Frequently Asked Questions from RIDSP 2025 RI Local Officials Training

July 31, 2025

Questions are organized under the following headings:

- Zoning Ordinances
- Subdivisions and Land Development
- Affordable Housing
- Miscellaneous Topics

Zoning Questions (CHAPTER 45-24 Zoning Ordinances)

Accessory Dwelling Units (ADUs) - Reference: § 45-24-73. Design Standards Required for Accessory Dwelling Units

- **What setbacks should be used for an ADU?**
  - The Law does not address setbacks for ADUs. There are few interpretations on this as a result:
    - all ADU are accessory uses, therefore follow accessory structure setbacks.
    - An ADU must meet principal dwelling setbacks if it is attached to a principal dwelling
      - When considering applicable setbacks, one part of the Law says an ADU is allowed:
    - *"(3) Where the proposed ADU is located within the existing footprint of the primary structure or existing accessory attached or detached structure and does not expand the footprint of the structure."*

- **How to enforce ADUs are not used for short-term rentals or posted on any hosting platforms?**
  - It is up to local staff for enforcement. The Law is silent on enforcement.

- **Can ADUs count as affordable units?**
  - Reference: § 45-24-75. *Accessory dwelling units which may be counted towards low- and moderate-income housing.*
    - Yes, provided that the tenant of the unit has at least a one-year lease and the following conditions are met.
      (1) The ADU is occupied by a household whose income does not exceed 80% of the area median income (AMI), adjusted for family size, as determined and certified by the selected approved monitoring agent; or
      (2) The ADU is leased to a household utilizing a publicly subsidized rental assistance voucher that limits income to no more than eighty percent 80% of the AMI, evidence of which is provided to the selected approved monitoring agent; and
      (3) The cost of rent, heat, and utilities other than telephone, cable, and internet, based on the number of the bedrooms in the unit does not exceed 30% of the gross annual household income for a household with 80% or less of area median income, adjusted for family size as certified by the selected approved monitoring agent.
    - *Accessory dwelling units eligible to be counted toward a community's affordable housing goal under this section shall be counted as one-half (0.5) units each in every year for which documentation required to establish eligibility is provided annually to RIHousing by the selected approved monitoring agent.*

- **What happens if an owner-occupied ADU is sold and becomes non-owner occupied?**
  - Nothing. The Law is silent on enforcement. It is up to local staff for enforcement.

- **Do municipalities have the right to disqualify an application if the waste system is a private septic system in a critical care area?**
  - Reference: § 45-24-30

- In 2015 the Zoning Enabling Act was amended. It is not allowed by the Law, unless the community has an OSWT ordinance which has been approved by the Director of DEM.
- The Zoning Enabling Law states that "*municipalities shall not require infrastructure improvements in connection with the ADU unless such improvements and/or modifications are required by DEM to comply with building code requirements, or to address capacity or upgrades necessary to accommodate*." A community can require information to be submitted as to the status of such if an application is needed to be filed with DEM for a necessary upgrade to an OSWT. Communities can issue a conditional decision based upon DEM approving the application. "……subject to DEM approval". Consider adding this item to the checklist for ADU applications to be reviewed by the appropriate local official where communities are not served by public sewers.

- **Unrelated Persons - how to determine & prove unrelated?**
  - Refence: House Bill No. 7382 SUB A & Senate Bill No. 2635 Sub A
    - The Law is silent on this. The amendment adds to the definition of household but has no other guidance.
      - *"(ii) A person or group of unrelated persons living together. The maximum number may be set by local ordinance, but this maximum shall not be less than one person per bedroom and shall not exceed five (5) unrelated persons per dwelling. The maximum number shall not apply to NARR-certified recovery residences."*

- **Setbacks for Nonconforming Lots- which do we use?**
  - Reference: § 45-24-38. General provisions — Substandard lots of record.
    - Undersized/nonconforming lots, minimum setbacks, frontage/width shall be reduced by either - applying requirements from another zoning district in the municipality in which the subject lot would conform or
    - reduced by the same proportion that the area of such substandard lot meets the minimum lot area of the district in which the lot is located (for example – if it meets 50% of the minimum lot area, setbacks, frontage, width all reduced by 50%, and maximum building lot coverage is Increased by 50%.

- **How to calculate FAR with basement Units?**
  - Reference: House Bill No. 7324 SUB A & Senate Bill No. 3148
    - The definition of Basement is defined in § 45-24.3-5 (housing maintenance and occupancy code):

    (5) "Basement" means a portion of the building partly underground but having less than half its clear height below the average grade of the adjoining ground."

      - The language of the Legislation does read "must exclude any portion of a basement as defined in § 45-24.3-5 from the calculation of floor area ratio" which means basement units are to be excluded. Be sure to heck with your municipal planning staff and solicitor for your community as Zoning Ordinances are allowed to prohibit basement units and the RI Building Code has very specific standards which must to be met for such units.

- **Zoning decisions must be rendered in 15 days — is that State Law?**
  - Reference: 45-24-61 - https://webserver.rilegislature.gov/Statutes/TITLE45/45-24/45-24-61.htm
    - Yes, this is state law. 15 days to render the decision from the close of the hearing, and 30 days to be recorded from the date the decision was rendered.

