

2023 Amendments to Zoning Enabling Act & Effect on Municipalities

MICHAEL MONTI

SAYER REGAN & THAYER, LLP

130 BELLEVUE AVENUE

NEWPORT, RI

401-849-3040



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

2023 Legislative Session

- ▶ During the 2023 Legislative Session, the Legislature passed 8 Amendments to the Zoning Enabling Act.
- ▶ The amendments are pro-development and represent a targeted overhaul of existing provisions that stifle land development.
- ▶ This presentation sets forth the most significant amendment and will be accompanied by discussion as to whether and to what extent the municipality must amend its Zoning Code to comply with the new General Law.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

Senate Bill 1032-A (Effective 1/1/24)

- ▶ Changes the standard for granting a variance.
- ▶ Creates new regulations with respect to substandard lots of record.
- ▶ Creates a new process for administrative review for small non-compliance of dimensional regulations.
- ▶ Creates a more restrictive merger provision.
- ▶ Creates new rules for special use permits.
- ▶ Let's take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

23 (1) That the hardship from which the applicant seeks relief is due to the unique
24 characteristics of the subject land or structure and not to the general characteristics of the
25 surrounding area; and is not due to a physical or economic disability of the applicant, excepting
26 those physical disabilities addressed in § 45-24-30(a)(16);

27 (2) That the hardship is not the result of any prior action of the applicant ~~and does not result~~
28 ~~primarily from the desire of the applicant to realize greater financial gain; and~~

29 (3) That the granting of the requested variance will not alter the general character of the
30 surrounding area or impair the intent or purpose of the zoning ordinance or the comprehensive plan
31 upon which the ordinance is based; ~~and~~

32 ~~(4) That the relief to be granted is the least relief necessary.~~

33 (e) The zoning board of review, or, where unified development review is enabled pursuant
34 to § 45-24-46.4, the planning board or commission, shall, in addition to the above standards, require

1 that evidence is entered into the record of the proceedings showing that:

2 (1) In granting a use variance, the subject land or structure cannot yield any beneficial use
3 if it is required to conform to the provisions of the zoning ordinance. Nonconforming use of
4 neighboring land or structures in the same district and permitted use of lands or structures in an
5 adjacent district shall not be considered in granting a use variance; and

6 (2) In granting a dimensional variance, that the hardship suffered by the owner of the
7 subject property if the dimensional variance is not granted amounts to more than a mere
8 inconvenience, meaning that relief sought is minimal to a reasonable enjoyment of the permitted
9 use to which the property is proposed to be devoted. The fact that a use may be more profitable or
10 that a structure may be more valuable after the relief is granted is not grounds for relief. The zoning
11 board of review, or, where unified development review is enabled pursuant to § 45-24-46.4, the
12 planning board or commission has the power to grant dimensional variances where the use is
13 permitted by special-use permit ~~if provided for in the special-use permit sections of the zoning~~
14 ~~ordinance.~~



20 45-24-38. ~~General provisions~~ ~~Substandard lots of record~~ General provisions --

21 Substandard lots of record -- Effective January 1, 2024.

22 (a) Any city or town adopting or amending a zoning ordinance under this chapter shall
23 regulate the ~~use or uses~~ development of any single substandard lot of record or contiguous lots of
24 record at the effective date of adoption or amendment of the zoning ordinance.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

25 (b) Notwithstanding ~~notwithstanding~~ the failure of that lot or those lots to meet the
26 dimensional and/or quantitative requirements, and/or road frontage or other access requirements,
27 applicable in the district as stated in the ordinance, a substandard lot of record shall not be required
28 to seek any zoning relief based solely on the failure to meet minimum lot size requirements of the
29 district in which such lot is located. The setback, frontage, and/or lot width requirements for a
30 structure under this section shall be reduced and the maximum building coverage requirements
31 shall be increased by the same proportion as the lot area of the substandard lot is to the minimum
32 lot area requirement of the zoning district in which the lot is located. All proposals exceeding such
33 reduced requirement shall proceed with a modification request under § 45-24-46 or a dimensional
34 variance request under § 45-24-41, whichever is applicable.



1 (c) Provisions may be made for the merger of contiguous unimproved, or improved and
2 unimproved, substandard lots of record in the same ownership to create dimensionally conforming
3 lots or to reduce the extent of dimensional nonconformance. The ordinance shall specify the
4 standards, on a district by district basis, which determine the mergers. The standards include, but
5 are not to be limited to, the availability of infrastructure, the character of the neighborhood, and the
6 consistency with the comprehensive plan. The merger of lots shall not be required when the
7 substandard lot of record has an area equal to or greater than the area of fifty percent (50%) of the
8 lots within two hundred feet (200') of the subject lot, as confirmed by the zoning enforcement
9 officer.



