

Rhode Island Land Use Legislation

Opportunities and Constraints



\$2,032,733,824

Invested in construction in Providence since 2015

4,735 HOUSING UNITS IN MID- TO LARGE-SCALE DEVELOPMENTS

Under construction, in plan review, undergoing permitting process or completed since 2015 in Providence

4,108 MARKET RATE

627 AFFORDABLE

APPROACHES TO DEVELOPMENT REGULATION

Regulations

- Intended to encourage development
- Intended to slow development

Process

- As-of-right
 - Transparent, unambiguous, no discretion
- Discretionary
 - Public bodies grant or withhold approvals

Providence's Balanced Approach

- Most development is as-of-right
- Discretionary approvals subject to public review
- Discretion is limited by ordinance

TOOLS WE USE

Regulations

- Allow high density in most zones
- Removed density limitations in some zones
- Allow and encourage mixed use in many zones
- Reduced or eliminated parking minimums
- Incentives for housing, mixed use, active ground floors, structured parking
- Design standards (form-based) in many zones
- Height zones
- Historic Districts
- Rules regarding nonconforming development

TOOLS WE USE

Process

- Land Development Project
 - $\geq 10,000$ sf new construction, 10+ new dwelling units
 - Dimensional adjustments
- Unified Development Review for LDPs and subdivisions
- Development Plan Review
 - Downtown Design Review
 - Institutional Master Plan Review
 - Staff-level DPR
 - Waivers of Design rules through public review
- Historic District review
- Zoning Map changes when necessary
- Special Use Permits
- Variances

TOOLS WE USE

Process

- Community Engagement
 - Community engagement happens when comp plan and zoning ordinance are adopted
 - State laws require public hearings/meetings for development projects
 - For institutions we require they hold a community meeting
 - For other large projects we encourage community meetings

Commentary

- Many residents, elected officials and community groups want more robust community engagement for every large project
- There is often a disconnect between what the public thinks can be achieved through the process and what the laws and regulations say
- We are working on outreach to educate community members about the process and how they can most productively participate

PROBLEMS WITH EXISTING LEGISLATION

Building Design

- No explicit guidance in the laws on regulating building design outside of historic districts
- Design regulations are often dimensional (height, setback, % of façade with windows, location of entries and parking, etc.)
- Many design regulations are not dimensional but can be objective (materials, requirement of architectural details)
- Some design regulations are not objective (compatibility)
- The Enabling Acts should be explicit about allowing design regulation in accordance with objective standards, and allowing waivers from design standards (vs. variances)

PROBLEMS WITH EXISTING LEGISLATION

§ 45-24-49. Special provisions — Development plan review.

§ 45-23-50. Special provisions — Development plan review.

Issues:

- Two laws refer to DPR
- The Zoning Enabling Act states that there can be DPR bodies as defined in the zoning ordinance with regulations in the ordinance, which are adopted by the town/city council
- The Subdivision and Land Development Enabling Act requires DPR regulations to be in the subdivision and land development regulations, which are adopted by the planning board and only apply to activities of the planning board

PROBLEMS WITH EXISTING LEGISLATION

§ 45-24-49. Special provisions — Development plan review.

(a) A zoning ordinance may permit development plan review of applications for uses requiring a special-use permit, a variance, a zoning ordinance amendment, and/or a zoning map change. The review shall be conducted by the planning board or commission and shall be **advisory to the permitting authority.**

Issues:

- Permitting Authority not defined in Zoning Enabling Act (is defined in subdivision act)
- Town/City Council, which approves zoning changes, is not a really a permitting authority
- In the case of UDR, planning board would be advisory to itself

PROBLEMS WITH EXISTING LEGISLATION

§ 45-24-49. Special provisions — Development plan review.

(b) A zoning ordinance may permit development plan review of applications for uses that are permitted by right under the zoning ordinance, but **the review shall only be based on specific and objective guidelines** which must be stated in the zoning ordinance. The **review body** shall also be set forth in and be established by the zoning ordinance. A rejection of the application shall be considered an appealable decision pursuant to § 45-24-64.

Issues:

- Development Plan Review body is a Permitting Authority, but this is implied, not explicit

PROBLEMS WITH EXISTING LEGISLATION

§ 45-24-49. Special provisions — Development plan review.

(c) Nothing in this subsection shall be construed to permit waivers of any regulations unless approved by the permitting authority pursuant to the local ordinance and this act.

Issues:

- Negative syntax is confusing
- Waiver is not defined in Zoning Enabling Act
- This is confusing when the development review body is the permitting authority

PROBLEMS WITH EXISTING LEGISLATION

Land Development Project vs. Development Plan Review

Issues:

- Terminology means different things in different laws
- They could be tailored to have the same rules and regulations
- DPR has more flexibility in terms of who conducts the review
- Do we need both?

PROBLEMS WITH EXISTING LEGISLATION

§ 45-24-40. General provisions — Alteration of nonconforming development.

(a) **A zoning ordinance may permit a nonconforming development to be altered** under either of the following conditions:

(1) The ordinance may establish a special-use permit, authorizing the alteration, which must be approved by the zoning board of review following the procedure established in this chapter and in the zoning ordinance; or

(2) The ordinance may allow the addition and enlargement, expansion, intensification, or change in use, of nonconforming development either by permit or by right and may distinguish between the foregoing actions by zoning districts.

(b) The ordinance may require that the alteration more closely adheres to the intent and purposes of the zoning ordinance.

(c) **A use established by variance or special use permit shall not acquire the rights of this section.**

Issues:

- None of these tools apply to variances

PROBLEMS WITH EXISTING LEGISLATION

§ 45-24-63. Appeals — Right of appeal.

(a) A zoning ordinance adopted pursuant to this chapter shall provide that **an appeal** from any decision of an administrative officer or agency charged in the ordinance with the enforcement of any of its provisions **may be taken to the zoning board of review** by an aggrieved party.

(b) A zoning ordinance adopted pursuant to this chapter shall provide that **an appeal from a decision of the zoning board of review may be taken by an aggrieved party to the superior court** for the county in which the city or town is situated.

Issues:

- Appeals are used to stop or slow projects
- Most appeals end up in court

Questions?

