Ursillo, Teitz & Ritch, Ltd.
Counsellors At Law

2 Williams Street
(at South Main Street)
Providence, Rhode Island 02903-2918

Michael A. Ursillo *
Andrew M. Teitz, AICP * †
Scott A. Ritch * †
———————
Troy L. Costa †
Amy H. Goins * †
Peter F. Skwirz * †
Admitted in RI*, MA†

Tel (401) 331-2222
Fax (401) 751-5257
amygoins@utrlaw.com

M E M O R A N D U M

TO: **The Honorable Bristol Town Council**
Steven Contente, Town Administrator
Diane Williamson, Director of Community Development
Edward M. Tanner, Principal Planner
Stephen Greenleaf, Building Official
Planning Board
Zoning Board
Historic District Commission

FROM: **Amy H. Goins, Esq., Assistant Town Solicitor**
Andrew M. Teitz, Esq., AICP, Assistant Town Solicitor

DATE: **June 24, 2024**

SUBJECT: **Recently Enacted Laws Affecting Land Use**

As you know, the General Assembly recently passed a number of significant bills relating to land use and housing production. The impact of these bills does not appear to be quite as dramatic as that of last year's housing package, but there are some important substantive and procedural changes. As of the date of this memo, the bills have not yet been signed into law by the Governor, but we expect them to be signed soon. Copies of the legislation are attached for your review along with a press release from the office of Speaker Shekarchi.

Our office will be working with staff on the amendments that will be required to both the Zoning Ordinance and the Land Development & Subdivision Regulations. Please let us know if you have any questions in the meantime.

Contents

H 7062A – Accessory Dwelling Units

→ Key Takeaway: This is perhaps the most significant bill from this year's crop of housing bills, and will require amendments to the Zoning Ordinance. ADUs will be allowed "as of right" in many locations. There is also ambiguity and concern about the treatment of "family member" ADUs that were or may now be created, when the family member dies, leaves, or the property is sold, since the municipality is forbidden to revoke the prior permission.

→ Effective Date: Upon Passage

This legislation allows more accessory dwelling units (ADUs) to be constructed as of right, with no local approval required other than a building permit. When the ADU law was last amended in 2022, those amendments were widely viewed by municipal officials and attorneys as difficult to interpret. This bill clarifies the rules surrounding ADUs as follows:

- Housekeeping changes to the definition of an ADU: "A residential living unit on the same lot where the principal use is a legally established single-family dwelling unit or multi-family dwelling unit. An ADU provides complete independent living facilities for one or more persons. It may take various forms including, but not limited to: a detached unit; a unit that is part of an accessory structure, such as a detached garage; or a unit that is part of an expanded or remodeled primary dwelling."

Where ADUs would be permitted by right:

The law provides that one ADU per lot shall be allowed under the following circumstances:

- On an owner-occupied property as a reasonable accommodation for family members with disabilities; or
- On a lot with a total area of at least 20,000 sf for which the primary use is residential; or
- Where the proposed ADU is located within the existing footprint of the primary structure or existing accessory attached or detached structure and doesn't expand the footprint of

the structure. The use of "footprint" rather than "envelope" presumably means that the structure can be raised in height up to the applicable height limit.

Uniform standards for ADUs:

- Maximum unit size can be established, but subject to applicable dimensional requirements, municipalities must allow:
    - A studio or one-bedroom ADU of at least 900 sf, or 60% of the principal dwelling's floor area, whichever is less; and
    - A two-bedroom ADU of at least 1,200 sf, or 60% of the principal dwelling's floor area, whichever is less

What Cities & Towns Cannot Do:

[Note: this list was already on the books, but the new law extensively amends it.]

