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M E M O R A N D U M

TO: **APA – Rhode Island Chapter**

FROM: **Amy H. Goins, Esq.**
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DATE: **June 30, 2023**

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. This memorandum summarizes the legislation that was recently enacted and explains the effect that it will have on the local review and approval process. Virtually all of these enactments will require corresponding amendments to the Zoning Ordinance and/or Subdivision and Land Development Regulations. Most of these new laws become effective on January 1, 2024, so there is some time to prepare, but the necessary changes on the local level will likely take several months to work through.

According to a press release from the General Assembly, the bills discussed in this memo were enacted by the Governor last week. As of the date of this memo, the official Public Law references are not yet available.

This is the first part of a two-part series. Part II will function more as an action checklist and a guidance document for making changes to local ordinances and regulations. Please feel free to direct any questions regarding the content of this memo to us through the APA-RI Chapter.

Contents

Accessory Dwelling Units – no change from 2022 2
Zoning Enabling Act 2
Adaptive Reuse 3
Transit-Oriented Development 4
Comprehensive Plan Implementation 4
Development Review Act 5

LMI Housing Act 8
Inclusionary Zoning 9
Land Use Calendar/State Housing Appeals Board 10
Notice Requirements 10
Land Use Commission/Affordable Housing Commission 11

Accessory Dwelling Units – no change from 2022

This is the only bill included within the Speaker's housing package that was not enacted into law. The topic is included within this memo for informational purposes only because there was significant buzz about this legislation, which would have overhauled the law relating to accessory dwelling units. The ADU law enacted in 2022 is still in effect – see reference below.

*Key takeaway: The press release announcing the enactment of the housing package, and noting that the proposed ADU amendments failed to gain passage, states as follows: "Speaker Shekarchi and sponsor Representative Speakman intend to continue working to refine that bill ahead of next year's legislative session."

P.L. 2022, ch. 437; P.L. 2022, ch. 440, both effective June 30, 2022

Zoning Enabling Act

*Effective Date: January 1, 2024

This is the first comprehensive update of the Rhode Island Zoning Enabling Act of 1991 since its enactment.

- 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.
- 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."
- 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 percent of the dimensional requirements must be allowed, and modifications between 15 percent and 25 percent of the dimensional requirements may be allowed. The standards and public notice requirements for granting a modification have also been changed.

- 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.
- Provides for reduced dimensional requirements for nonconforming lots, and prohibits automatic merger of lots in some cases.

*Key takeaway: Unified development review will shift many applications from the Zoning Board to the Planning Board, leaving the Zoning Board with a potentially lighter docket. A comprehensive review of the standards for the various categories of uses permitted by special use permit will be required. An amendment to permit a special use permit to be issued in conjunction with a dimensional variance will also be required if not already permitted by your zoning ordinance.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6059A, signed by Governor 6/24/2023]

Adaptive Reuse

Effective Date: January 1, 2024

This law encourages the conversion of existing commercial buildings to residential use and places limits on a municipality's authority to impose certain density and dimensional requirements on these adaptive reuse projects.

- Provides that adaptive reuse shall be a permitted use and allowed by specific and objective provisions of a zoning ordinance.
- Adaptive reuse means the conversion of any commercial building (including offices, schools, religious buildings, medical buildings, and malls) into residential units or mixed use developments including at least 50 percent of the existing gross floor area as residential units.
- Such developments shall be exempt from off-street parking requirements of over one space per dwelling unit.
- Curtails municipal authority to limit the density of such developments, as follows:
    - High density development of at least 15 dwelling units per acre allowed for projects that are limited to the building's footprint, include at least 20 percent affordable housing, and have access to public utilities or approved alternative water service/wastewater systems.
    - All other adaptive reuse projects shall be the maximum allowed that otherwise meets all standards of minimum housing.

- Provides that existing building setbacks and height shall remain and be considered legal nonconforming.

*Key takeaway: Although this law now limits a municipality's authority to constrain adaptive reuse projects, adaptive reuse projects will be subject to land development project review. Local ordinances governing adaptive reuse projects must contain specific and objective provisions that do not conflict with this law.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6090A, transmitted to Governor 6/19/2023]

Transit-Oriented Development

Effective Date: January 1, 2024

This law creates a transit-oriented development (TOD) pilot program to encourage residential housing near convenient public transportation.

- Dept. of Housing to promulgate regulations establishing criteria for the program. Statutory criteria as follows:
    - Municipality must have developable land/properties within a quarter-mile radius of a regional mobility hub or a one-eighth mile radius of a frequent transit stop (as defined by the State's transit master plan).
- Program would provide increased density for residential development at a minimum of 10 units per acre, and the easing of dimensional restrictions and parking requirements.

