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M E M O R A N D U M

TO: **The Honorable Bristol Town Council**
Steven Contente, Town Administrator
Diane Williamson, Director of Community Development
Edward M. Tanner, Principal Planner
Stephen Greenleaf, Building Official
Planning Board
Zoning Board

FROM: **Amy H. Goins, Esq., Assistant Town Solicitor**
Andrew M. Teitz, Esq., AICP, Assistant Town Solicitor

DATE: **April 13, 2025**

SUBJECT: **Proposed Legislation Affecting Land Use**

As you know, in February, Speaker Shekarchi announced a package of legislation aimed to encouraging the production of new housing units in Rhode Island. The legislation, known as the 'housing package,' represents the latest in an annual effort to streamline and standardize the process of local land use review and approval. Copies of these bills are attached for your review and summarized in this memorandum. As in previous years, we would expect some if not all of these bills to gain passage, but the legislation may change before it is enacted. Our office will monitor the status of this legislation and provide an update to this memorandum at the end of the legislative session. Please let us know if you have any questions in the meantime.

Contents

H Res. 6027: Extension of Land Use Commission

→ Key Takeaway: This legislation extended the reporting and expiration dates of the House Commission known as the Land Use Commission for an additional year, to June 2026.

→ Effective Date: Upon Passage

The Land Use Commission was created in 2021 and is formally known as the 'Special Legislative Commission to Study the Entire Area of Land Use, Preservation, Development, Housing, Environment, and Regulation." Its original reporting and expiration dates have been extended several times. The continued existence of this legislative commission signals that the General Assembly's work in the land use arena is ongoing.

H 5793A: Tax Cap

→ Key Takeaway: This legislation would allow municipalities to exceed the statutory four percent (4%) limit on increases to the previous year's tax levy based on increases to the municipality's housing stock, with certain conditions.

→ Effective Date: Upon Passage

This legislation would add a provision to an existing law that limits municipal property tax increases. The law limits annual property tax increases to four percent (4%), meaning that the total amount levied cannot exceed the previous year's levy by more than this percentage. Several exceptions apply, to which this law would add the following:

"The assessed value of new housing units added to the municipal tax base may exceed the maximum levy, as set forth in this section. For the purposes of this subsection, new housing units shall include newly constructed residential properties, including single-family homes, multi-family dwellings, and mixed-use developments where residential units constitute at least fifty percent (50%) of the building's total square footage as well as existing buildings converted into residential housing units qualifying under adaptive reuse in § 45-24-37; provided such conversions meet all applicable zoning and building code requirements and increase the

municipality's total housing stock. New construction shall also include modular and manufactured homes."

The requirements for this exemption to the tax cap would be as follows:

"(i) A city or town has issued over ten (10) certificates of occupancy during the tax year for new residential units; and
(ii) Such units are part of a development that includes at least ten percent (10%) of the units designated as low- or moderate-income housing as defined in §§ 45-53-3 and 42-128-8.1; and
(iii) Such units are assessed utilizing the same valuation methods and rates as similar units in the respective city or town; and
(iv) The assessed value of a new housing unit may only exceed the maximum levy for a period of three (3) years following the issuance of a certificate of occupancy for the new housing unit."

The premise behind this legislation is to allow municipalities to shift some of the tax burden of the cost of services for new housing developments onto the owners of the newly constructed dwelling units, rather than spreading the burden equally among the municipality's tax base. This legislation is endorsed by the Rhode Island League of Cities & Towns.

H 5794A: Zoning Enabling Act (ZEA) & Development Review Act (DRA)

→ Key Takeaway: For the third year in a row, this legislation would amend certain portions of the Zoning Enabling Act (ZEA) and Development Review Act (DRA), which govern municipal land use. Some of these proposed amendments are in the nature of housekeeping or incremental changes and some of these amendments are more significant – for example, making pre-application meetings optional rather than mandatory.

