



Office of the Town Planner MEMORANDUM

TO: The Honorable Town Council, Nancy Beye, President
Edward A. Mello, Town Administrator
FROM: Lisa W. Bryer, AICP, Town Planner
RE: Zoning Ordinance Amendments
DATE: December 11, 2023

Below is a compilation of comments and suggested changes to the proposed Zoning Ordinance Amendments based on the joint work session with the Town Council on November 1, 2023, additional public comment received by this office, additional changes recognized, and Planning Commission deliberations at their meeting on November 15. This Memo addresses the public comments received (bulleted), or justification for any changes or “no” change. I am attaching a compilation of the changes recommended in a separate document titled ZONING ORDINANCE CHANGES RECOMMENDED dated 12-18-23. **The document you received Titled Zoning Ordinance Final Draft dated 12-18-23 includes all of the changes discussed in this memo and detailed in the document titled Zoning Ordinance Changes proposed dated 12-18-23.**

General:

- A. The term building has been changed or added to “structure” where appropriate.
- B. The CWe(east) and w(west) districts have been split and appropriate changes made.
- C. Uses in Table 6-1 were reviewed again and appropriate changes made.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Section 82-104. Definitions

Currently there is not a definition or category for assisted living facilities in the Zoning Ordinance.

Assisted living facility. A non-institutional shared living environment which integrates shelter and service needs for functionally impaired and older persons who can maintain a semi-independent lifestyle and who do not require constant supervision or intensive health care as provided by an institution. Each congregate unit has its own bedroom and may have a separate and shared living room, kitchen, dining area or bathroom.

Standards for this type of facility will need to be developed when we address all the standards for special use permits in the spring.

Lot coverage. That portion of the lot that is or may be covered by buildings and accessory buildings and accessory structures. **See Sec 82-703**

This change adds decks and patios 12" above grade as part of building lot coverage. Decks and significant masonry work are becoming a more extensive part of property development in Jamestown and should be counted as part of lot coverage.

Major Recreational Equipment. See Recreational Equipment, Major, **See Sec 82-706**

~~**Short Term Rental.** Any lodging unit in a residential building (whether in the primary or an accessory building) that is occupied or intended or designed to be occupied on a short term basis of less than 30 consecutive days and where the property owner may or may not be in residence during the transient occupancy. A short term rental shall not include a hotel, motel, or bed and breakfast house.~~

Substantial modification. Alteration to a building that includes one or more of the following:

- 1) That is valued at more than 50% of the replacement cost of the entire building;
- 2) New construction other than single family;
- 3) Fifty percent or greater alteration of a building exterior;
- 4) Demolition;
- 5) Grading that disturbs more than two vertical feet of land;
- 6) Fifty percent or greater alteration of street façade;
- 7) New use category;
- 8) Expansion of use which requires more than 15 net new parking spaces; or
- 9) A use applying for no net loss of parking per Sec. 82-1307.

Public Comment: The highlighted section 1) above was questioned in terms of process of determining this standard as follows:

- What is the process for determining 50% replacement cost? (i.e. your cost may be different from my cost). Who is the authority making the decision if it meets the 50% requirement? What is the standard for the 50% replacement.

This has not been a problem in the past and generally it is obvious, and in several cases triggering 1) also triggers 3) or 6) above. When 1) is the only parameter triggered the applicant is always provided the opportunity to provide a building estimate that can be reviewed by the building official. That option has never been taken. In all TRC Administrative reviews (Sec 82-410) the TRC has the ability to assign the application to the Planning Commission for full review at its discretion if the project does not meet required criteria or the project has elements that render public review appropriate or necessary. No changes are recommended in this section.

Sec. 82-601. Uses and districts.

At this point, it seems reasonable to allow residentially used single family or duplex dwellings to be able to have an ADU in the CD District. The proposed ordinance states in Sec. 82-1201.2. Standards:

An accessory dwelling unit may be permitted, by right, in any residential zoning district with the following limitations:

- A. Accessory dwelling units are only allowed on a lot with one single-family or with a duplex dwelling as the principal dwelling and must be clearly subordinate to that principal dwelling. The ADU shall be no more than 1/2 the size of the existing home or in the case of a duplex shall be no more than 2/3 the size of the larger duplex unit. In any case, the ADU shall not be larger than 800 square feet.

