

SUMMARY OF CHANGES TO LAND USE ACTS AS A RESULT OF 2023 LEGISLATIVE SESSION¹

TO: RHODE ISLAND BUILDERS ASSOCIATION

FROM: JOELLE ROCHA, ESQ., Partner, Duffy & Sweeney, LTD.

jrocha@duffysweeney.com

401-455-0700

ALL LEGISLATION EFFECTIVE 1/1/24 EXCEPT FOR NOTICE BILL BELOW

I. NOTICE REQUIREMENTS—EFFECTIVE NOW

All applications (zoning and planning) same requirements now. No more certified mailing.

- First class mail with mailing affidavit.
- Local newspaper published 2 weeks before hearing
- Abutters mailings 10 days before
- Municipal website 2 weeks before

II. MAJOR LAND DEVELOPMENT/MAJOR SUBDIVISION REVIEW

(slide of review process attached at **Tab A**—completed by Weston and Sampson)

Stays substantially the same.

New:

1. Public hearing only required at master, but public notice (mailings) still required at preliminary. (note, unless new zoning relief is requested at preliminary, then public hearing under UDR needed)
2. Administrative Officer (AO) can combine stages if all materials submitted for both
3. Timeframe to certify complete does not begin unless with the application a completed checklist is provided.
4. If zoning relief is requested as part of the application, it is reviewed by the planning board under unified development review (UDR) which is now mandatory. (if the zoning relief is minor and qualifies as a modification (see below), you would submit that request to the zoning official).
5. Appeals of decisions now go direct to superior court—no zoning board of appeals for permitting decisions.
6. Major subdivisions are anything 10 lots or over
7. Final now administrative unless major change from preliminary or submission waiver granted at preliminary
8. State approvals needed before end of preliminary plan review (before decision) not at submission time.

¹ Not all details and changes are in this memorandum, only the most major/high points. Generally the review timeframes are not set forth here. Please contact your attorney for more detail regarding a specific project or application. Additionally, the municipalities are in the middle of amending their ordinances, so those should be reviewed as well.

III. MINOR LAND DEVELOPMENT/MINOR SUBDIVISION

A. Categories are now defined in state law:

1. Minor subdivision:

Subdivision creating nine or fewer lots.

2. Minor Land development:

(A) Seven thousand five hundred (7,500) gross square feet of floor area of new commercial, manufacturing or industrial development; or less, or

(B) An expansion of up to fifty percent (50%) of existing floor area or up to ten thousand (10,000) square feet for commercial, manufacturing or industrial structures; or

(C) Mixed-use development consisting of up to six (6) dwelling units and two thousand five hundred (2,500) gross square feet of commercial space or less; or

(D) Multi-family residential or residential condominium development of nine (9) units or less; or

(E) Change in use at the property where no extensive construction of improvements are sought;

(F) An adaptive reuse project of up to twenty-five thousand (25,000) square feet of gross floor area located in a commercial zone where no extensive exterior construction of improvements is sought;

(G) An adaptive reuse project located in a residential zone which results in less than nine (9) residential units;

HOWEVER, municipalities can increase the thresholds in which minor land development is allowed, but not decrease them. For example, it is expected that Providence will continue to review all strictly residential with no zoning relief as minor land development projects.

ALSO, the municipality can elect that some of these categories which overlap the Development Plan Review (“DPR”) categories are reviewed as DPR.

B. Process—Slide of review process attached at **Tab B**—completed by Weston and Sampson

- Generally two stages of review—same as current law—preliminary and final.
- Administrative officer has the ability to combine stages of review
- Submission must include a completed checklist or the date for certificate of completeness doesn't start until received (same as major)
- Process depends on type of application. It is no longer the rule that if a minor project needs zoning relief it becomes a major project
- Projects requiring zoning relief (dimensional variance or special use permit):

1. Zoning relief qualifies as a modification: then applicant submits for modification to ZO first. If granted, application for preliminary plan is reviewed administratively. If modification is denied or objection received then it proceeds under UDR before the planning board and it includes a public hearing
 2. zoning relief does not qualify for a modification, then minor review is done via UDR before planning board which includes a public hearing
- Applications involving street extension are reviewed before the planning board and require a public hearing
 - Projects not requiring zoning relief are reviewed administratively by the AO who can also grant waivers of design standards as specifically set forth in local ordinance
 - Final plan (no matter the type of development) is administrative to be done by AO or technical review committee, UNLESS there is a major change (as defined in the law)
 - Appeals of all decisions go direct to superior court
 - Minor land development approvals now valid for one year instead of 90 days

IV. DEVELOPMENT PLAN REVIEW

A DEVELOPMENT CANNOT BE BOTH MAJOR/MINOR LAND DEVELOPMENT AND DPR. NOT TO BE SUBJECT TO MORE THAN ONE REVIEW PROCESS.

Design or site plan review of a development of a permitted use. A municipality may utilize development plan review under limited circumstances to encourage development to comply with design and/or performance standards of the community under specific and objective guidelines, for developments including, but not limited to:

(i) A change in use at the property where no extensive construction of improvements is sought;

(ii) An adaptive reuse project located in a commercial zone where no extensive exterior construction of improvements is sought;

(iii) An adaptive reuse project located in a residential zone which results in less than nine (9) residential units;

(iv) Development in a designated urban or growth center;

(v) Institutional development design review for educational or hospital facilities; or

(vi) Development in a historic district.