15 45-24-42. ~~General provisions~~ ~~Special-use permits~~ General provisions -- Special-use
16 permits -- Effective January 1, 2024.

30 (3) Establish specific and objective criteria for the issuance of each type of use category of
31 special-use permit ~~that~~, which criteria shall be in conformance with the purposes and intent of the
32 comprehensive plan and the zoning ordinance of the city or town; however, in no case shall any
33 specific and objective criteria for a special use permit include a determination of consistency with
34 the comprehensive plan;

17 (c) If an ordinance does not expressly provide for specific and objective criteria for the
18 issuance of a category of special use permit such category shall be deemed to be permitted use.



28 (a) A zoning ordinance ~~may~~ shall provide for the issuance of modifications ~~or adjustments~~
29 from the literal dimensional requirements of the zoning ordinance in the instance of the
30 construction, alteration, or structural modification of a structure or lot of record. ~~If the ordinance~~
31 ~~allows modifications then the~~ The zoning enforcement officer is authorized to grant modification
32 permits. The zoning ordinance ~~establishes the maximum percent allowed for a modification, which~~
33 ~~shall not exceed twenty five percent (25%), of any of~~ shall permit modifications that are fifteen
34 percent (15%) or less of the dimensional requirements specified in the zoning ordinance but may
1 permit modification up to twenty-five percent (25%). A modification does not permit moving of
2 lot lines. ~~The zoning ordinance shall specify which dimensional requirements or combinations of~~
3 ~~these requirements are allowable under a modification. These requirements may differ by use or~~
4 ~~zoning district.~~ Within ten (10) days of the receipt of a request for a modification, the zoning
5 enforcement officer shall make a decision as to the suitability of the requested modification based
6 on the following determinations:



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

11 (3) The modification requested ~~is in harmony with the purposes and intent of the~~
12 ~~comprehensive plan and zoning ordinance of the city or town~~ does not require a variance of a flood
13 hazard requirement, unless the building is built in accordance with applicable regulations; and

14 (4) The modification requested does not ~~require a variance of a flood hazard requirement~~
15 violate any rules or regulations with respect to freshwater or coastal wetlands.



16 (b) Upon an affirmative determination, in the case of a modification of five percent (5%)
17 or less, the zoning enforcement officer shall have the authority to issue a permit approving the
18 modification, without any public notice requirements. In the case of a modification of greater than
19 five percent (5%), the zoning enforcement officer shall notify, by ~~registered or certified~~ first class
20 mail, all property owners abutting the property which is the subject of the modification request, and
21 shall indicate the street address of the subject property in the notice, and shall publish in a
22 newspaper of ~~general~~ local circulation within the city or town that the modification will be granted
23 unless written objection is received within ~~thirty (30)~~ fourteen (14) days of the public notice. If
24 written objection is received within ~~thirty (30)~~ fourteen (14) days, the request for a modification
25 shall be ~~denied.~~ scheduled for the next available hearing before the zoning board of review on
26 application for a dimensional variance. ~~In that case the changes requested will be considered a~~
27 ~~request for a variance and may only be issued by the zoning board of review~~ following the standard
28 procedures for such variances, including notice requirements provided for under this chapter. If no
29 written objections are received within ~~thirty (30)~~ fourteen (14) days, the zoning enforcement officer
30 shall grant the modification. The zoning enforcement officer may apply any special conditions to
31 the permit as may, in the opinion of the officer, be required to conform to the intent and purposes
32 of the zoning ordinance. The zoning enforcement officer shall keep public records of all requests
33 for modifications, and of findings, determinations, special conditions, and any objections received.



Senate Bill 1033-A (Effective 1/1/24)

- ▶ This bill deals with the creation and implementation of the Comprehensive Plan.
- ▶ It creates a penalty if a municipality fails to update its Comprehensive Plan every 12 years.
- ▶ Mandates a timeframe by which the municipality must adopt zoning amendments.
- ▶ Dictates that the future land use map controls over the zoning map.
- ▶ Requires an annual report to the Town Council on the implementation of the Comprehensive Plan.
- ▶ Prescribes that the Comprehensive Plan state specific goals and implementation actions relative to the development of low- and moderate-income housing.
- ▶ Let's take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

2 (b) A municipality shall periodically review and amend its plan in a timely manner to
3 account for changing conditions. At a minimum, a municipality shall fully update and re-adopt its
4 entire comprehensive plan, including supplemental plans, such as, but not limited to, special area
5 plans, that may be incorporated by reference, at least once every ten (10) years from the date of
6 municipal adoption. A minimum twenty (20) year planning timeframe in considering forecasts,
7 goals, and policies must be utilized for an update. If a municipality fails to fully update and re-
8 adopt its comprehensive plan within twelve (12) years from the date of the previous plan's adoption,
9 such municipality shall not be able to utilize the comprehensive plan as a basis for denial of a
10 municipal land use decision.