→ Effective Date: Upon Passage

This legislation would make the following changes to the Zoning Enabling Act and Development Review Act:

- Definition of major and minor subdivision: The definition of a "major subdivision" would be revised as follows (new language underlined): "A subdivision creating ten (10) or more buildable lots where a street extension or street creation is required." The definition of a "minor subdivision" would be revised as follows: "A subdivision creating nine (9) or fewer buildable lots where a street extension or creation is required. A subdivision of an unlimited number of lots on an existing improved public street also qualifies as a minor subdivision."
- Pre-application meetings: Would be optional (at the applicant's request) rather than mandatory. Currently, pre-application meetings are required for major land development projects and major subdivisions.

- Certification of completeness: Would clarify the purpose of the administrative officer's initial review of applications for completeness by adding the following language: "An application shall initially be reviewed by the administrative officer solely for the purpose to determine whether the application lacks information required for the respective applications [sic] type as specified in the local checklist, and whether the applicant lacks items or information which was required as a condition of a previous approval stage(s) for the same project." The legislation also specifies that "an application shall not be deemed incomplete for reasons other than the failure to supply an item or items listed on the applicable checklist."

- Preliminary plan review for major projects: Would remove the existing requirement that, prior to approval of the preliminary plan, the applicant submit (1) copies of all legal documents describing the property, proposed easements, and rights of way; and (2) required state and federal permits. Legal documents and permits would now be required prior to approval of the final plan. For permits issued by RIDOT, a letter evidencing the issuance of such a permit upon submission of a bond and insurance would suffice for final approval, but the actual permit would be required before a building permit would issue.

    - This would represent a significant change in procedure because the final plan stage is administrative, meaning that neither the Planning Board nor the public would have the opportunity to comment on these permits at a public meeting. However, due to the combined effect of recent changes to state law, municipal authority over areas where a state agency has concurrent jurisdiction, especially for environmental issues, has already been somewhat diminished.

- Final approval expiration date: Would extend the expiration date for final approval for major projects from one year to two years.

- Clarification of role of Board of Appeal: Previous legislation had limited the matters subject to appeal to the Board of Appeal (Zoning Board), since most appeals of land use matters will now go directly to Superior Court. This revision would clarify that the Board of Appeal would review "decisions of the administrative officer on administrative matters, interpretations and decisions . . . and shall not apply to decisions of the administrative officer . . . which approve or deny an application."

- Changes to required findings for approval: Clarifies that projects must either be zoning-compliant or receive zoning relief. Additionally, the required findings for minor subdivisions that are subject to administrative review and approval (for which no zoning relief is required) would be pared down. Such projects would not be required to satisfy the standard of 'no significant negative environmental impacts' or the standard prohibiting the creation of lots with physical constraints to development for which building would be rendered impracticable.

- Adaptive reuse: Revisions to regulations adopted in 2023. Expands the provision of the law setting forth where adaptive reuse projects shall not be allowed by adding the

following: “In any industrial or manufacturing zoning use district, or a portion thereof, where residential use is prohibited for public health and safety reasons which are based on specific and detailed findings; (iii) in any building previously used for industrial or manufacturing use(s), which has not been vacant of an industrial use for less than one year prior to the submission of the permit or application for adaptive reuse.” Additionally, the amendments include revisions to regulations governing density and dimensional requirements for adaptive reuse projects.

- Manufactured homes: Would make manufactured homes permitted as a type of single-family home on any lot zoned for single-family use. Legislation to this effect was introduced in 2024 but amended before passage to make this an option rather than a requirement. This would be mandatory for all municipalities.

- Dimensional requirements for substandard lots: Would revise this section of the law that was adopted in 2023 and then further revised in 2024. Setbacks, lot frontage, and lot width requirements for substandard lots would be reduced in proportion to how undersized the lot is compared to the minimum lot size for the zoning district. (For example, if the lot contains 40% of the minimum lot area, those requirements would be reduced by 40%.) The 2024 amendments required the zoning official to apply the dimensional requirements “from another zoning district in the municipality in which the subject lot would be conforming as to lot area” – this language would be eliminated in favor of the proportional reduction in setbacks, with the addition of the following clause: “However, to the extent the city or town has a zoning district in which the lot would be conforming as to size, the city or town may require compliance with the building setback, lot frontage, and lot width requirements for said zoning district if such requirement is in the local zoning ordinance.”