Key takeaway: This law was modeled off a similar law in Massachusetts, and the forthcoming regulations from the Department of Housing could be similar. We will advise you when the regulations have been noticed for public comment.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6084B, transmitted to Governor 6/19/2023]

Comprehensive Plan Implementation

Effective Date: March 1, 2024

This law requires municipalities to expend more effort on the comprehensive planning process, specifically with regard to implementation as well as affordable housing.

- Provides that comprehensive plans shall include "specific goals, implementation actions, and time frames for development of low- and moderate-income housing."
- Sets an 18-month deadline for a municipality to bring its zoning map into compliance with the future land use map set forth in the comprehensive plan.
- Provides that the future land use map in a valid comprehensive plan shall govern all local municipal land use decisions.

- Provides that the implementation program in the comprehensive plan must contain a strategic plan that shall be reviewed annually by the municipality.
- Provides that if a municipality fails to fully update and re-adopt its comprehensive plan within 12 years from the date of the previous plan's adoption, the plan cannot serve as the basis for denial of a development application.

*Key takeaway: Take note of the expiration date of State approval for your municipality's comprehensive plan. If it is not currently State-approved, we would advise you to begin the process of amending the plan. It is our interpretation that comprehensive plans that are currently State-approved will not be required to amend these plans to include "specific goals, implementation actions, and time frames for development" of affordable housing until the next scheduled update, and that this section will apply only prospectively.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6085A, signed by Governor 6/24/2023]

Development Review Act

Effective Date: January 1, 2024

This is a major rewrite of the Rhode Island Land Development and Subdivision Review Enabling Act of 1992. It will require an extensive corresponding rewrite of local regulations.

- Eliminates the Zoning Board as the Planning Board of Appeal. Appeals from Planning Board decisions would now go directly to Superior Court.
- Defines and standardizes the process for development plan review (DPR). Many developments that are now subject to land development project review (multi-stage review process with multiple public hearings) will now be reviewed under the DPR framework.
    - DPR is defined as follows: "Design or site plan review of a development of a permitted use. A municipality may utilize [DPR] under limited circumstances to encourage development to comply with design and/or performance standards of the community under specific and objective guidelines, for developments including, but not limited to:
        - (i) A change in use at the property where no extensive construction of improvements is sought;
        - (ii) An adaptive reuse project located in a commercial zone where no extensive exterior construction of improvements is sought;
        - (iii) An adaptive reuse project located in a residential zone which results in less than nine (9) residential units;
        - (iv) Development in a designated urban or growth center;
        - (v) Institutional development design review for educational or hospital facilities; or
        - (vi) Development in a historic district."

- Standardizes the review and approval process for projects subject to DPR. Municipalities must identify the permitting authority for DPR: either the administrative officer, planning board, or technical review committee. Further, municipalities must specify the categories of projects that are eligible for administrative review and the project categories that are required to be heard by the planning board or TRC.
    - Administrative DPR: single-stage review.
    - Formal DPR: preliminary and final.
- Provides a definition for a land development project (LDP), which previously was defined in part at the local level, leading to varying definitions among municipalities.
    - A land development project is defined as follows: "A project in which one or more lots, tracts, or parcels of land or a portion thereof are developed or redeveloped as a coordinated site for one or more uses, units, or structures, including but not limited to, planned development or cluster development for residential, commercial, institutional, recreational, open space, or mixed uses.
    - A minor LDP is defined as follows: "A land development project involving any of [of] the following:
        - (A) Seven thousand five hundred (7,500) gross square feet of floor area of new commercial manufacturing or industrial development; or less, or
        - (B) An expansion of up to fifty percent (50%) of existing floor area or up to ten thousand (10,000) square feet for commercial, manufacturing or industrial structures; or
        - (C) Mixed-use development consisting of up to six (6) dwelling units and two thousand five hundred (2,500) gross square feet of commercial space or less; or
        - (D) Multi-family residential or residential condominium development of nine (9) units or less; or
        - (E) Change in use at the property where no extensive construction of improvements are sought;
        - (F) An adaptive reuse project of up to twenty-five thousand (25,000) square feet of gross floor area located in a commercial zone where no extensive exterior construction of improvements is sought;
        - (G) An adaptive reuse project located in a residential zone which results in less than nine (9) residential units;
        - A community can increase, but not decrease the thresholds for minor land development set forth above if specifically set forth in the local ordinance and/or regulations. The process by which minor land development projects are reviewed by the local planning board, commission, technical review committee and/or administrative officer is set forth in § 45-23-38."
    - The definition for a major LDP is as follows: "A land development project which exceeds the thresholds for a minor land development project as set forth in this section and local ordinance or regulation. The process by which major land development projects are reviewed by the local planning board, commission, technical review committee or administrative officer is set forth in § 45-23-39."