5 comprehensive plan and shall be included as part of the implementation program, but in no event
6 shall it take longer than eighteen (18) months for a zoning map to be brought into compliance with
7 the future land use map. The future land use map in a valid comprehensive plan updated in
8 accordance with this chapter shall govern all local municipal land use decisions.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

24 (v) The implementation program shall contain a concise strategic plan that details the
25 actions to be taken annually to achieve the goals and policies of the plan. The strategic plan shall
26 be reviewed annually by a municipality and the annual review shall be accomplished in the
27 following manner: a municipal planning department shall submit a report to the municipal planning
28 board for the board's review, comment and findings. The planning board shall submit to the
29 respective city or town council, a report summarizing the status of the implementation of the
30 strategic plan which report shall be reviewed by the city or town council at a public meeting.



28 (6) Housing. The plan must include the identification of existing housing patterns, an
29 analysis of existing and forecasted housing needs, and identification of areas suitable for future
30 housing development or rehabilitation. The plan shall include an affordable housing program that
31 meets the requirements of § 42-128-8.1, the “Comprehensive Housing Production and
32 Rehabilitation Act of 2004” and chapter 53 of this title, the “Rhode Island Low and Moderate
33 Income Housing Act.” The plan must include goals and policies that further the goal of § 45-22.2-
34 3(c)(3) and implementation techniques that identify specific programs to promote the preservation,
1 production, and rehabilitation of housing, as well as specific goals, implementation actions, and
2 time frames for development of low- and moderate-income housing, as defined in § 45-53-3.



Senate Bill 1034-A (Effective 1/1/24)

- ▶ New definitions for land development projects and development plan review.
- ▶ Administrative officer given authority to approve minor subdivisions and land development projects, except those proposing new streets or requiring zoning relief.
- ▶ Plans requiring zoning relief to be reviewed by Planning Board under unified review.
- ▶ Minor plans can be approved by administrative officer with no public review.
- ▶ Appeals go directly to Superior Court rather than Zoning Board.
- ▶ Let's take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

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

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

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

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

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

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

22 (vi) Development in a historic district.



12 (20) Land-development project. A project in which one or more lots, tracts, or parcels of
13 land or a portion thereof are developed or redeveloped as a coordinated site for one or more uses,
14 units, or structures, including but not limited to, planned development or cluster development for
15 residential commercial, institutional, recreational, open space, or mixed uses. The local regulations
16 shall include all requirements, procedures and standards necessary for proper review and approval
17 of land development projects to ensure consistency with this chapter and the Rhode Island zoning
18 enabling act.



19 (i) Minor land development project. A land development project involving any one the

20 following:

21 (A) Seven thousand five hundred (7,500) gross square feet of floor area of new commercial,

22 manufacturing or industrial development; or less, or

23 (B) An expansion of up to fifty percent (50%) of existing floor area or up to ten thousand

24 (10,000) square feet for commercial, manufacturing or industrial structures; or

25 (C) Mixed-use development consisting of up to six (6) dwelling units and two thousand

26 five hundred (2,500) gross square feet of commercial space or less; or



27 (D) Multi-family residential or residential condominium development of nine (9) units or
28 less; or
29 (E) Change in use at the property where no extensive construction of improvements are
30 sought;
31 (F) An adaptive reuse project of up to twenty-five thousand (25,000) square feet of gross
32 floor area located in a commercial zone where no extensive exterior construction of improvements
33 is sought;



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

1 (9) residential units;

2 A community can increase, but not decrease the thresholds for minor land development set
3 forth above if specifically set forth in the local ordinance and/or regulations. The process by which
4 minor land development projects are reviewed by the local planning board, commission, technical
5 review committee and/or administrative officer is set forth in § 45-23-38.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

6 (ii) Major land development project. A land development project which exceeds the
7 thresholds for a minor land development project as set forth in this section and local ordinance or
8 regulation. The process by which major land development projects are reviewed by the local
9 planning board, commission, technical review committee or administrative officer is set forth in §
10 45-23-39.