- Zoning modifications: Zoning modifications allow administrative relief from dimensional requirements. They were previously optional and made mandatory statewide in 2023. This legislation would provide that modifications are available for any dimensional requirements specified in the zoning ordinance. The definition of a zoning modification excludes lot area, so undersized lots can’t be created through this process, but this amendment would extend modifications to all other dimensional requirements. It would also eliminate language that a modification does not permit moving of lot lines. Also, one of the standards for granting a zoning modification would be changed to reflect the revised standard (from previous legislation) for dimensional variances. (Note that modifications would also be affected by H 5799A, discussed below.)

- Inclusionary zoning: This remains an optional tool for municipalities to encourage production of LMI Housing. This provision of the ZEA was amended in 2023 and revised again in 2024. This legislation would add the following two provisions to this portion of the ZEA: (1) “A municipality shall not limit the number of bedrooms for applications submitted under this section to anything less than three (3) bedrooms per dwelling unit for single-family dwelling units.” (2) “Inclusionary zoning requirements shall not be applied where there is a limitation on development density at the subject property under

the regulations of a state agency, such as the [CRMC or DEM] that prevents the use of the density bonus set forth in this section."

- Unified development review: Made mandatory in 2023, this procedure allows the Planning Board to grant zoning relief in connection with development projects. This amendment would clarify how those standards should be applied for projects involving subdivisions.

- Transit-oriented development pilot program: This portion of the amendments relate to legislation enacted in 2023 that aims to encourage development near transit centers. Regulations for this program have not yet been promulgated by the Department of Housing. These amendments would tweak the criteria for this program, including allowing developers (not just municipalities) to apply for state funding.

Finally, this legislation would amend the Comprehensive Planning and Land Use Act by providing that amendments made to a municipality's comprehensive plan that allow for an increase in new housing units shall be exempt from the limitation on annual amendments (normally permitted only four (4) times per calendar year).

H 5795: Zoning Certificates

→ Key Takeaway: This legislation would attempt to change the nature of zoning certificates, which are currently for informational purposes only.

→ Effective Date: Upon Passage

The description of this legislation in the press release seems to say a bit more than the legislation itself, which calls into question its actual legal effect. The intent of the legislation, as described in the press release, is to "allow purchases [of real property] to reasonably rely on zoning opinions issued by local officials. Presently, when a current property owner obtains a zoning certificate, the certificate is for instructive purposes only and not binding; this amendment would remove the non-binding nature of zoning certificates to allow property owners to rely on the municipal determination of the legality of the present use." However, in our view, this legislation may not affect the well-established principle in Rhode Island caselaw that if a municipal official makes a mistake where zoning compliance is concerned, a property owner is not entitled to rely upon that mistaken opinion. So while the text of this legislation appears somewhat innocuous, the intent may be to use this legislation in future litigation against municipalities for property owners seeking damages based on mistaken advice/information from zoning officials.

H 5796aa: Development within urban services boundary

→ Key Takeaway: This legislation would arguably require municipalities to allow housing types other than single-family detached structures within the urban services boundary.

→ Effective Date: 1/1/2026

This legislation would amend the ZEA by adding an additional purpose to the list of general purposes that zoning ordinances shall address: "providing for residential use options that are not limited to single family detached structures, in areas which have available public water and sewer capacity in municipalities in which at least part of the area is located within the urban services boundary which is identified on Rhode Island statewide planning program's future land use map tools and on the Rhode Island geographic information system."

The House passed this legislation on April 8.

H 5797A: Co-living housing opportunities

→ Key Takeaway: This legislation would permit, but not require, municipalities to allow co-living housing.

→ Effective Date: 1/1/2026

This legislation would amend the ZEA by adding a definition for "co-living housing," defined as "a specific residential development with units which provide living and sleeping space which are independently rented and lockable for the exclusive use of an occupant, but require the occupant to share sanitary and/or food preparation facilities with the other units in the occupancy. This section shall not be read to allow the conversion of existing dwelling units into co-living housing unless authorized by a local zoning ordinance." Municipalities would be permitted, but not required, to "authoriz[e] community living options such as co-living housing in areas serviced by transit and other services." The legislation provides further that municipalities may allow co-living housing in adaptive reuse developments, contingent on compliance with the applicable building and fire codes.