    - A development may no longer be subject to both DPR and land development project review for the same application.
- Revises the definition of a subdivision and significantly changes the definition of a major and minor subdivision.
    - A minor subdivision is defined as follows: "A subdivision creating nine (9) or fewer buildable lots. The process by which a municipal planning board, commission, technical review committee, and/or administrative officer reviews a minor subdivision is set forth in § 45-23-38."
    - A major subdivision is defined as follows: "A subdivision creating ten (10) or more buildable lots. The process by which a municipal planning board, commission, technical review committee, and/or administrative officer reviews a minor subdivision is set forth in § 45-23-39."
- Significantly alters the review and approval process for all application types (DPR, subdivisions, and land development projects).
    - Minor subdivisions and LDPs are subject to two-stage review: preliminary and final. Master plan has been eliminated for these projects. Final plan review is strictly administrative and shall be conducted by either the administrative officer or the technical review committee.
        - For applications requiring zoning relief, the process depends on the degree of zoning relief required. If only a dimensional modification is needed, the application can be reviewed administratively (by the administrative officer). If a variance or special use permit is required, the planning board shall conduct unified development review. Applications requiring a street creation or extension shall be reviewed by the planning board and require a public hearing.
        - For applications not involving zoning relief, the administrative officer is authorized to review and grant limited waivers of design standards.
        - Local deadlines for action on minor projects remain the same, except that the deadline for recertification of completeness is reduced from 14 days to 10 (consistent with major applications) and a 25-day period is added for final plan review, and the vesting period for final plan is now one year instead of 90 days
    - Major subdivisions and LDPs are subject to three-stage review: master plan (public hearing required), preliminary, and final.
        - The administrative officer is empowered to combine review phases. Time periods for local action and vesting remain unchanged, except that the deadline for certification of completeness for final plan applications is reduced from 25 days to 15 days, with an extension to 25 days if needed, and the deadline for recertification of completeness is reduced from 14 days to 10 days.
- 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 have adopted it. It is now required.

*Key takeaway: This is the single most significant piece of legislation in the Speaker's housing package and will have a major impact on the review and approval process for all types of applications. It will likely take several months to work through the extensive changes that will be required to local regulations. Municipalities that do not currently permit unified development review should familiarize themselves with this procedure.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6061Aaa, signed by Governor 6/24/2023]

LMI Housing Act

Effective Date: January 1, 2024

This is a significant amendment to the Low and Moderate Income (LMI) Housing Act, which governs review and approval of comprehensive permit applications (developments containing a minimum of 25% affordable housing).

- Allows for-profit developers to appeal an approval with conditions that make the development financially or logistically impracticable. Previously, only nonprofit developers were allowed to appeal an approval with conditions, and had to show that such conditions made it impossible to proceed with the development without financial loss.
- Amends the definition of "meeting local housing needs" to include a showing that at least 20 percent of the total residential housing units approved by the municipality in a calendar year be affordable as defined by law.
- Revises the definition of a "municipal government subsidy" (which is required for comprehensive permit developments) and sets forth the minimum zoning incentives that must be provided, as follows:
    - For properties connected or eligible for connection to public utilities, a density of at least:
        - 5 units per acre for proposals where at least 25 percent of the dwelling units are affordable
        - 9 units per acre for proposals where at least 50 percent of the dwelling units are affordable
        - 12 units per acre for proposals where 100 percent of the dwelling units are affordable
    - For properties not connected to either public water or sewer or both, a density of at least:
        - 3 units per acre for proposals where at least 25 percent of the dwelling units are affordable
        - 5 units per acre for proposals where at least 50 percent of the dwelling units are affordable
        - 8 units per acre for proposals where 100 percent of the dwelling units are affordable

- Sets forth certain dimensional standards and other requirements that constrain a municipality's ability to regulate the development (for instance, municipalities are barred from limiting the number of bedrooms below three (3) for a single-family dwelling unit).
- Prohibits municipalities from adopting any ordinance or policy that operates as a limit or moratorium with respect to comprehensive permits.
- Eliminates the master plan stage of review and amends the requirements for a pre-application conference and preliminary plan application. The review and approval process will now consist of a preapplication conference, preliminary plan public hearing, and final plan at the administrative level (with an allowance for final plan review by the planning board if a waiver of checklist items was required at the preliminary stage).
- Eliminates one of the required findings for approval, so that a finding of "no significant negative environmental impacts" is no longer required to approve an application.