18 (i) Administrative subdivision. Subdivision of existing lots which yields no additional lots
19 for development, and involves no creation or extension of streets. This subdivision only involves
20 division, mergers, mergers and division, or adjustments of boundaries of existing lots. The process
21 by which an administrative officer or municipal planning board or commission reviews any
22 subdivision qualifying for this review is set forth in § 45-23-37.

23 (ii) Minor subdivision. A subdivision creating nine (9) or fewer buildable lots. The process
24 by which a municipal planning board, commission, technical review committee, and/or
25 administrative officer reviews a minor subdivision is set forth in § 45-23-38.

26 (iii) Major subdivision. A subdivision creating ten (10) or more buildable lots. The process
27 by which a municipal planning board or commission reviews any subdivision qualifying for this
28 review under § 45-23-39.



16 (b) Classification. ~~The~~ In accordance with this chapter, the administrative officer shall
17 advise the applicant as to which ~~approvals are~~ category of approval is required ~~and the appropriate~~
18 ~~board for hearing an application~~ for a ~~land development or subdivision~~ project. An applicant shall
19 not be required to obtain both land development and development plan review, for the same project.



9 45-23-38. ~~General provisions — Minor land development and minor subdivision~~

10 ~~review~~ General provisions -- Minor land development and minor subdivision review --

11 Effective January 1, 2024.

18 (1) Applications requesting relief from the zoning ordinance.

19 (i) Applications under this section which require relief which qualifies only as a
20 modification under § 45-24-46 and local ordinances shall proceed by filing an application under
21 this chapter and a request for a modification to the zoning enforcement officer. If such modification
22 is granted the application shall then proceed to be reviewed by the administrative officer pursuant
23 to the applicable requirements of this section. If the modification is denied or an objection is
24 received as set forth in § 45-24-46, such application shall proceed under unified development plan
25 review pursuant to § 45-23-50.1.



9 45-23-38. ~~General provisions — Minor land development and minor subdivision~~

10 ~~review~~ General provisions -- Minor land development and minor subdivision review --

11 Effective January 1, 2024.

26 (ii) Applications under this section which require relief from the literal provisions of the
27 zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning
28 board under unified development plan review pursuant to § 45-23-50.1, and a request for review
29 shall accompany the preliminary plan application.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

9 45-23-38. ~~General provisions — Minor land development and minor subdivision~~

10 ~~review~~ General provisions -- Minor land development and minor subdivision review --

11 Effective January 1, 2024.

30 (iii) Any application involving a street creation or extension shall be reviewed by the

31 planning board and require a public hearing.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

9 45-23-38. ~~General provisions — Minor land development and minor subdivision~~

10 ~~review~~ General provisions -- Minor land development and minor subdivision review --

11 Effective January 1, 2024.

32 (2) Other applications.

33 The administrative officer shall review and grant, grant with conditions or deny all other

34 applications under this section and may grant waivers of design standards as set forth in the local

1 regulations and zoning ordinance. The administrative officer may utilize the technical review

2 committee for initial review and recommendation. The local regulations shall specifically list what

3 limited waivers an administrative officer is authorized to grant as part of their review.



9 45-23-38. ~~General provisions — Minor land development and minor subdivision~~

10 ~~review~~ General provisions -- Minor land development and minor subdivision review --

11 Effective January 1, 2024.

4 (3) Review stages.

5 Minor plan review consists of two (2) stages, preliminary and final; provided, that unless
6 otherwise set forth in this section, if a street creation or extension is involved, or a request for
7 variances and/or special-use permits are submitted, pursuant to the regulation's unified
8 development review provisions, a public hearing is required before the planning board. The
9 administrative officer may combine the approval stages, providing requirements for both stages are
10 met by the applicant to the satisfaction of the administrative officer.



9 45-23-38. ~~General provisions — Minor land development and minor subdivision~~

10 ~~review~~ General provisions -- Minor land development and minor subdivision review --

11 Effective January 1, 2024.

16 (i) Appeal. Decisions under this section shall be considered an appealable decision pursuant

17 to § 45-23-71.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

23 45-23-39. General provisions — Major land development and major subdivision
24 review stages General provisions -- Major land development and major subdivision review
25 stages -- Effective January 1, 2024.

23 (iv) Applications requesting relief from the zoning ordinance.
24 (A) Applications under this chapter which require relief which qualifies only as a
25 modification under § 45-24-46 and local ordinances shall proceed by filing a master plan
26 application under this section and a request for a modification to the zoning enforcement officer. If
27 such modification is granted, the application shall then proceed to be reviewed by the planning
28 board pursuant to the applicable requirements of this section. If the modification is denied or an
29 objection is received as set forth in § 45-24-46, such application shall proceed under unified
30 development plan review pursuant to § 45-23-50.1.