- Restrict tenants based on familial relationships or age, unless such restriction is needed to comply with the terms of a federal subsidy;
- Charge application or permitting fees in excess of what would be charged for a new single-family dwelling;
- Require infrastructure improvements in connection with the ADU, except for code compliance or as required by a state agency for compliance with state law or regulations, or to address capacity or upgrades necessary to accommodate the ADU;
- Impose dimensional requirements or other development standards that exceed the requirements for an accessory structure in the same zoning district;
- Require additional lot area, lot frontage, or lot width for conforming lots or legal nonconforming lots of record solely to accommodate an ADU;
- Require zoning relief for ADU applications proposed within an existing footprint of a legal nonconforming primary or accessory structure in order to address the existing dimensional nonconformity;
- Require more than one off-street parking space per bedroom for the ADU;
- Limit ADUs to lots with preexisting dwellings or otherwise prohibit ADUs as part of applications for new primary dwelling units or subdivisions;
- Prohibit an ADU that otherwise complies with this chapter and applicable dimensional regulations from having up to two (2) bedrooms;
- Require ADUs to be deed-restricted for occupancy by LMI households unless the ADU is part of a development subject to inclusionary zoning or a comprehensive permit application;
- Revoke the permitted status or otherwise require the disassembly of a legally established ADU upon transfer of title or occupancy. As noted above, this is inconsistent with allowing "family member" ADU units on lots smaller than 20,000 square feet.

Transient Rental Prohibited

- ADUs shall not be utilized as short-term rentals as defined under RIGL 42-63.1-2, meaning that they shall not be "offered or rented for tourist or transient use or through a hosting platform." The law defines "tourist or transient" use as an occupancy period of less than 30 days. Also note that even offering it for a rental on a hosting platform is not allowed. This should be a boon to local realtors.

Review Procedures

The legislation sets forth the proposed review and approval procedure for ADUs as follows:

- An application for an ADU which is not allowed by right shall not, by itself, be reviewed as a minor land development or major land development project. This means that the ADU can still be regulated through zoning, and relief from setback regulations, size limitations, etc. can be requested through the variance or special use permit process, but the ADU would not require review by the Planning Board or Administrative Officer.
- ADU applications shall be allowed as part of applications for new primary dwelling units or subdivisions.
- For proposed ADUs that are part of a larger development proposal, a municipality shall not count such ADUs toward density of the proposal for purposes of limiting the number of dwelling units allowed.
- Unified development review approval is permitted.
- ADUs may be exempted from utility assessment and/or tie-in fees (exemption is not mandatory).

H 7324A – Floor Area Ratio

→ Key Takeaway: This bill will affect the calculation of floor area ratio within the Zoning Ordinance, and the definition of floor area ratio should be revised to reflect this legislation.

→ Effective Date: Upon Passage

This bill was not part of the Speaker's housing package. This bill amends the section of the ZEA that allows municipalities to regulate floor area ratio (FAR), which is a tool that can control the massing of buildings. The bill prohibits municipalities from including basement areas within the calculation of FAR. The bill refers to § 45-24.3-5(5) of the Housing Maintenance and Occupancy Code for the definition of a "basement," which is "a portion of the building partly underground, but having less than half its clear height below the average grade of the adjoining ground." Note that this is essentially a "walk out" basement which may otherwise by code usually be used for living quarters, but now will not be counted in the calculation.

The Zoning Ordinance prescribes a maximum FAR for buildings in commercial and industrial zoning districts. The corresponding definition of FAR must be amended.

H 7382A – Unrelated Persons

→ Key Takeaway: This bill will require an amendment to the definition of a "household" in the Zoning Ordinance. Now, up to five unrelated persons must be permitted if there are at least five bedrooms.

→ Effective Date: Upon Passage

This bill was also not part of the Speaker's housing package. It amends the definition of a "household" set forth in the ZEA, which currently provides that municipalities may establish the maximum number of unrelated persons that can live together in a single dwelling unit, and that this maximum shall be at least three (3) unrelated persons. This law changes that provision to read as follows: "The maximum number [of unrelated persons living together] may be set by local ordinance, but this maximum shall not be less than one person per bedroom and shall not exceed five (5) unrelated persons per dwelling. The maximum number shall not apply to NARR-certified recovery residences [sober houses]."