- **When the Planning acts under the Zoning Ordinance for Unified Development Review (UDR) would the following apply to Planning Board members?**

- Reference: CHAPTER 45-24 Zoning Ordinances
  - No abstaining - Yes
  - No absences by a member on the application to be able to vote on the application - Yes

Subdivisions and Land Development Questions (Chapter 23 Subdivision of Land)

- **Is there still Master Plan requirement as part of the Major Land Development/Subdivision Process?**
  - Reference: § 45-23-39. General provisions - Major land Development and Major Subdivision Review Stages.
    - Yes except for certain affordable housing applications.

- **Do boards/commissions have the authority to make decisions on the completeness of an application?**
  - Reference: CHAPTER 45-23 Subdivision of Land
    - This is the authority only of the local administrative officer. When an application is before a land use board/commission, the members' is to are to review if the application meets or does not meet the applicable standards of review.

Affordable Housing Questions (CHAPTER 42-128.1 RI Housing Resources Act of 1998)

Mobile Homes / affordability – is this for rented or owner occupied mobile homes?

- Reference: House Bill No. 7984 SUB A as amended (Chapter 302) & Senate Bill No. 2993 as amended (Chapter 303)
  - The Law reads if owner occupied **OR** if the home is within a resident-owned community
  - The Law does not address rentals of mobile homes
    - *"(ii) Mobile and manufactured homes shall be included as affordable housing if such home constitutes a primary residence of the occupant or occupants; and such home is located within a community owned by the residents or the land containing the home is owned by the occupant or occupants; and such home was constructed after June 15, 1976; and such home complies with the Manufactured Home Construction and Safety Standards of the United States Department of Housing and Urban Development"*

What is the procedure for including Section 8 housing within municipal affordable housing counts?

- Reference: Effective in 2024, House Bill 8336 and Senate Bill 2089aa
  - The Law requires federal rental assistance vouchers to count towards a community's 10% affordable housing goal for Low-to-Moderate Income housing. RIHousing calculates the percentage of affordable housing achieved for municipalities and releases it annually through the Low and Moderate-Income Housing Chart. Federal rental vouchers are to be reported by public housing authorities by December 31 each year to RIHousing. More information on the methodology for incorporating such vouchers in the percentage can be found on the RIHousing webpage here. Municipalities are encouraged to check with their local housing authorities (where available) as to their reporting process.

Miscellaneous Questions

Who can see the Annual Financial Statements filed with the Ethics commission?

- Reference: Financial Disclosure | State of Rhode Island: Ethics Commission
  - These are public records. They are not published but the public has the right to request to see a public official's filings.

Hearings/ Public Input - are interactive / online meetings required?

- Reference: Chapter 42-46 Open Meetings
    - NO, currently an online option is NOT required for public meetings and all Board members must appear in person.
    - Following the Pandemic, some Boards kept hybrid meetings that are interactive, others use a "livestream" option with view only option, and some have no online option at all. For those using online options be sure that your Rules of Procedure cover participation guidelines for online participants.

Should public input be solicited during every motion discussion, or just during hearings?

- References: CHAPTER 45-24 Zoning Ordinances, CHAPTER 45-23 Subdivision of Land, CHAPTER 45-24.1 Historical Area Zoning
    - Public input is required during a public hearing prior to a decision on an application based upon what type of application is being reviewed. For other items on an agenda under a public meeting, but NOT a public hearing, public input/comment is discretionary. Be sure that your Rules of Procedure cover guidelines for such.

Are there regulations regarding board members personal liability?

- There aren't any regulations on this currently. How communities handle this will vary by municipality. Check with your local planning staff and solicitor for further information. It may worth asking for a board / Council workshop to discuss it and set a policy for your community.

Can boards/commissions vote to reject but not deny applications?

- References: CHAPTER 45-24 Zoning Ordinances, CHAPTER 45-23 Subdivision of Land, CHAPTER 45-24.1 Historical Area Zoning
    - Boards and commissions* may consider the following options for decisions on applications:
        - Approve or Approved with Conditions
        - Deny or Deny without prejudice - meaning an application could come back before a board/commission with less hurdles, such as waiting periods. Ensure your Rules of Procedure have a process to address this type of decision to give applicants direction to follow.
        - Continue the application (if the board/commission does not feel there is enough evidence in the record and/or have outstanding questions to be addressed.
        - *Planning Boards: Check with local staff/solicitor to see about required timetables/deadlines to be adhered to or extend with the agreement of the applicant to avoid automatic approval for failure to act.

Is a roll-call vote required?

- References: CHAPTER 45-24 Zoning Ordinances, CHAPTER 45-23 Subdivision of Land
    - No, it is a recommended best practice. The record (minutes) of the meeting must record how all voted. The easiest way to do that is through a roll call vote.

Is there a legal requirement for stating "why" in abstaining, or simply a best practice?

- No, it is a recommended best practice.

What should be done if the Historic District Commission does not understand architectural concept of replacing historically accurate materials with acceptable modern materials?

- Construction materials change over time. Recommend bringing an expert to testify at the application meeting on "replacement in kind" materials. Consult the RI Historical Preservation and Heritage Commission for guidance.