23 45-23-39. General provisions — Major land development and major subdivision
24 review stages General provisions -- Major land development and major subdivision review
25 stages -- Effective January 1, 2024.

31 (B) Applications under this section which require relief from the literal provisions of the
32 zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning
33 board under unified development plan review pursuant to § 45-23-50.1.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

19 45-23-50. ~~Special provisions~~ — ~~Development plan review~~ Special provisions --

20 Development plan review -- Effective January 1, 2024.

21 (a) Municipalities may provide for development plan review, as defined in [§§ 45-23-32](#)
22 [and](#) 45-24-49 of the Rhode Island Zoning Enabling Act of 1991, ~~to be subject to~~ [as](#) part of the local
23 regulations. ~~(b)~~ In these instances, local regulations must include all requirements, procedures and
24 standards necessary for proper review and recommendations of projects subject to development
25 plan review to ensure consistency with the intent and purposes of this chapter and with § 45-24-49
26 of the Rhode Island Zoning Enabling Act of 1991. [The local regulations and/or ordinances shall](#)
27 [identify the permitting authority with the responsibility to review and approve applications for](#)
28 [development plan review, which shall be designated as the planning board, technical review](#)
29 [committee or administrative officer. The local regulations and/or ordinances shall provide for](#)
30 [specific categories of projects that may review and approve an application administratively as well](#)
31 [as categories which are required to be heard by the designated planning board, or authorized](#)
32 [permitting authority.](#)



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

19 45-23-50. ~~Special provisions~~ — ~~Development plan review~~ Special provisions --

20 Development plan review -- Effective January 1, 2024.

33 (b) The authorized permitting authority may waive requirements for development plan
34 approval where there is a change in use or occupancy and no extensive construction of
1 improvements is sought. The waiver may be granted only by a decision by the permitting authority
2 finding that the use will not affect existing drainage, circulation, relationship of buildings to each
3 other, landscaping, buffering, lighting and other considerations of development plan approval, and
4 that the existing facilities do not require upgraded or additional site improvements. The application
5 for a waiver of development plan approval review shall include documentation, as required by the
6 permitting authority, on prior use of the site. the proposed use, and its impact.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

19 45-23-50. ~~Special provisions — Development plan review~~ Special provisions --

20 Development plan review -- Effective January 1, 2024.

22 (ii) Applications under this section which require relief from the literal provisions of the
23 zoning ordinance in the form of a variance or special use permit, shall be reviewed by the planning
24 board under unified development plan review pursuant to § 45-23-50.1, and a request for review
25 shall accompany the preliminary plan application.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

19 45-23-50. ~~Special provisions — Development plan review~~ Special provisions --

20 Development plan review -- Effective January 1, 2024.

13 (k) Appeal. A decision under this section shall be considered an appealable decision

14 pursuant to § 45-23-71.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

Senate Bill 1035-A

- ▶ This bill mandates that the Zoning Code include a special provision for “Adaptive Reuse” of certain structures and exempts those structures from certain zoning requirements.
- ▶ Let’s take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

25 (h)(1) Adaptive reuse. Notwithstanding any other provisions of this chapter, adaptive reuse
26 for the conversion of any commercial building, including offices, schools, religious facilities,
27 medical buildings, and malls into residential units or mixed use developments which include the
28 development of at least fifty percent (50%) of the existing gross floor area into residential units,
29 shall be a permitted use and allowed by specific and objective provisions of a zoning ordinance,
30 except where such is prohibited by environmental land use restrictions recorded on the property by
31 the state of Rhode Island department of environmental management or the United States
32 Environmental Protection Agency preventing the conversion to residential use.

33 (i) The specific zoning ordinance provisions for adaptive reuse shall exempt adaptive reuse
34 developments from off-street parking requirements of over one space per dwelling unit.



1 (ii) Density. (A) For projects that meet the following criteria, zoning ordinances shall allow
2 for high density development and shall not limit the density to less than fifteen (15) dwelling units
3 per acre:

4 (I) Where the project is limited to the existing footprint, except that the footprint is allowed
5 to be expanded to accommodate upgrades related to the building and fire codes and utilities; and

6 (II) The development includes at least twenty percent (20%) low- and moderate-income
7 housing; and

8 (III) The development has access to public sewer and water service or has access to
9 adequate private water, such as a well and and/or wastewater treatment system(s) approved by the
10 relevant state agency for the entire development as applicable.