The law now sets forth both a floor and a ceiling for the number of unrelated persons who can live together in one household, where previously, only a floor was set forth. The floor, meaning the minimum number of unrelated persons who can live together in a single dwelling unit, is now "one person per bedroom." Rather than a fixed number, it is dependent on the number of bedrooms in the dwelling unit. The ceiling, meaning the maximum number of unrelated persons who can cohabitate in a single dwelling unit, is now five unrelated persons.

The definition of a "household" within the Zoning Ordinance needs to be updated, as it limits the maximum number of unrelated persons who can live together in a single dwelling unit to four persons. This definition will need to match the new law. So if a single-family dwelling has four bedrooms, the Town can still enforce a four-person limit, but if a different dwelling has five bedrooms, then five unrelated people can reside together.

H 7948A – Inclusionary Zoning

→ Key Takeaway: This bill dials back some of the changes to last year's legislation on inclusionary zoning, especially changing the required density bonus ratio from 2-to-1 to 1-to-1, which returns inclusionary zoning to being a useful tool to obtain affordable housing. The Planning Board and Town Council can consider whether to reinstate inclusionary zoning in light of these amendments.

→ Effective Date: January 1, 2025

This bill amends the inclusionary zoning statute, § 45-24-46.1 of the ZEA. This statute was amended in the 2023 housing package in a way that disincentivized inclusionary zoning for municipalities, and some towns that previously had an inclusionary zoning requirement on the books opted to discontinue this requirement going forward. The Rhode Island Chapter of the American Planning Association (APA-RI) endorsed this legislation.

The changes are as follows:

- Affordable housing shall constitute no less than 15 percent of the total units proposed for development – this represents a decrease from 25 percent in last year's legislation.
- Decreases the density bonus to one (1) market rate unit for each required LMI unit – this represents a decrease from the current 2-for-1 density bonus
- Clarifies that the total number of units in the development may include less than 15 percent LMI units after the density bonus is determined. The 2023 legislation created some confusion about the calculation of the density bonus, which this amended provision addresses.
- The density bonus is available only if LMI units are built as part of the development itself – off-site construction or rehabilitation of LMI units, fee-in-lieu option, or land donation shall not render the development eligible for a density bonus.
- Requires local regulations to provide "reasonable relief from dimensional requirements to accommodate the bonus density under this section" but does not define "reasonable." In addition, a municipality "shall provide and an applicant may request" additional zoning incentives and/or municipal government subsidies to offset differential costs of affordable units, again without defining those incentives or subsidies.

Example calculation under 2024 legislation:

- Developer proposes a 6-unit development
- 15 percent of 6 is .9, so round up to 1 = 1 LMI unit required out of 6
- Density bonus is 1 extra unit, so the unit count is as follows: 1 LMI unit, 5 + 1 market rate units = 6 market rate, for a total of 7 units.

Example calculation under 2023 law:

- Developer proposes a 6-unit development
- 25 percent of 6 is 1.5, so round up to 2 = 2 LMI units required out of 6
- Density bonus is 4 extra units, so the unit count is as follows: 2 LMI units, 4 + 4 market rate units = 8 market rate, for a total of 10 units.

H 7949Aaa – Development Review Act and Zoning Enabling Act

→ Key Takeaway: This bill is mostly a collection of corrections/housekeeping-type amendments. It does include substantive changes to the way setbacks are calculated for undersized legal nonconforming lots, and now significantly limits Development Plan Review to only five types of uses, but makes Development Plan Review optional. It seems that Development Plan Review will fade away over time and such reviews will become Minor Land Development projects. It will require amendments to the Zoning Ordinance and Land Development & Subdivision Regulations.

