

2016 -- H 7699

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2016

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A N A C T

RELATING TO TOWNS AND CITIES

Introduced By: Representatives DeSimone, Lima, and Palangio

Date Introduced: February 24, 2016

Referred To: House Municipal Government

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 45-23-66, 45-23-67, 45-23-68, 45-23-69 and 45-23-71 of the  
2   General Laws in Chapter 45-23 entitled "Subdivision of Land" is hereby amended to read as  
3   follows:

4           **45-23-66. Appeals -- Right of appeal.** -- (a) Local regulations adopted pursuant to this  
5   chapter shall provide that an appeal from any decision of the planning board, or administrative  
6   officer charged in the regulations with enforcement of any provisions, except as provided in this  
7   section, may be taken to the board of appeal by an aggrieved party. [An aggrieved party may only](#)  
8   [take an appeal of an approval to the board of appeals at one stage of approval, meaning at either](#)  
9   [master, preliminary or final approval.](#) Appeals from a decision granting or denying approval of a  
10   final plan shall be limited to elements of the approval or disapproval not contained in the decision  
11   reached by the planning board at the preliminary stage, providing that a public hearing has been  
12   held on the plan pursuant to § 45-23-42.

13           (b) Local regulations adopted pursuant to this chapter shall provide that an appeal from a  
14   decision of the board of appeal may be taken by an aggrieved party to the superior court for the  
15   county in which the municipality is situated. [An aggrieved party may only take an appeal of an](#)  
16   [approval to superior court at one stage of approval, meaning at either master, preliminary or final](#)  
17   [approval.](#)

18           **45-23-67. Appeals -- Process of appeal.** -- (a) An appeal to the board of appeal from a  
19   decision or action of the planning board or administrative officer may be taken by an aggrieved

1 party to the extent provided in § 45-23-66. The appeal must be taken within ~~twenty (20)~~ ten (10)  
2 days after the decision has been filed and posted in the office of the city or town clerk.

3 (b) The appeal shall be in writing and state clearly and unambiguously the issue or  
4 decision which is being appealed, the reason for the appeal, and the relief sought. The appeal  
5 shall either be sent by certified mail, with a return receipt requested, or be hand-delivered to the  
6 board of appeal. The city or town clerk shall accept delivery of an appeal on behalf of the board  
7 of appeal, if the local regulations governing land development and subdivision review so provide.

8 (c) Upon receipt of an appeal, the board of appeal shall require the planning board or  
9 administrative officer to immediately transmit to the board of appeal, all papers, documents and  
10 plans, or a certified copy thereof, constituting the record of the action which is being appealed.

11 **45-23-68. Appeals -- Stay of proceedings. -- Appeals – Discretionary stay of**  
12 **proceedings.** --An appeal ~~stays all~~ shall not stay proceedings in furtherance of the action being  
13 appealed.

14 **45-23-69. Appeals -- Public hearing.** -- (a) The board of appeal shall hold a public  
15 hearing on the appeal within ~~forty five (45)~~ thirty (30) days of the receipt of the appeal, give  
16 public notice of the hearing, as well as due notice to the parties of interest. At the hearing any  
17 party may appear in person, or be represented by an agent or attorney. The board shall render a  
18 decision within ten (10) days of the close of the public hearing and shall post and record the  
19 decision within thirty (30) days thereafter. The cost of any notice required for the hearing shall be  
20 borne by the applicant.

21 (b) The board of appeal shall only hear appeals of the actions of a planning board or  
22 administrative officer at a meeting called especially for the purpose of hearing the appeals and  
23 which has been so advertised.

24 (c) The hearing, which may be held on the same date and at the same place as a meeting  
25 of the zoning board of review, must be held as a separate meeting from any zoning board of  
26 review meeting. Separate minutes and records of votes as required by § 45-23-70(d) shall be  
27 maintained by the board of appeal.

28 **45-23-71. Appeals to the superior court.** -- (a) An aggrieved party may appeal a  
29 decision of the board of appeal, to the superior court for the county in which the municipality is  
30 situated by filing a complaint stating the reasons of appeal within ~~twenty (20)~~ ten (10) days after  
31 the decision has been recorded and posted in the office of the city or town clerk. An aggrieved  
32 party may only take an appeal of an approval to superior court at one stage of approval, meaning  
33 at either master, preliminary or final approval. The board of appeal shall file the original  
34 documents acted upon by it and constituting the record of the case appealed from, or certified

1 copies of the original documents, together with any other facts that may be pertinent, with the  
2 clerk of the court within ~~thirty (30)~~ fifteen (15) days after being served with a copy of the  
3 complaint. When the complaint is filed by someone other than the original applicant or appellant,  
4 the original applicant or appellant and the members of the planning board shall be made parties to  
5 the proceedings. The appeal does not stay proceedings upon the decision appealed from, but the  
6 court may, in its discretion, grant a stay on appropriate terms and make any other orders that it  
7 deems necessary for an equitable disposition of the appeal.

8 (b) The review shall be conducted by the superior court without a jury. The court shall  
9 consider the record of the hearing before the planning board and, if it appear to the court that  
10 additional evidence is necessary for the proper disposition of the matter, it may allow any party to  
11 the appeal to present evidence in open court, which evidence, along with the report, shall  
12 constitute the record upon which the determination of the court shall be made.