11 (B) For all other adaptive reuse projects, the residential density permitted in the converted
12 structure shall be the maximum allowed that otherwise meets all standards of minimum housing
13 and has access to public sewer and water service or has access to adequate private water, such as a
14 well, and wastewater treatment system(s) approved by the relevant state agency for the entire
15 development, as applicable, The density proposed shall be determined to meet all public health and
16 safety standards.



17 (iii) Notwithstanding any other provisions of this chapter, for adaptive reuse projects,
18 existing building setbacks shall remain and shall be considered legal nonconforming, but no
19 additional encroachments shall be permitted into any nonconforming setback, unless otherwise
20 allowed by zoning ordinance or relief is granted by the applicable authority.

21 (iv) For adaptive reuse projects, notwithstanding any other provisions of this chapter, the
22 height of the existing structure, if it exceeds the maximum height of the zoning district, may remain
23 and shall be considered legal nonconforming, and any rooftop construction shall be included within
24 the height exemption



Senate Bill 1037-A (Effective 1/1/24)

- ▶ This bill changes the requirements for affordable housing Comprehensive Permit Applications. For example, the applications will no longer involve the major/minor land development review and instead proceed under its own review process.
- ▶ The bill also sets forth specific density bonus calculations based on the percentage of units which are affordable.
- ▶ It also prohibits a municipality from placing certain restrictions on these applications relative to bedrooms, parking, and floor area.
- ▶ Let's take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

13 ~~(3)~~(1) Pre-application conference. ~~Where the comprehensive permit application proposal~~
14 ~~is a major land development project or a major subdivision pursuant to chapter 23 of this title a~~ Δ
15 municipality may require an applicant proposing a project under this chapter to ~~first schedule~~
16 complete, or the applicant proposing a project under this chapter may request a pre-application
17 conference with the local review board, the technical review committee established pursuant to §
18 45-23-56, or with the administrative officer for the local review board ~~and other local officials,~~ as
19 appropriate. ~~To request~~ In advance of a pre-application conference, the applicant shall be required



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

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

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



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

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

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



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

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

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

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



Senate Bill 1038-A (Effective)

- ▶ This bill changes the notice requirements for hearings before the Planning and Zoning Boards.
- ▶ Notice is now required in a publication of “local” circulation, rather than in a publication of “general” circulation.
- ▶ Notice also needs to be provided on the municipal website at least 14 days in advance of the hearing and also available in the Town Clerk’s Office.
- ▶ The maker of any notice that is required to be made by first class mail must also submit a notarized affidavit attesting to the mailing.
- ▶ Let’s take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

27 (b) Notice requirements. Public notice of the hearing shall be given at least fourteen (14)
28 days prior to the date of the hearing in a newspaper of ~~general~~ local circulation within the
29 municipality following the municipality's usual and customary practices for this kind of
30 advertising. The same notice shall be posted in the town or city clerk's office and one other
31 municipal building in the municipality and the municipality must make the notice accessible on
32 their municipal home page of its website at least fourteen (14) days prior to the hearing. Notice
33 shall be sent to the applicant and to each owner within the notice area, by ~~certified mail, return~~
34 ~~receipt requested~~ first class mail, of the time and place of the hearing not less than ten (10) days
1 prior to the date of the hearing. Notice shall also be sent to any individual or entity holding a
2 recorded conservation or preservation restriction on the property that is the subject of the
3 application at least fourteen (14) days prior to the hearing. The notice shall also include the street
4 address of the subject property, or if no street address is available, the distance from the nearest
5 existing intersection in tenths (1/10's) of a mile. Local regulations may require a supplemental
6 notice that an application for development approval is under consideration be posted at the location
7 in question. The posting is for informational purposes only and does not constitute required notice
8 of a public hearing. For any notice sent by first-class mail, the sender of the notice shall submit a
9 notarized affidavit to attest to such mailing.



Senate Bill 1050-A (Effective 1/1/24)

- ▶ This Bill eliminates the state housing appeal board.
- ▶ Appeals of affordable housing Comprehensive Permit decisions will go directly to the Superior Court.
- ▶ The bill also directs the Superior Court to prioritize appeals from local boards over other matters pending on the case docket.
- ▶ Let's take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

7 (a) Effective January 1, 2024 as a replacement to § 45-53-5. A decision of a local review
8 board may be appealed by the applicant or an aggrieved party, as defined by § 45-24-31 to the
9 superior court for the county in which the property is situated. The appeal shall be taken within
10 twenty (20) days after the date of the recording and posting of the decision by the local review
11 board by filing with the superior court, a complaint which contains a statement of the prior
12 proceedings and the reasons upon which the appeal is based. The complaint shall name the local
13 review board as the appellee and serve the local review board with the appeal within twenty (20)
14 days of filing of the appeal. If an aggrieved party who is not the applicant files an appeal, the
15 original applicant shall be named as a party and served in the same manner as the local review
16 board.