→ Effective Date: Upon Passage

This bill follows last year's overhaul of the Development Review Act, which is the enabling act for subdivisions and land development projects. This bill contains several corrections, clarifications, and other changes, as follows:

- Changes definition of "development plan review" (DPR) by making the list of project types eligible for such review an exclusive list. Last year's legislation framed this list as "including but not limited to."
- Makes the process of DPR optional for towns rather than mandatory. This would reverse a change made in last year's legislation.
- Clarifies that formal DPR shall be reviewed as a final plan application
- Clarifies that a minor land development project involves certain project types unless the municipality designates those project types as subject to DPR. This is consistent with existing language elsewhere in the law allowing municipalities to do so.
- Clarifies the deadline for action on certain projects, correcting some inconsistencies in last year's legislation
- Revises the section on precedence of approvals, which wasn't updated last year and contained outdated language. The proposed language now takes into account the process of unified development review, which is now mandatory.

This bill also contains proposed amendments to the Zoning Enabling Act, as follows:

- Changes to dimensional regulations for substandard lots. Last year's legislation specified that "the setback, frontage, and/or lot width requirements for a structure under this section shall be reduced and the maximum building coverage requirements shall be increased by the same proportion as the lot area of the substandard lot is to the minimum lot area requirement of the zoning district in which the lot is located." This language would be replaced with an entirely different rule, which would have the same effect of making substandard lots easier to develop. The legislation provides as follows:
    - "Minimum building setbacks, lot frontage and lot width requirements for a lot which is nonconforming in area shall be reduced by applying the building setback, lot frontage and lot width requirements from another zoning district in the municipality in which the subject lot would be conforming as to lot area. If the subject lot is not conforming as to lot area in any zoning district in the municipality, the setbacks, lot frontage and lot width shall be reduced by the same proportion that the area of such substandard lot meets the minimum lot area of the district in which the lot is located. By way of example, if the lot area of a substandard lot only meets forty percent (40%) of the minimum lot area required in the district in which it is located, the setbacks, frontage and width shall each be reduced to forty percent (40%) of the requirements for those dimensional standards in the same district."
    - The legislation also clarifies the manner in which the maximum lot coverage shall be increased for substandard lots, as follows: "Maximum lot building coverage for lots that are nonconforming in area shall be increased by the inverse proportion that the area of such substandard lot meets the minimum area requirements in the

district in which the lot is located. By way of example, if the lot area of a substandard lot only meets forty percent (40%) of the required minimum lot area, the maximum lot building coverage is allowed to increase by sixty percent (60%) over the maximum permitted lot building coverage in that district."

- The legislation also provides that advertising and notice requirements for special use permit applications shall mirror what is already required for dimensional variance applications.
- The legislation further clarifies that development plan review is an optional process for municipalities. This addresses an inconsistency with last year's legislation.

H 7950A – Financial Guarantees

→ Key Takeaway: No longer can a municipality require only cash bonds for improvement guarantees. Now three forms must be offered, which will probably include bonds by insurance companies and bank letters of credit. This will require an amendment to the Land Development & Subdivision Regulations.

→ Effective Date: Upon Passage

State law requires that for developments requiring public improvements (roads, utilities, etc.), those improvements must be either completed prior to final plan approval or financially guaranteed. This legislation changes the rules applicable to financial guarantees as follows:

- Clarifies that the applicable permitting authority shall approve financial guarantees. This aligns with last year's legislation which transferred permitting authority for some developments from planning boards to the administrative officer/technical review committee.
- Requires timely inspections by town staff for improvements constructed without a financial guarantee.
- Requires local regulations to specify at least three (3) acceptable forms of financial security.
- Provides that a maintenance guarantee (for maintenance of required improvements) shall not exceed 10 percent of the construction guarantee, or the original cost of the public improvements if no guarantee was required.

H 7951A – Comprehensive Planning

→ Key Takeaway: This will make it even more difficult for a municipality to adopt a moratorium on development. It was likely sparked by concern that municipalities might react to these many legislative amendments with a flood of moratoria. No amendments are required on the local level.

