~~(34)~~(35) Household. - One or more persons living together in a single dwelling unit, with  
15 common access to, and common use of, all living and eating areas and all areas and facilities for  
16 the preparation and storage of food within the dwelling unit. The term "household unit" is  
17 synonymous with the term "dwelling unit" for determining the number of units allowed within  
18 any structure on any lot in a zoning district. An individual household shall consist of any one of  
19 the following:

20 (i) A family, which may also include servants and employees living with the family; or

21 (ii) A person or group of unrelated persons living together. The maximum number may  
22 be set by local ordinance, but this maximum shall not be less than three (3).

23 ~~(35)~~(36) Incentive Zoning. - The process whereby the local authority may grant  
24 additional development capacity in exchange for the developer's provision of a public benefit or  
25 amenity as specified in local ordinances.

26 ~~(36)~~(37) Infrastructure. - Facilities and services needed to sustain residential,  
27 commercial, industrial, institutional, and other activities.

28 ~~(37)~~(38) Land Development Project. - A project in which one or more lots, tracts, or  
29 parcels of land are developed or redeveloped as a coordinated site for one or more uses, units, or  
30 structures, including, but not limited to, planned development and/or cluster development for  
31 residential, commercial, institutional, recreational, open space, and/or mixed uses as provided in  
32 the zoning ordinance.

33 ~~(38)~~(39) Lot. - Either:

34 (i) The basic development unit for determination of lot area, depth, and other

1 dimensional regulations; or

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

5 ~~(39)~~(40) Lot Area. - The total area within the boundaries of a lot, excluding any street  
6 right-of-way, usually reported in acres or square feet.

7 ~~(40)~~(41) Lot Area, Minimum. - The smallest land area established by the local zoning  
8 ordinance upon which a use, building or structure may be located in a particular zoning district.

9 ~~(41)~~(42) Lot Building Coverage. - That portion of the lot that is or may be covered by  
10 buildings and accessory buildings.

11 ~~(42)~~(43) Lot Depth. - The distance measured from the front lot line to the rear lot line.  
12 For lots where the front and rear lot lines are not parallel, the lot depth is an average of the depth.

13 ~~(43)~~(44) Lot Frontage. - That portion of a lot abutting a street. A zoning ordinance shall  
14 specify how noncontiguous frontage will be considered with regard to minimum frontage  
15 requirements.

16 ~~(44)~~(45) Lot Line. - A line of record, bounding a lot, which divides one lot from another  
17 lot or from a public or private street or any other public or private space and shall include:

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

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

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

26 ~~(45)~~(46) Lot Size, Minimum. - Shall have the same meaning as "minimum lot area"  
27 defined herein.

28 ~~(46)~~(47) Lot, Through. - A lot which fronts upon two (2) parallel streets, or which fronts  
29 upon two (2) streets which do not intersect at the boundaries of the lot.

30 ~~(47)~~(48) Lot Width. - The horizontal distance between the side lines of a lot measured at  
31 right angles to its depth along a straight line parallel to the front lot line at the minimum front  
32 setback line.

33 ~~(48)~~(49) Mere Inconvenience. - See § 45-24-41.

34 ~~(49)~~(50) Mixed Use. - A mixture of land uses within a single development, building, or

1 tract.

2 ~~(50)~~(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 ~~(51)~~(52) 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 and not in  
9 conformity with the provisions of that ordinance or amendment. Nonconformance is of only two  
10 (2) types:

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

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

22 ~~(52)~~(53) Overlay District. - A district established in a zoning ordinance that is  
23 superimposed on one or more districts or parts of districts. The standards and requirements  
24 associated with an overlay district may be more or less restrictive than those in the underlying  
25 districts consistent with other applicable state and federal laws.

26 ~~(53)~~(54) Performance Standards. - A set of criteria or limits relating to elements which a  
27 particular use or process must either meet or may not exceed.

28 ~~(54)~~(55) Permitted Use. - A use by right which is specifically authorized in a particular  
29 zoning district.