17 (b) The local review board shall not be required to answer the complaint, but it shall submit
18 the complete local review board record to superior court within thirty (30) days of receiving service
19 of the complaint. Should the local review board fail to file the record within thirty (30) days, the
20 applicant may move for default.

21 (c) The appeal shall be expedited and given priority on the court calendar as soon as proof
22 of service of the complaint on the local review board is filed. The appeal shall be decided as soon
23 as possible by the superior court, without delay.

24 (d) The review shall be conducted by the superior court without a jury. The court shall
25 consider the record of the hearing before the local review board and, if it appears to the court that
26 additional evidence is necessary for the proper disposition of the matter, it may allow any party to
27 the appeal to present that evidence in open court, which evidence, along with the record, constitutes
28 the record upon which the determination of the court is made.



29 (e) The superior court shall review the appeal under the following standards:
30 (1) Whether the decision was arbitrary and capricious or clearly erroneous in light of
31 considerations regarding:
32 (i) The consistency of the decision to deny or condition the permit with the approved
33 affordable housing plan;
34 (ii) The extent to which the community meets or plans to meet housing needs, as defined



1 in an affordable housing plan, including, but not limited to, the ten percent (10%) goal for existing
2 low-and moderate-income housing units as a proportion of year-round housing;
3 (iii) The consideration of environmental protection;
4 (iv) The state's need for low-and moderate-income housing;
5 (v) The need to protect the health and safety of the occupants of the proposed housing or
6 the residents of the city or town;
7 (vi) The need to promote better site and building design in relation to the surroundings or
8 to preserve open space; and
9 (vii) Whether the reasons for denial, local zoning or land use ordinances, requirements and
10 regulations are applied as equally as possible to both subsidized and unsubsidized housing.



Senate Bill 1051-A (Effective 1/1/24)

- ▶ This bill makes changes to the requirements in inclusionary zoning ordinances.
- ▶ Affordable housing must now constitute not less than 25% of total units, previously the law called for not less than 10% of total units to be affordable.
- ▶ Density bonus minimum shall be at least 2 market rate units per affordable unit.
- ▶ Fee in lieu shall be at the discretion of the developer; no density bonus if opt for fee in lieu.
- ▶ Must pass an ordinance relative to allocation of funds received.
- ▶ Let's take a look!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

4 (a) A zoning ordinance requiring the inclusion of affordable housing as part of a
5 development shall provide that the housing will be affordable housing, as defined in § 42-128-
6 8.1(d)(1); that the affordable housing will constitute not less than ~~ten percent (10%)~~ twenty-five
7 (25%) of the total units in the development; and that the units will remain affordable for a period
8 of not less than thirty-years (30) from initial occupancy enforced through a land lease and/or deed
9 restriction enforceable by the municipality and the state of Rhode Island. A zoning ordinance which
10 requires the inclusion of affordable housing as part of a development shall specify the threshold in
11 which the inclusion of affordable housing is required, but in no event shall a minimum threshold
12 triggering the inclusion of affordable housing be higher than ten (10) dwelling units.



18 (c) Density bonus, zoning incentives and municipal subsidies. For all projects subject to
19 inclusionary zoning, ~~density bonuses and other incentives shall be established by the community~~
1 ~~and shall apply to offset differential costs of below market units.~~ subject to applicable setback, lot
2 width, or frontage requirements or the granting of relief from the same, a municipality shall allow
3 the addition of two (2) market rate units for each affordable unit provided and the minimum lot
4 area per dwelling unit normally required in the applicable zoning district shall be reduced by that
5 amount necessary to accommodate the development. Larger density bonuses for the provision of
6 an increased percentage of affordable housing in a development may be provided by a municipality
7 in the zoning ordinance. Nothing herein shall prohibit a municipality from providing, or an
8 applicant from requesting additional zoning incentives and/or municipal government subsidies as
9 defined in § 45-53-3 to offset differential costs of affordable units. Available zoning incentives and
10 municipal government subsidies shall be listed in the zoning ordinance.