The House passed this legislation on April 1.

H 5798Aaa: Attached single-family dwelling units

→ Key Takeaway: This legislation would amend the ZEA by providing that the construction of attached single-family dwellings shall be allowed in residential zoning districts that allow for the construction of two (2) or more units.

→ Effective Date: 1/1/2026

This type of dwelling is defined as "a dwelling unit constructed side by side or horizontally and separated by a party wall and lot line." Such dwellings shall be allowed in certain zoning districts, subject to the following requirements:

- "(i) The unit(s) have access to public water and sewer, or have adequate access to private water and/or wastewater systems approved by the relevant state agency; and
- (ii) The zoning ordinance shall allow each single-family unit to be located on its own lot, without increased requirements for minimum lot size, lot width, lot frontage or lot depth and shall allow for a zero-lot line setback along the common property line to accommodate the subdivision for these units; provided that, the unit(s) comply with requirements for building and fire codes; and
- (iii) Other dimensional requirements of the base zoning district shall apply to the outside perimeter property lines of the end-units of the development; however, there shall not be increased dimensional requirements solely applicable to attached single-family structures and not applicable to other residential structures containing the same density in the same zoning district; and
- (iv) Cities and towns may establish additional standards for such units; provided that, such standards do not restrict a dwelling to less than three (3) stories, restrict its floor area ratio to less than one, limit the bedrooms to less than three (3), or require more than one off street parking space for up to two (2) bedrooms, and two (2) off-street parking spaces for up to three (3) bedrooms."

The legislation provides that such dwelling units shall be allowed "in residential districts which allow for the construction of two (2) or more units. The number of attached single family units allowed shall be the same as the corresponding residential density for the property and zoning district."

The House passed this legislation on April 8.

H 5799A: Infill/oversized lot subdivisions

→ Key Takeaway: This legislation would add a new category of development known as "oversized lot subdivisions" and would eliminate the need for surveys for these subdivisions. Additionally, the legislation would expand the scope of zoning modifications, which allow limited relief from certain dimensional requirements through an administrative process, to modifications that are based on the existing built environment around the subject property.

→ Effective Date: 1/1/2026

These developments would be reviewed as minor subdivisions and would be defined as follows: "Subdivisions of an existing lot, including a lot which was legally merged or replatted, which result in the creation of a vacant lot or lots for residential use which are equal to or greater in lot area than the area of fifty percent (50%) of the residential lots within two hundred feet (200′) of

the lot proposed for subdivision, as confirmed by a registered professional engineer, surveyor or certified planner based on city or town records including geographic information system and/or tax assessor data. A lot, qualifying for this type of subdivision shall be allowed to subdivide even if the resulting lots fail to meet minimum lot size requirements of the district in which such lot is located, subject to the applicable requirements in § 45-24-38. The resulting subdivided lots shall have the benefit of reduced requirements as set forth in § 45-24-38, and/or are eligible for the processes set forth in § 45-24-46, as applicable."

The legislation would also amend the ZEA by adding a new category of zoning modifications. Zoning modifications, which were made mandatory in 2023, are authorized departures from certain dimensional requirements of the zoning ordinance that are available through an administrative process. The new category of "neighborhood character-based modifications ("NCBM")" would be authorized on properties connected to public sewer and water for purposes of residential use. Such modifications would be available in connection with "the construction, alteration, creation or structural modification of a dwelling unit." These modifications would be available where the resulting lots have at least 3,000 square feet and would allow "dimensional relief from setbacks, height, frontage, lot coverage, lot size, lot width, and lot depth, up to the average dimensions of the comparable existing built environment." This benchmark would be calculated by "a registered professional engineer, surveyor or certified planner based on city or town records including geographic information system and/or tax assessor data" for "all parcels that are: (A) within two hundred feet (200') of the subject property; and (B) in the same base zone; and (C) used for residential purposes." Notably, these average dimensions "are to be determined without any additional review of zoning or building code analysis of the legality of the existing dimensions of the comparable existing parcels." This means that if a property is surrounded by neighboring parcels that, for example, are all legally nonconforming with respect to lot coverage, the subject property will benefit from the character of the existing built environment and will be eligible for a zoning modification.

