



DEPARTMENT OF PLANNING & DEVELOPMENT  
MAYOR BRETT P. SMILEY

October 11, 2023

To: City Plan Commission

From: Robert E. Azar, AICP, Deputy Director

Re: Development Review Regulations Changes Related to State Law Changes

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As we have discussed in the past few months, the Department of Planning and Development and the Zoning Official have been working on amendments to the Zoning Ordinance and Development Review Regulations in response to the bills passed by the R.I. General Assembly at the end of the 2023 session. The bills require local changes to be in effect by January 1, 2024.

We presented the zoning changes to you in September. They are scheduled for a public hearing before the City Council's Ordinance Committee on November 1. This memo describes the new features of the Development Review Regulations that we are currently working on. Note that due to the substantial revisions of state law, this will be an entirely new set of regulations. We expect to submit a complete draft to you at the November meeting. We anticipate holding a public hearing in November, with a possible continuance of the hearing to December, and adoption before the end of the year. Below is a summary of the changes we are proposing.

### **Subdivision**

The state law is unchanged regarding administrative subdivisions (lot line adjustments where no new lots are created). Therefore, no changes are proposed.

Under today's state law, any subdivision that creates between two and five lots is a minor subdivision that must be reviewed by the planning board. Under the new law, a minor subdivision creates nine or fewer lots, and if it requires no zoning relief, is approved administratively. The CPC will continue to review minor subdivisions that involve a street creation or extension and will still review minor subdivisions requiring zoning relief under unified development review (UDR).

Any subdivision of more than nine lots will be a major subdivision. The process will still involve CPC review.

### **Land Development Project**

As we discussed last month, we are proposing to keep the triggers for land development project in the Zoning Ordinance at 10,000 sq. ft. of new floor area, 10 or more dwelling units, and 50 or more new parking spaces. State law requires us to set thresholds in the Development Review Regulations that distinguish between minor and major land development projects.

### *Minor Land Development Project*

Under today's state law, a minor land development project is any exclusively residential land development project. In Providence, this means a residential project of 10 or more units or with 10,000 sq. ft. of gross floor area. Under the new law, a minor land development project is defined as a land development project involving any one the following:

- A. 7,500 gross square feet of floor area of new commercial, manufacturing or industrial development; or less, or
- B. An expansion of up to 50% of existing floor area or up to 10,000 square feet for commercial, manufacturing or industrial structures; or
- C. Mixed-use development consisting of up to six dwelling units and 2,500 gross square feet of commercial space or less; or
- D. Multi-family residential or residential condominium development of 9 units or less; or
- E. Change in use at the property where no extensive construction of improvements are sought; or
- F. An adaptive reuse project of up to 25,000 square feet of gross floor area located in a commercial zone where no extensive exterior construction of improvements is sought; or
- G. An adaptive reuse project located in a residential zone which results in less than nine residential units.

If we were to adopt all of these criteria, virtually all small to moderate development projects would be minor land development projects. However, the law provides that a community can increase, but not decrease, the thresholds for minor land development projects set forth above. Importantly, the law states that minor land development projects that do not require zoning relief or street creation are approved by the administrative officer. In evaluating the workload of the CPC and staff and the types of projects that are most likely to require the review and discretion of the CPC, we are proposing the following new triggers for minor land development project:

- 1. Between 10,000 and 20,000 square feet of new gross floor area of commercial, manufacturing, or industrial development; or
- 2. An expansion of between 10,000 and 20,000 square feet of new gross floor area of commercial, manufacturing, or industrial structures; or
- 3. Construction of new gross floor area that creates 10 or more dwelling or rooming units and between 0 and 2,500 gross square feet of commercial space; or
- 4. Development of 50 or more new parking spaces.

Further, we are proposing that any minor land development project that requires a variance, dimensional adjustment, or design waiver be reviewed by the CPC. Topic for discussion: if a minor land development project meets all standards, and is eligible for administrative approval, but still requires a design waiver, should the waiver be delegated to the administrative officer? We will be proposing standards that will need to be met for design waivers, whether approved by staff or the CPC (see below).