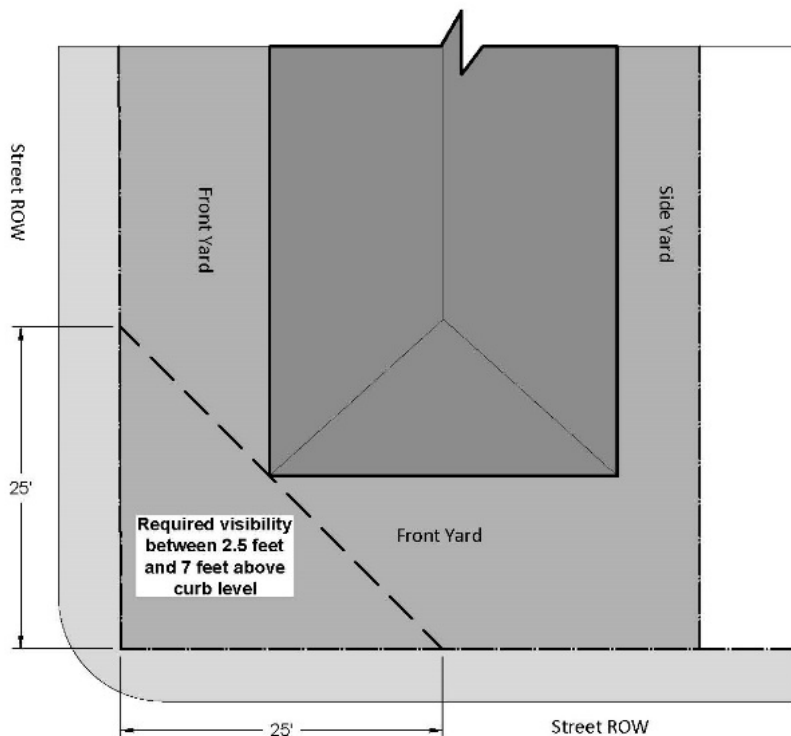
This would only allow ADUs on lots in the CD district that meets that criteria, i.e.: that have one single family or one duplex dwelling as stated above in the highlighted language. The Use Table 6-1 has been amended to include the CD as a yes (Y) in the Accessory Dwelling Unit category.

Section 82-604. Vision clearance at street corners.

This section was changed to clarify where you measure from when determining clearance of vegetation and structures at corner lots for the purpose of sight distance.

Sec. 82-604. Vision clearance at street corners.

At street intersections in all districts, no building or structure shall be erected and no vegetation shall be maintained between a height of 2.5 feet and seven feet above street level of the triangle formed by the two street-pavement edge lines and a third line joining points on the street-pavement edge line of 25 feet from the intersection.



Section 82-700. Accessory Structures (D):

- Public Comments:
- This provision puts an absolute ban on accessory structures in front yards. I am curious as to why we need this prohibition, especially because there are exceptions for waterfront property AND there are many many homes on the island that are not waterfront but also have accessory structures in the front yard. Also, we already have dimensional requirements for accessory structures, which is the control mechanism, and if a variance is needed, then it can still be obtained so long as it meets the criteria. An absolute ban is not necessary and the dimensional regulations should govern the location.
- **Height Language for Accessory Structures:** The 5' difference language is VERY confusing, especially because there are already dimensional regulations in the dimension table.
- **Section 82-703 Swimming Pools:** The language of this provision is still confusing and it is hard to tell where to measure the setback, the fence, the playing surface, etc.. If the playing surface, then what is the playing surface? The lines, the hardtop?
- **Section 82-706 A. and B:**
These changes were made to clarify that parking or storage of commercial and major recreational equipment can only occur on residentially developed lots and not vacant lots and also clarifies the number permitted and size of the vehicles as follows. The current Ordinance only permits one per lot hence the removal of "of each type of" below:

- A. ~~On any residentially developed lot,~~ parking lot, driveway, or garage located in a residential district, no more than one commercial vehicle may be stored overnight. Such vehicle or bus shall be no more than ~~1 1/2 tons rated capacity~~ 10,000 pounds gross vehicle weight. In an RR-200 or RR-80 district, registered farm vehicles and trucks may be stored provided they are 30 feet from any lot line.
- B. The parking or storing of major recreational equipment must comply with the following regulations:
 1. Not more than one ~~of each type of~~ registered major recreational equipment, as defined in **Sec. 82-104** (Definitions), may be parked or stored per dwelling unit on any one lot.
 2.
 - Public Comment - **Section 82-706 (4):** What is the purpose of the 10' setback if the vehicle is located on the property. If the vehicle or trailer is in a driveway, why does it need to be pushed in 10'. Why can cars park directly on the property line, or even on the street, but my trailer needs to be pushed back 10', especially if it is in a private driveway?