- Local regulations/ordinances shall provide what categories of projects shall be reviewed under DPR and what specific objective standards are to be met
- Local regulations/ordinances shall designate who the permitting authority is (planning board, TRC or administrative officer)
- Permitting authority can grant waivers of design standards if specifically set forth in the regs or ordinance
- Administrative DPR is one stage of review
- Formal DPR is two (like minor)

- If need zoning relief, follow same process as minor—either get a modification, or go under UDR
- Appeals go direct to superior court.

V. UNIFIED DEVELOPMENT REVIEW

Utilization of the planning board to grant zoning variances and special use permits in conjunction with a land development project or subdivision. Mandatory for all municipalities as of Jan. 1, 2024. Means no more bouncing back and forth between planning and zoning on the same project (like a comp permit but the planning board in a conventional development applies the same zoning standards for dimensional variances and special use permits (unlike the standard for an “adjustment” for a comprehensive permit (see below). When does it apply? For all applications needing zoning relief that either do not qualify as a modification or a modification was denied or objected to.

1. DPR

- Request must be made at preliminary plan stage—public hearing required

2. minor land development and minor subdivisions

- Follows minor process but public hearing required before preliminary plan approval is granted

3. major land development and major subdivisions

- Follows major process
- Public hearing on the zoning relief required at master plan stage or first level of approval if stages are combined by AO
- Can request revision of zoning relief or additional relief at this stage but would need a public hearing (which is not required at preliminary for conventional project)

VI. COMPREHENSIVE PERMITS

Significant changes include:

- No master plan stage
- Preapplication—now have to submit certain required documents for review
- Then straight to preliminary plan review
 - Good news: only one real level of appeal because of the shortened process (final plan appeals are limited to the changes between preliminary and final plan)
- Municipalities are to provide zoning incentives to offset the costs of the LMI units including but not limited to:

Mandatory (baseline) density bonuses:

Take yield of lot under current zoning and add (for density calc, need to remove wetlands, wetland buffers, area devoted to infrastructure for the development and easements or rights of way of record

For developments with available public water and sewer:

Providing 25% LMI: bonus is 5 units per acre²
Providing 50% LMI, bonus is 9 units per acre
Providing 100% LMI, bonus is 12 units per acre

For developments with private water and sewer or a combination of public and private:

Providing 25% LMI: bonus is 3 units per acre
Providing 50% LMI: bonus is 5 units per acre
Providing 100% LMI: bonus is 7 units per acre

Parking: municipality cannot require more than one off street parking space for units up to 2 bedrooms

Bedrooms: municipality cannot limit the number of bedrooms to under 3 for single family units

Floor area: municipality cannot utilize FAR limitations except as set forth in min housing codes

The standards of review for approval and denial have been further adjusted in favor of development and continue to be different than a conventional application

VII. INCLUSIONARY ZONING

- For communities that retain their IZ provisions, subject to applicable lot setback, lot width, frontage requirements or relief from the same, the municipality shall allow the addition of 2 market rate units for each affordable unit and the min lot size per unit shall be reduced accordingly. Municipality shall be able to provide larger density bonuses if the percentage of LMI is higher than the baseline (25%) *note—IZ now requires 25% LMI not 10%
- Municipality can provide other zoning incentives to offset the costs of LMI units
- If developer does fee in lieu—development shall not be allowed a density bonus or be allowed administrative review

VIII. ADAPTIVE REUSE

- Adaptive reuse of a property (defined as a change of the use of the property from its built-use to a use which is at least 50% residential) is an allowed use, meaning no zone change is required for residential in these structures (multifamily) so long as there is no ELUR or similar restriction preventing residential
- Parking requirements cannot be over 1 per unit
- For projects: 1) staying within existing footprint (or any expansion is solely to comply with building code); and 2) development includes at least 20% LMI component; and access to public utilities (water and sewer) or approval of private systems, then municipality shall allow a density of at least 15 units per acre
- Density for all other projects shall be permitted to the maximum allowed that otherwise meets all standards of minimum housing

² All these numbers are prefaced with “at least” i.e. “at least 5 units per acre”

IX. ZONING CHANGES OF SIGNIFICANCE

Dimensional variance standard altered

- Amends the standards for granting a dimensional variance:
 1. eliminates the requirements that the hardship doesn't result primarily from the applicant's desire to realize greater financial gain
 2. eliminates the requirement that the relief granted is the least relief necessary (but see #3)
 3. BUT Clarifies the requirement that the applicant would suffer more than a mere inconvenience if the variance were denied by providing that this means "relief sought is minimal to a reasonable enjoyment of the permitted use to which the property is proposed to be devoted."

Special use permits

- All municipalities to allow for granting of a dimensional variance in conjunction with SUP
- Ordinance must provide for specific and objective criteria for each category of SUP, otherwise use is permitted by right
- The criteria cannot include a determination under the comprehensive plan

Substandard lots of record

- Substandard lots of record now allowed to have proportionally reduced dimensional standards that are equivalent to the proportion of the lot area of the substandard lot to the minimum lot area requirements for the district in which the lot is located. Any lot exceeding such reduced requirements must apply with a modification request or a dimensional variance

Merger

- Prohibits the merger of lots when the substandard lot of record has an area equal to or greater than the area of 50% of the lots within 200 feet of the subject lot, as confirmed by the zoning enforcement officer.

Modifications

Requires municipalities to provide for the issuance of dimensional modifications, which was previously optional, and amends standards for granting the dimensional modification.

- Dimensional modifications of up to 15% of the dimensional requirement must be allowed and modifications between 15% and 25% of the dimensional requirement can be allowed if municipality so chooses (must be in ZO)
- Modifications of less than 5% of the dimensional requirement may be granted without notice.
- Standards for granting a modification are provided for in the law
- Process is set forth in law