### **Major Land Development Project**

As is the case today, any land development project not classified as a minor land development project is classified as a major land development project. Therefore, our definition is as follows:

1. More than 20,000 square feet of new gross floor area of commercial, manufacturing, or industrial development; or
2. An expansion of more than 20,000 square feet of new gross floor area of commercial, manufacturing or industrial structures; or
3. Construction of new gross floor area that creates 10 or more dwelling or rooming units and more than 2,500 gross square feet of commercial space.

### **Development Plan Review**

As we discussed in September, under the new law there will be two categories of development plan review (DPR): formal and administrative. Formal DPR may be carried out only by a planning board or technical review committee. Administrative DPR is conducted by an administrative officer. Under our proposal, the Downtown Design Review Committee (DDRC) will become a technical review committee and will conduct formal DPR of projects in the D-1 District, with DDRC staff conducting administrative DPR of some projects. The CPC will conduct review of institutional master plans, primary and secondary school plans, and design waivers through formal DPR. The actual review processes for DPR will be similar to what exists today, but with standardized procedures now contained in the Development Review Regulations. The administrative officer for the DDRC will have the authority to review many as-of-right projects, as is the case today. In addition, as enumerated in the zoning changes, the administrative officer will have the ability to grant certain minor design waivers, with others, such as demolition, reserved for the DDRC.

### **Unified Development Review**

All communities in the state are required to conduct unified development review (UDR), which had previously been optional. Since we have had this procedure since it was enabled, there are no proposed changes.

### **Public Hearings and Notice**

Under the new statute, public hearings with newspaper and mailed notice are still required for major land development projects, for UDR, and for subdivisions and land development projects that involve street creation. However, for major land development projects, the public hearing is at the master plan stage. Notice of master and preliminary plan is mailed, at a minimum, to direct abutters, with the notice for preliminary plan sent to abutters only. UDR still requires notice to owners of property within 200' of the subject property. We would like to have a discussion about public notice for all types of projects.

### **Powers and Procedures of the City Plan Commission**

Besides being amended to comply with the new law, the chapters in the regulations on powers and procedures of the CPC are due for an update. We are proposing the following:

- Mitigation of negative impacts. The statute is clear that one of the purposes of development and subdivision review is the “protection of the existing natural and built environment and the mitigation of all significant negative impacts of any proposed development on the existing environment.” We propose to make it clear what tools the CPC may use to mitigate negative impacts. These could include requirements for studies, including impacts on traffic or the natural and built environments.

- Criteria for dimensional adjustments. The CPC has discretion to grant dimensional adjustments of zoning regulations, such as additional height, reduced setback, or reduced parking. An applicant may ask for adjustments when certain conditions exist or are proposed, such as where open space is permanently set aside for public or common use; where the physical characteristics, location, or size of the site require an adjustment; where housing for low- and moderate-income families is provided; where structured parking is provided; and where vertical mixed-use development is provided, of which at least 50% is devoted to residential use. We propose to make it clear that the granting or denial of these adjustments is at the sole discretion of the CPC. The analysis required in considering an adjustment should take multiple factors under the CPC's jurisdiction into account, with the authority to require mitigation of negative impacts. This could include more purview over a building's design, requirements for increased landscaping, preservation of certain features on a site or building, changes to the plan to decrease traffic impacts, or requirements for public improvements.
- Design waiver criteria. Beyond the findings required for land development projects, the CPC does not have to make findings for design waivers. We are proposing to add criteria similar to what exists for the DDRC to grant waivers. These include: where literal enforcement of the provision for which a waiver is sought is impracticable, where the design or development condition resulting from the waiver has no adverse impact on the surrounding natural environment, built environment, or pedestrian and traffic circulation, and granting of the waiver is in the best interest of good planning, urban design, and/or architecture practice, as evidenced by consistency with the Comprehensive Plan and Zoning Ordinance.
- Major vs. minor changes to approved plans. For land development projects we currently have criteria for what constitutes a minor change, which may be approved administratively. These include: no increase in the number of lots or dwelling units; no change to any dimension of the plan, including building envelopes, exceeding 20%; no change to the type of street, driveways, or parking lots, if any; and no change required to any public infrastructure. Anything beyond these criteria trigger a major change, which requires a return to the CPC. We propose that these criteria be amended to focus on changes in the form and look of the building(s), traffic circulation, or noncompliance with the zoning ordinance.