→ Effective Date: Upon Passage

This bill amends § 45-22.2-13 of the Comprehensive Planning and Land Use Act by limiting land use moratoria, which are restrictions on building permits or other land use approvals. The legislation limits moratoria as follows:

- Limitations on residential building permits must be "vital to protecting public health and welfare and it must be demonstrated that there is no other means available to protect public health and welfare given the need for additional housing units in the community."
- Moratoria shall not be applicable to comprehensive permit applications or units to be developed under inclusionary zoning.
- Moratoria imposed "in the event of a dire emergency not reasonably foreseeable as part of the comprehensive planning process" shall be in effect no longer than 120 days.
- Proposals for moratoria on residential development must be advertised in the newspaper and on the municipality's website.
- Moratoria for residential development must include a vesting provision under which substantially complete applications are exempt.

H 7978A – Electronic Submission of Planning & Zoning Applications

→ Key Takeaway: This will require all municipalities to change their current procedures so that all development applications will be submitted electronically, similar to the current process for building permits.

→ Effective Date: Upon Passage, With Compliance Deadline of October 1, 2025

This legislation requires municipalities to implement electronic permitting for all development applications no later than October 1, 2025. State law already requires municipalities to adopt and implement electronic permitting for the building permit process. This legislation broadens that requirement to encompass development applications required under the Zoning Enabling Act, Development Review Act, and LMI Housing Act. The law requires the Town to impose a surcharge on applications, equal to an additional one-tenth of one percent (0.001%) of the total fee, that shall be transmitted monthly to the State, to defray the costs of the e-permitting software. The law also provides that DBR shall reimburse municipalities for annual fees and costs associated with the e-permitting requirement.

H 7979 – Combined Review Board

→ Key Takeaway: This will give the Town the option to replace the Planning Board and Zoning Board with a combined review board. This is one more step, albeit voluntary now, toward the elimination of the Zoning Board and replacement with one board. The 2023 legislation made Unified Development Review by the Planning Board mandatory, and also removed the appellate jurisdiction of zoning boards for planning board appeals and decisions of the administrative officer, and transferred it to the Superior Court Land Use Calendar.

→ Effective Date: January 1, 2025

This legislation gives municipalities the option to establish a combined review board in lieu of separate planning and zoning boards. The combined review board would have the power to act as a zoning board, a planning board, or both, as required. The legislation also amends provisions relating to the membership of planning boards and zoning boards.

As with previous legislation that was once optional but is now mandatory (unified development review, zoning modifications, etc.), it is possible that the option to establish a combined review board, if enacted, could later be turned into a mandate. (A press release from the Speaker's office dated March 7, 2024, describes this as a "pilot program.")

H 7980Aaa – Manufactured Homes

→ Key Takeaway: This bill was significantly revised from its original version. It would allow a community to allow a mobile home on any lot zoned for single-family use. Unfortunately, it still continues some of the confusion between "manufactured homes" and "mobile homes." No amendments are required on the local level unless the Town chooses to take action.

→ Effective Date: Upon Passage

This legislation amends the Zoning Enabling Act by providing that manufactured homes may be permitted where single-family homes are permitted. Note that an earlier version of this legislation would have made this treatment mandatory rather than option, which would have significantly changed current law. Under this bill, municipalities retain the authority to treat manufactured homes separately from stick-built homes. The legislation defines a "manufactured home" as follows:

> "As used in this section, a manufactured home shall have the same definition as in [federal law], meaning a structure, transportable in one or more sections, which, in the traveling mode, is eight (8) body feet or more in width or forty (40) body feet or more in length, or, when erected on site, is three hundred twenty (320) or more square feet, and which is built on a permanent chassis and is designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein; except that such term shall include any structure which meets all the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States Secretary of Housing and Urban Development and complies with the standards established under [federal law]; and except that such term shall not include any self-propelled recreational vehicle."

The legislation provides as follows:

> "Notwithstanding any other provisions of this chapter, all towns and cities may allow manufactured homes which comply with § 23-27.3-109.1.3 [reference is to the State Building Code] as a type of single-family home on any lot zoned for single-family use. Such home shall comply with all dimensional requirements of a single-family home in the district or seek relief for the same under the provisions of this chapter."