The standard for a NCBM is more flexible than the standard for a general zoning modification. Furthermore, although state law requires cities and towns to permit zoning modifications of 15 percent of the applicable dimensional requirements, the threshold for NCBMs would be 30 percent of the requirements of the zoning district. For example, if the zone required a 30 foot rear setback, relief of up to 9 feet of this requirement could be available as a NCBM.

In the original version of this legislation, it was unclear whether NCBMs are only for oversized lot subdivisions or would be generally available. The revised version of this legislation makes it clear that they will be available in all cases, not only in connection with oversized lot subdivisions. This will greatly expand the scope of zoning modifications, which are now available only for relief that does not exceed a certain percentage of the applicable requirement. If this legislation is enacted, the availability of zoning modifications will depend on the character of the existing built environment around the property. For example, if most of the structures in the surrounding area are located within the front yard setback, a modification could be allowed to permit an encroachment into the front yard setback, even if that modification represents a 30% (or greater) deviation from the minimum setback requirement.

H 5800: Village/mixed-use zoning

→ Key Takeaway: This legislation would require municipalities to provide for "residential development in all or some of the areas encompassing commercial district(s)" within the municipality.

→ Effective Date: 1/1/2026

Municipalities would be required to adopt "objective standards and criteria addressing the following: (i) standards to ensure that residential uses are allowed and integrated with commercial uses in a mixed use or village development; (ii) provisions that allow residential uses above commercial uses on the ground floor or first floor of a structure(s); (iii) provisions to permit medium to high density residential development in the commercial zones allowing residential use; and (iv) flexible and reasonable dimensional standards that promote and allow for the mixed use or village development." These requirements would be added to the section of the ZEA that sets forth the general purposes of zoning ordinances.

The House passed this legislation on April 1.

H 5801: LMI Housing Act

→ Key Takeaway: This legislation would restore the master plan stage for comprehensive permit applications, but only as an option to be elected by the developer. Other changes include making pre-applications optional for the developer and not mandatory, eliminating separate findings for denial of comprehensive permit applications, and other changes to the required criteria for approval.

→ Effective Date: Upon Passage [Section 1] & 1/1/26 [Section 2]

Section 1: In addition to some changes in the nature of housekeeping, this section of the legislation would allow developers to request review and approval of the master plan for the project. In 2023, the master plan stage was eliminated for comprehensive permits, leaving only a single public hearing to be held at the preliminary plan stage of review. This would restore master plan as an optional stage of review, at the choice of the developer. A public hearing would be held only if the developer submitted requests for adjustments (relief from the requirements of the zoning ordinance and/or local regulations).

Additionally, this section of the legislation would revise the required findings for comprehensive permits. Currently, the law sets forth a list of required findings for approval and a separate list of required findings for denial. This legislation would instead set forth a single list of required findings, all of which would need to be satisfied for approval. Notable changes to the criteria for approval include the following:

- If the Planning Board finds that the project is not consistent with local needs, "it must also find that the municipality has made significant progress in implementing [its affordable] housing plan."
- The standard for whether the affordable units in the development are "compatible in scale" to the market rate units would be defined as "meaning that the footprint and height of the [affordable] units shall not be less than twenty-five percent (25%) of the footprint and height of the market rate units." Similarly, the standard for whether the affordable units are "of similar architectural style to the market rate units within the project" would be clarified; this is about whether "the exterior of the units looks like an integrated neighborhood with similar rooflines, window patterns, materials and colors."
- There would be an exception to the requirement that affordable units be integrated into the development and be compatible in scale and architectural style for certain dwelling units. Affordable units that are age-restricted (55+ or 62+) are not subject to this requirement "to the extent the age-restricted housing units are designed to meet the physical or social needs of older persons or necessary to provide housing opportunities for older persons."