11 ~~(e) This~~ (d) Fee-in-lieu. To the extent a municipality provides an option for the payment of
12 a fee-in-lieu of the construction or provision of affordable housing, such fee ~~in lieu of the~~
13 ~~construction or provision of affordable housing~~ shall be the choice of the developer or builder
14 applied on a per-unit basis and may be used for new developments, purchasing property and/or
15 homes, rehabilitating properties, or any other manner that creates additional low-or-moderate
16 income housing as defined in § 45-53-3(9).



17 (1) Eligibility for density bonus. Notwithstanding any other provisions of this chapter, an
18 application which utilizes a fee-in-lieu of the construction or provision of affordable housing shall
19 not be eligible for the density bonus outlined in this section.

20 (2) An application which seeks to utilize a fee-in-lieu of the construction or provision of
21 affordable housing must be permitted by the planning board or commission and is not eligible for
22 administrative review under the Rhode Island Land Development and Subdivision Review
23 Enabling Act of 1992, codified at §§ 45-23-25 - 45-23-74.



1 ~~(d)~~(4) Use of fee-in-lieu. The municipality shall deposit all in-lieu payments into restricted
2 accounts that shall be allocated and spent only for the creation and development of affordable
3 housing within the municipality serving individuals or families at or below eighty percent (80%)
4 of the area median income. The municipality shall maintain a local affordable housing board to
5 oversee the funds in the restricted accounts and shall allocate the funds within ~~two (2) years~~ three
6 (3) years of collection. The municipality shall include in the housing element of their local
7 comprehensive plan, ~~if applicable,~~ and shall pass by ordinance, the process it will use to allocate
8 the funds.





9 (e) As an alternative to the provisions of subsection (d), the municipality may elect to
10 transfer in-lieu payments promptly upon receipt or within the ~~two-year (2)~~ three (3) year period
11 after receipt. A municipality shall transfer all fee-in-lieu payments which are not allocated within
12 three (3) years of collection, including funds held as of July 1, 2024, to ~~the housing resources~~
13 ~~commission or Rhode Island housing~~ RIHMFC for the purpose of developing affordable housing
14 within that community.

15 (f) ~~Rhode Island housing~~ Both the municipalities and RIHMFC shall report annually with
16 the first report due December 31, 2024 to the general assembly, the secretary of housing and the
17 housing resources commission the amount of fees in lieu collected by community; the projects that
18 were provided funding with the fees, the dollar amounts allocated to the projects and the number
19 of units created.



Process

- ▶ Planning Board to hold hearing and forward recommendations to Town Council.
- ▶ Town Council to hold two readings.
- ▶ Amendment need to be made before the changes become effective on January 1, 2024!



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

Help is on the way!

An Update on the Municipal Technical Assistance Program

We would like to provide an update on the Municipal Technical Assistance Program (MTAP).

As noted in our earlier communication, we have received applications from many municipalities seeking assistance through the program to bring their local documents and processes into conformance with the new zoning and planning requirements established by [recently passed legislation](#).



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

Other Zoning Code Amendments

- ▶ Cannabis legislation – forwarded to Town Council



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

Other Zoning Code Amendments

- ▶ Cannabis legislation – forwarded to Town Council
- ▶ Accessory Dwelling Units...
 - ▶ Legislation was passed in 2022 and amendments were proposed in 2023. The 2023 amendments failed to pass.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

ADU Legislation

45-24-73. Consistent statewide treatment of accessory dwelling units required.

(a) Any municipality which chooses to permit accessory dwelling units (ADUs) within the municipality, shall not impose any excessive restrictions on accessory dwelling units (ADUs).



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

ADU Legislation

45-24-74. Additional zoning provisions for applications for accessory dwelling units.

(b) ADUs shall be a permitted use in any residential district with a minimum lot size of twenty thousand square feet (20,000 sq. ft.) or more, and where the proposed ADU is located within the existing footprint of the primary structure or existing secondary attached or detached structure and does not expand the footprint of the structure.



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

ADU Legislation

(e) Notwithstanding any other provision of this chapter, an accessory ~~family~~ dwelling unit in an owner-occupied, ~~single-family~~ residence [that complies with §§ 45-24-31 and 45-24-73](#) shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older, or to accommodate other family members. ~~The appearance of the~~



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

ADU Legislation

More specifically, a municipality which permits ADUs shall not:

(1) Restrict tenants based on familial relationship or age unless such restriction is necessary

to comply with the terms of the federal subsidy related to affordability;



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW

2023 Amendments to Zoning Enabling Act & Effect on Municipalities

MICHAEL MONTI

SAYER REGAN & THAYER, LLP

130 BELLEVUE AVENUE

NEWPORT, RI

401-849-3040



Sayer Regan & Thayer, LLP
ATTORNEYS AND COUNSELLORS AT LAW