



DEPARTMENT OF PLANNING & DEVELOPMENT  
MAYOR BRETT P. SMILEY

August 15, 2023

To: City Plan Commission

From: Robert E. Azar, AICP, Deputy Director

Re: State Law Changes Related to Zoning, Land Development and Subdivision Regulations

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At the end of the 2023 session, The R.I. General Assembly passed a number of significant bills related to zoning, land use and housing production. They were signed into law by the Governor on June 24, 2023. Four of these bills will require the City of Providence to make major amendments to its zoning ordinance and regulations for subdivisions and land development projects. The bills take effect January 1, 2024, so the City will need to make these amendments prior to then. In many cases, the bills dictate what the language will have to be in our local regulations. In others, the bills provide leeway in how the laws are implemented locally. The bills will require us to make wide-ranging changes and we will have some choices to make as we undertake this initiative.

The zoning ordinance changes will require hearings by the City Plan Commission and City Council, two votes by the full Council, and signature by the Mayor. The land development and subdivision regulation changes are adopted by the City Plan Commission (CPC) following a public hearing. The Department of Planning and Development (DPD) and the Zoning Official, with assistance from the Law Dept., have begun drafting the changes. The DPD will be discussing the changes with the CPC in August, and formally introducing them to the CPC and Council in September. We will need to ensure that the changes can be approved in a relatively short timeframe.

Below is a summary of the major changes required to the City's ordinance and regulations.

### **Zoning Enabling Act**

- Amends the standards for granting a dimensional variance; specifically, eliminates the requirements that the hardship doesn't result primarily from the applicant's desire to realize greater financial gain, and the requirement that the relief granted is the least relief necessary. 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."
- Requires municipalities to allow the granting of a special use permit in conjunction with a variance, which previously was optional but not required. Providence already allows this.
- Requires the zoning ordinance to provide for specific and objective criteria for the issuance of each category of special use permit. "If an ordinance does not expressly provide for specific and objective criteria for the issuance of a category of special use permit such category shall be

deemed to be [a] permitted use.” Providence largely does this, but we will need to add conditions to some use categories.

- Requires municipalities to provide for the issuance of dimensional modifications. This was previously allowed but not required. The thresholds for dimensional modifications have also been changed: modifications of up to 15% of the dimensional requirements must be allowed, and modifications between 15% and 25% of the dimensional requirements may be allowed. The standards and public notice requirements for granting a modification have also been changed. Providence already has provisions for modifications up to 10%. We will evaluate whether to increase beyond the 15% mandated by the new law.
- Requires municipalities to provide for a procedure whereby a proposed use that is not specifically listed in the zoning ordinance is presented to the zoning board or zoning official for review and approval. This was adopted as an option for municipalities in 2022, and now it is mandatory.
- Allows for uses by variance to be changed without needing further zoning relief.
- Provides that conversion of existing commercial buildings (including offices, schools, religious buildings, medical buildings, and malls) to residential use shall be a permitted use and allowed by specific and objective provisions of a zoning ordinance. It curtails municipal authority to limit the density of such developments.
- Provides for reduced dimensional requirements for nonconforming lots and prohibits automatic merger of lots in some cases.

Key takeaways: The City has already adopted many of the previously optional provisions of the act, but our zoning regulations will still need discreet amendments with respect to these changes. Two items will be helpful: the provision for adaptive reuse will likely help facilitate housing production while avoiding the necessity for variances. The provision allowing use variances to be changed was one we advocated for. It will be extremely helpful in allowing flexibility for modernizing properties with undesirable legacy uses. The provision for reduced dimensional requirements is less helpful, as it interferes with the way we regulate undersized lots. We are evaluating how best to approach the changes.

### **Land Development and Subdivision Review Enabling Act**

This is a major overhaul of the Rhode Island Land Development and Subdivision Review Enabling Act of 1992. It will require us to completely rewrite our local land development and subdivision regulations, and significantly change our zoning ordinance.

- Eliminates the Zoning Board as the Planning Board of Appeal. Appeals from Planning Board decisions would now go directly to Superior Court.
- Redefines and standardizes the process for development plan review (DPR). DPR may be conducted by the planning board, technical review committee or by staff.
- Redefines a land development project (LDP), which previously was defined in part at the local level, leading to varying definitions among municipalities. Also changes and streamlines the process for review of LDPs to create more opportunities for administrative approval.
- Revises the definition of a subdivision and significantly changes the definition of a major and minor subdivision. Also changes and streamlines the process for review of subdivisions to create more opportunities for administrative approval.

- Requires municipalities to adopt unified development review, under which the Planning Board is empowered to grant zoning relief. This procedure was adopted in 2016 as an option for municipalities, a handful of which, including Providence, have adopted it.

Key takeaways: This bill will fundamentally change the way the CPC reviews subdivisions, land development projects, Institutional Master Plans, and design waivers. It also will change the way the Downtown Design Review Committee reviews the design of development in Downtown, and the way staff reviews projects administratively. In general, the changes are helpful, or at least not harmful. However, the changes are numerous, and the state has not given municipalities much time to incorporate the changes. That said, we feel that, with the cooperation of the City Council, we will be able to make the amendments and have the new regulations in place by the January 1 deadline.