13 (c) The court shall not substitute its judgment for that of the planning board as to the  
14 weight of the evidence on questions of fact. The court may affirm the decision of the board of  
15 appeal or remand the case for further proceedings, or may reverse or modify the decision if  
16 substantial rights of the appellant have been prejudiced because of findings, inferences,  
17 conclusions or decisions which are:

18 (1) In violation of constitutional, statutory, ordinance or planning board regulations  
19 provisions;

20 (2) In excess of the authority granted to the planning board by statute or ordinance;

21 (3) Made upon unlawful procedure;

22 (4) Affected by other error of law;

23 (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the  
24 whole record; or

25 (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
26 exercise of discretion.

27 SECTION 3. Sections 45-24-64, 45-24-66 and 45-24-69 of the General Laws in Chapter  
28 45-24 entitled "Zoning Ordinances" are hereby amended to read as follows:

29 **45-24-64. Appeals -- Appeals to zoning board of review.** -- An appeal to the zoning  
30 board of review from a decision of any other zoning enforcement agency or officer may be taken  
31 by an aggrieved party. The appeal shall be taken within ~~a reasonable time~~ twenty (20) days of the  
32 date of the recording of the decision by the zoning enforcement officer or agency by filing with  
33 the officer or agency from whom the appeal is taken and with the zoning board of review a notice  
34 of appeal specifying the ground of the appeal. The officer or agency from whom the appeal is

1 taken shall immediately transmit to the zoning board of review all the papers constituting the  
2 record upon which the action appealed from was taken. Notice of the appeal shall also be  
3 transmitted to the planning board or commission.

4 **45-24-66. Appeals -- Public hearing by zoning board of review. --** The zoning board of  
5 review shall fix a reasonable time for the hearing of the appeal, and shall give public notice, at  
6 least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in  
7 the city or town. Notice of the hearing, which shall include the street address of the subject  
8 property, shall be sent by first class mail, postage prepaid, to the appellant and to those requiring  
9 notice under § 45-24-53. The zoning board of review shall decide the matter within ~~a reasonable~~  
10 ~~time~~ ten (10) days, and shall post and record its decision within thirty (30) days of the vote. Upon  
11 the hearing, any party may appear in person or by agent or by attorney. The cost of any notice  
12 required for the hearing shall be borne by the appellant.

13 **45-24-69. Appeals -- Appeals to superior court. --** (a) An aggrieved party may appeal a  
14 decision of the zoning board of review to the superior court for the county in which the city or  
15 town is situated by filing a complaint stating the reasons of appeal within ~~twenty (20)~~ ten (10)  
16 days after the decision has been recorded and posted in the office of the city or town clerk. The  
17 decision shall be posted in a location visible to the public in the city or town hall for a period of  
18 ~~twenty (20)~~ ten (10) days following the recording of the decision in the office of the city or town  
19 clerk. The zoning board of review shall file the original documents acted upon by it and  
20 constituting the record of the case appealed from, or certified copies, together with other facts that  
21 may be pertinent, with the clerk of the court within ~~thirty (30)~~ fifteen (15) days after being served  
22 with a copy of the complaint. When the complaint is filed by someone other than the original  
23 applicant or appellant, the original applicant or appellant and the members of the zoning board are  
24 made parties to the proceedings. The appeal shall not stay proceedings upon the decision  
25 appealed from, but the court may, in its discretion, grant a stay on appropriate terms and make  
26 any other orders that it deems necessary for an equitable disposition of the appeal.

27 (b) If, before the date set for the hearing in the superior court, an application is made to  
28 the court for leave to present additional evidence before the zoning board of review and it is  
29 shown to the satisfaction of the court that the additional evidence is material and that there were  
30 good reasons for the failure to present it at the hearing before the zoning board of review, the  
31 court may order that the additional evidence be taken before the zoning board of review upon  
32 conditions determined by the court. The zoning board of review may modify its findings and  
33 decision by reason of the additional evidence and file that evidence and any new findings or  
34 decisions with the superior court.

1           (c) The review shall be conducted by the superior court without a jury. The court shall  
2 consider the record of the hearing before the zoning board of review and, if it appears to the court  
3 that additional evidence is necessary for the proper disposition of the matter, it may allow any  
4 party to the appeal to present that evidence in open court, which evidence, along with the report,  
5 constitutes the record upon which the determination of the court is made.

6           (d) The court shall not substitute its judgment for that of the zoning board of review as to  
7 the weight of the evidence on questions of fact. The court may affirm the decision of the zoning  
8 board of review or remand the case for further proceedings, or may reverse or modify the  
9 decision if substantial rights of the appellant have been prejudiced because of findings,  
10 inferences, conclusions, or decisions which are:

11           (1) In violation of constitutional, statutory, or ordinance provisions;

12           (2) In excess of the authority granted to the zoning board of review by statute or  
13 ordinance;

14           (3) Made upon unlawful procedure;

15           (4) Affected by other error of law;

16           (5) Clearly erroneous in view of the reliable, probative, and substantial evidence of the  
17 whole record; or

18           (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted  
19 exercise of discretion.

20           SECTION 4. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TOWNS AND CITIES

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1           This act would amend timeframes and procedures for appeals in the zoning enabling act  
2 and land development and subdivision review enabling act, and would also shorten the time for,  
3 and number of, appeals during the planning board of review process.

4           This act would take effect upon passage.

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