H 7982 – Wetlands

→ Key Takeaway: This law clarifies that DEM and CRMC have exclusive jurisdiction over setbacks from wetlands. This law will not require any amendments on the local level.

→ Effective Date: Upon Passage

Legislation enacted in 2015 began a process that ultimately led to municipalities losing the authority to regulate development near wetlands and wetland buffers. Regulations that took effect in 2022 now give the Department of Environmental Management or the Coastal Resources Management Council authority to regulate such development. This legislation simply clarifies this and doesn't make any substantive changes. It is fair to characterize this bill as a housekeeping amendment.

H 7984Aaa – Mobile & Manufactured Homes as LMI Units

→ Key Takeaway: This allows certain mobile homes to be counted as an affordable unit if there is a 30-year deed restriction in place, and one-half (½) of an affordable unit without a deed restriction, toward the required 10%. No amendments are required but there may be impacts to the Town's number of affordable housing units.

→ Effective Date: Upon Passage

This legislation would provide that mobile and manufactured homes shall constitute "affordable housing" as defined by state law, provided that the home meets the following conditions: (1) it constitutes a primary residence of the occupant(s); (2) it is located within a resident-owned community or the land containing the home is owned by the occupant(s); (3) it was constructed after June 15, 1976; and (4) it complies with federal standards for manufactured homes. Any affordable units meeting this definition shall be counted as one whole unit in determining the number of affordable units within the municipality. Such units that lack a deed restriction on affordability may be counted as half-units for purposes of the LMI quota, if the municipality contracts with an approved monitoring agent to verify eligibility.

MISCELLANEOUS LEGISLATION

The following bills will not directly alter laws relating to land use, so the summaries below are taken directly from the explanations provided by the General Assembly. All of these bills have been approved by the General Assembly.

H 7977A: "This resolution would create a thirteen (13) member special legislative study commission whose purpose it would be to study the ability of the Rhode Island educational system to offer degree or certificate programs within the State to provide a supply and a pipeline of planners, planning technicians, and planning staff, and who would report back to the House no later than April 1, 2025, and whose life would expire on June 30, 2025." This resolution passed the House on April 11. As a House resolution, it is effective without Senate passage.

Key Takeaway: The goal of this resolution is to restore the "pipeline" of young professional planners which evaporated after <u>URI eliminated its Master's program in planning several years ago.</u>

H 7983Aaa: "This act would amend various provisions relative to the duties of the state building commissioner and would establish a building code education and training unit to educate building officials and inspectors statewide." This law would take effect on January 1, 2025.

Key Takeaway: The goal of this act is to increase the number of "certified" building officials available to serve Rhode Island municipalities.

H 7985A "This act would require the department of administration to publish a report to the speaker of the house, president of the senate, and secretary of housing evaluating the cost to establish and maintain a statewide geographic information system."

Key Takeaway: **This act might eventually lead to the creation of statewide GIS system, and it is possible that it might lead to a statewide zoning map.**

H 7986Aaa: "This act would require towns and cities to publish a list of abandoned properties and makes various other amendments relative to the sale of abandoned property by a receiver."

Key Takeaway: Municipalities previously had to submit a list of abandoned properties to the state. Now they have to publish it as well. Also, in the sale of abandoned property by a Receiver, the Court may give priority to purchasers who propose one or more of four strategies for housing creation.

H 7981A – Residential Uses – NOT ENACTED

You may have heard some buzz about a law that would have changed where residential uses must be permitted, one of which would have required every municipality to allow duplexes in 30% of the municipality's land area. This law was ultimately not enacted.

Unfortunately, this law also contained certain revisions to the provisions of the ZEA that govern Adaptive Reuse, which was adopted last year. Theses revisions would have provided some protection for industrial uses and zones, but because the law failed to win passage, the Adaptive Reuse provisions remain in effect as is.