Section 2: This portion of the legislation would clarify how the LMI Housing Act should be applied to a municipality that has met the milestone of having ten percent (10%) of its year-round housing units designated as affordable housing. As of 2023, the year for which the most current data is available, only four (4) municipalities have achieved this goal and are considered 'exempt' from the LMI Housing Act, meaning that they do not have to accept comprehensive permit applications. This legislation would provide that even those municipalities that have met this goal must accept such applications and provide density bonuses for comprehensive permit projects. However, the specific minimum density bonuses that were added to the LMI Housing Act in 2023 would be applicable only to those municipalities that have not achieved the ten-percent goal.

Additionally, the legislation would eliminate the ability for a municipality to limit comprehensive permit applications from for-profit developers. Currently, municipalities may do so by ordinance if they are "meeting local housing needs", which is a defined term in the Act. This revision would allow only those municipalities that have achieved the ten-percent goal to do so.

The legislation would also revise the definition of "consistent with local needs," which is a required finding for comprehensive permit projects. Language indicating when local land use ordinances & regulations are consistent with local needs would be eliminated. This is consistent with the intent of the LMI Housing Act and recent amendments; namely, focusing the Planning Board's review of the project on the local need for affordable housing rather than its consistency (or not) with local requirements.

H 5802A: State-owned vacant properties

→ Key Takeaway: This legislation would facilitate the development of housing on state-owned property, with certain requirements and limitations. Such development would be exempt from local planning & zoning ordinances, regulations, and review processes, after a hearing is held before the State Planning Council.

→ Effective Date: 1/1/2026

This act would amend the Comprehensive Planning and Land Use Act by adding requirements for the State when it seeks to develop housing on property that is owned by the State and is vacant, abandoned property, or underutilized/excess land. When housing on such property would not comply with an approved and updated municipal comprehensive plan, and/or local zoning ordinance provisions, the state planning council must hold a public hearing on the proposal, with notice provided to the affected municipality. At the public hearing, the state agency proposing such a project (presumably, the Department of Housing) must demonstrate the following: (1) that the project complies with the state guide plan; (2) hat the project is needed for statewide health, safety and public welfare, including the need for affordable housing; (3) that the project has attempted to utilize design standards and recommendations of the municipality in which the property is located "to the extent feasible;" (4) that expert reports "conclude that there will not be a detrimental impact on traffic, stormwater, wetlands, sewer capacity, potable water availability, or historic features," and (5) that the agency has obtained feedback from the municipality's planning, zoning, and/or engineering staff. Provided that this public hearing has been completed, the municipality has no authority to require that the proposed development be reviewed as a land development project and/or subdivision; further, the zoning ordinance will not apply to the project. The legislation provides that state agencies may partner with a non-public individual or entity and may transfer the property after completion of the project.

The legislation would also eliminate existing language that makes a State-approved municipal comprehensive plan binding on actions of state agencies. In our opinion, this does not represent a drastic change to the existing state of the law regarding the relationship of municipal comprehensive plans and zoning ordinances to State-initiated development.

H 5803A: Electronic permitting expansion

→ Key Takeaway: This legislation would expand mandatory electronic permitting for land use applications to state agencies.

→ Effective Date: Upon passage, with compliance date of 10/1/26 [upcoming municipal compliance date of 10/1/25 in existing law]

This act would provide for the "establishment and maintenance of an electronic permitting platform and regulations related to the use of the platform for use in all matters related to the applications and review for state and local building permits, municipal zoning applications,

municipal planning applications, applications and permits for the department of environmental management, applications and permits for the department of transportation and applications and permits for the coastal resources management council." This legislation expands upon a law enacted last year that set a deadline of October 1, 2025, for municipalities to go live with an e-permitting platform for development applications. The legislation would expand this e-permitting mandate to the Department of Transportation, Coastal Resources Management Council, and the Department of Environmental Management, with those agencies subject to a compliance deadline of October 1, 2026.

H 5804: Building Code

→ Key Takeaway: This legislation doesn't seem to have much of an effect on the municipal level – it is focused on state-level committees & agencies.

→ Effective Date: Upon passage

This legislation's effect was summarized by the Legislative Council's office as follows: "This act would amend the corporation of the building code standards committee and would make several technical amendments relative to the building code office and would establish a state building code office within the office of the state fire marshal."