Key Takeaway: Taken together with changes to this statute enacted last year, this raises the bar for permissible reasons to deny a comprehensive permit application.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6081A, signed by Governor 6/24/2023]

Inclusionary Zoning

Effective Date: January 1, 2024

This is an amendment to the provisions of the Zoning Enabling Act relating to inclusionary zoning, which many municipalities have adopted. An inclusionary zoning requirement obligates developments containing a certain threshold of dwelling units to deed-restrict a percentage of those units as affordable.

- Provides that an inclusionary zoning ordinance, which is still optional at the municipal level and not required, shall require at least 25 percent of the total units in the development to be affordable.
- Requires the minimum threshold over which inclusionary zoning is triggered to be no higher than 10 units (so, for example, a municipality cannot adopt an inclusionary zoning requirement that is triggered only for developments containing more than 12 units).
- Defines and sets a minimum threshold for density bonuses, zoning incentives, and municipal subsidies, which were previously not defined. The minimum density bonus shall be at least 2 market rate units for each affordable unit, and there shall be no requirement to seek relief from the minimum lot area per dwelling unit.
- Provides that developments seeking to pay a fee-in-lieu of the construction or provision of affordable housing shall not be eligible for such a density bonus, and further provides that such developments shall not be eligible for staff-level review under the Development Review Act.
- Requires municipalities to allocate in-lieu payments within three years of collection (rather than two before this amendment) and requires municipalities to pass by ordinance the process it will use to allocate the funds.

- Provides that all in-lieu payments not allocated within three years of collection, including fees held as of July 1, 2024, shall transfer to RI Housing.

Key Takeaway: If your municipality has an inclusionary zoning ordinance and/or allows the payment of fees in lieu of development, amendments will be required.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6058A, signed by Governor 6/24/2023]

Land Use Calendar/State Housing Appeals Board

Effective Date: January 1, 2024 (for Land Use Calendar) / Upon Passage (for SHAB)

Taken together, this legislation would send all appeals related to land use matters to the Superior Court. The State Housing Appeals Board (SHAB) would be abolished.

- Establishes a separate calendar in the Rhode Island Superior Court for the administration and determination of all land use matters, including appeals from zoning boards and planning boards, and provides for expedited decision of these matters.
- Eliminates the State Housing Appeals Board (SHAB), which currently hears and decides appeals related to comprehensive permit applications, as these matters will now be assigned to the land use calendar.
- Sets forth the Superior Court's standard of review for appeals related to comprehensive permit applications, which more or less aligns with the standard that SHAB employed.

*Key takeaway: With this legislation, all land use-related appeals should be resolved more expeditiously.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6060A, signed by Governor 6/24/2023 / H6083A, signed by Governor 6/24/2023]

Notice Requirements

Effective Date: January 1, 2024

This law amends notice requirements in the various land use enabling acts.

- Provides that required newspaper notices shall be given in a newspaper of local rather than general circulation in the municipality [the distinction is not defined/explained], and requires the same notice to be posted on the municipality's website.
- Provides that notice to abutters shall be sent by first class mail (rather than certified mail).

*Key takeaway: In general, the burden to ensure proper notice is on the applicant, but this legislation along with a recent (2020) Superior Court decision places more of the burden on municipalities.

Reference: P.L. 2023, ch. X; P.L. 2023, ch. X [H6086A, signed by Governor 6/24/2023]

Land Use Commission/Affordable Housing Commission

Two legislative commissions originally created by the Rhode Island House of Representatives in 2021 have now been authorized to continue in existence until 2025: the Special Legislative Commission to Study the Entire Area of Land Use, Preservation, Development, Housing, Environment, and Regulation (the "Land Use Commission") and the Special Legislative Commission to Study Housing Affordability" (the "Affordable Housing Commission").

*Key takeaway: Stay tuned for further land-use related legislation in the years to come.

Reference: House Resolution 229, enacted Apr. 6, 2023 (extending reporting and expiration dates for Affordable Housing Commission to June 7, 2025, and June 28, 2025, respectively); House Resolution 230, enacted Apr. 6, 2023 (extending reporting and expiration dates for Land Use Commission to June 8, 2025, and June 30, 2025, respectively).

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