30 ~~(55)~~(56) Planned Development. - A "land development project", as defined in § 45-24-  
31 31(37), and developed according to plan as a single entity and containing one or more structures  
32 and/or uses with appurtenant common areas.

33 ~~(56)~~(57) Plant Agriculture. - The growing of plants for food or fiber, to sell or consume.

34 ~~(57)~~(58) Preapplication Conference. - A review meeting of a proposed development held

1 between applicants and reviewing agencies as permitted by law and municipal ordinance, before  
2 formal submission of an application for a permit or for development approval.

3 ~~(58)~~(59) Setback Line or Lines. - A line or lines parallel to a lot line at the minimum  
4 distance of the required setback for the zoning district in which the lot is located that establishes  
5 the area within which the principal structure must be erected or placed.

6 ~~(59)~~(60) Slope of Land. - The grade, pitch, rise or incline of the topographic landform or  
7 surface of the ground.

8 ~~(60)~~(61) Site Plan. - The development plan for one or more lots on which is shown the  
9 existing and/or the proposed conditions of the lot.

10 ~~(61)~~(62) Special Use. - A regulated use which is permitted pursuant to the special-use  
11 permit issued by the authorized governmental entity, pursuant to § 45-24-42. Formerly referred to  
12 as a special exception.

13 ~~(62)~~(63) Structure. - A combination of materials to form a construction for use,  
14 occupancy, or ornamentation, whether installed on, above, or below, the surface of land or water.

15 ~~(63)~~(64) Substandard Lot of Record. - Any lot lawfully existing at the time of adoption  
16 or amendment of a zoning ordinance and not in conformance with the dimensional and/or area  
17 provisions of that ordinance.

18 ~~(64)~~(65) Use. - The purpose or activity for which land or buildings are designed,  
19 arranged, or intended, or for which land or buildings are occupied or maintained.

20 ~~(65)~~(66) Variance. - Permission to depart from the literal requirements of a zoning  
21 ordinance. An authorization for the construction or maintenance of a building or structure, or for  
22 the establishment or maintenance of a use of land, which is prohibited by a zoning ordinance.  
23 There are only two (2) categories of variance, a use variance or a dimensional variance.

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

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

34 ~~(66)~~(67) Waters. - As defined in § 46-12-1(23).



1           ~~(67)~~(68) Wetland, Coastal. - As defined in § 45-22.2-4.

2           ~~(68)~~(69) Wetland, Freshwater. - As defined in § 2-1-20.

3           ~~(69)~~(70) Zoning Certificate. - A document signed by the zoning enforcement officer, as  
4 required in the zoning ordinance, which acknowledges that a use, structure, building, or lot either  
5 complies with or is legally nonconforming to the provisions of the municipal zoning ordinance or  
6 is an authorized variance or modification therefrom.

7           ~~(70)~~(71) Zoning Map. - The map or maps which are a part of the zoning ordinance and  
8 which delineate the boundaries of all mapped zoning districts within the physical boundary of the  
9 city or town.

10          ~~(71)~~(72) Zoning Ordinance. - An ordinance enacted by the legislative body of the city or  
11 town pursuant to this chapter and in the manner providing for the adoption of ordinances in the  
12 city or town's legislative or home rule charter, if any, which establish regulations and standards  
13 relating to the nature and extent of uses of land and structures, which is consistent with the  
14 comprehensive plan of the city or town as defined in chapter 22.2 of this title, which includes a  
15 zoning map, and which complies with the provisions of this chapter.

16          ~~(72)~~(73) Zoning Use District. - The basic unit in zoning, either mapped or unmapped, to  
17 which a uniform set of regulations applies, or a uniform set of regulations for a specified use.  
18 Zoning use districts include, but are not limited to: agricultural, commercial, industrial,  
19 institutional, open space, and residential. Each district may include sub-districts. Districts may be  
20 combined.

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

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
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1           This act would amend the definition of "building height" and define the term "freeboard"  
2 in the Zoning Enabling Act to account for obstacles to construction in flood zone areas and to  
3 encourage safe and stable design for those structures.

4           This act would take effect upon passage.

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