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Section 82-800. High Groundwater Table and Impervious Layer Overlay District

Public Comments:

- **Section 82-800 J(1) (c)(D): High ground water:** These provisions create new criteria that an applicant will need to provide evidence for on the record in order to obtain the Special Use Permit. **How is an applicant supposed to know what the “availability and capacity of existing and planned public and or private service facilities.”?** There is no way for an applicant to provide this kind of testimony.

“And planned” has been removed.

- Same sections creating extra criteria: What “goals and patterns of land use” are being referred to in this criteria? Where in the comp plan does it lay out the criteria and plans for the high ground water district?

This refers to land use in general in the Groundwater District.

- **Section 82-800(K):** **Out of all of my comments I believe that this one needs the most attention and likely to be completely removed in its entirety.** This provision is trying to make a dimensional variance a “USE” variance (i.e. under this provision a house in the shores that wants to put a one foot expansion on their deck will NOT be able to do so because it is virtually legally impossible to obtain a USE VARIANCE). The standard to obtain a USE Variance is “No other beneficial use.”. If you cannot prove this, and it is VERY RARELY proven, you will NOT get the variance. Also, this section refers back to subsection G. Subsection G is NOT a USE prohibition, rather it is merely a prohibition section and not a prohibition on USES.

The uses discussed in Section K discussed above are not proposed to change and are currently the prohibited uses as noted below:

G. Prohibitions.

1. The installation of subsurface drains designed to intercept and lower the groundwater table for the installation of an OWTS.
2. Basements associated with any structure, or the expansion of any structure, are not allowed in Sub-district A.
3. In-ground swimming pools are not allowed in Sub-district A.

These uses are prohibited due to their potential significant impact in the High Groundwater District. They are uses not dimensions. If they were “dimensions”, they would be appropriate for a variance, but they are “uses” and would be subject to a “use variance” today if requested. This language in the ordinance as shown in the proposed ordinance and the “ORDINANCE CHANGES PROPOSED” below is simply making it clear what the process is to request these prohibited uses. No changes are recommended for section K.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Article 9. Nonconforming Uses Buildings and Structures

This section is being clarified so that nonconforming building or structure that wishes to put a conforming addition onto it does not get sent to the Zoning Board. This was problematic for several recent applications, such as the 15 Fowler Street application which the Planning Commission heard and then went to the Zoning Board. Please see the changes proposed in the Zoning Ordinance Changes Section.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Article 10. Development Plan Review

- Public Comments:

Section 1004.1 – Planning Commission as DPR Approving Authority

This section was cleaned up to agree with the TRC Section 82-410.

- **Section 1004.3:** This provision now makes every single application for a special use permit to obtain planning commission recommendation prior to moving to zoning. This is EXTREMELY burdensome to both the applicant and the Town. This also adds at least another 3 weeks to an applicants process, at a minimum from a procedural standpoint. This also begs the question if the applicant is now going to get hit with 2 application fees and 2 mailing fees on top of the increased amount of time to get a permit.

I believe it is clear, by virtue of the fact this is the section on “Development Plan Review”. The only applications that need Planning Commission review and recommendation to the Zoning Board are those that require Development Plan Review, NOT all Special Use Permits. The Zoning Board always has the option of sending any application to the Planning Commission for an advisory opinion. This process is common and the Planning Commission routinely provides recommendations to the Zoning Board on such applications, such as High Groundwater applications and Commercial Development plans that require special use permits such as Multifamily housing. The thresholds for what applications require review and recommendation are clear in this section. No changes are proposed for this section.

- **Section 1007.1:** Looks like a requirement for certified mail for notices. I believe that zoning has gone to regular USPS mailing. The mailing requirement for notices should be the same.

The requirement for certified mail has been removed.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Article 11. Jamestown Village Special Development District.

Public Comments:

- **Section 82-1103.2(D):** you account for waterfront lots in every district EXCEPT for the R8 and R20. What about waterfront lots NOT in the overlay district?

This section is proposed as follows:

- C. Frontage – R-8, R-20, CW, CL, CD and P Districts
 1. Buildings on corner lots shall have two Private Frontages as shown in Table 11-1.a.
 2. For waterfront lots, the applicant shall propose whether the street frontage, the waterfront, or both should serve as the primary frontage for the purposes of designating layers.

This section refers only to the street frontage designation and does not impact setbacks. There is no harm in adding R-8 and R-20 to these standards.

Article 12. Use Performance Standards

Sec. 82-1201.2. A. Accessory Dwelling Units – Standards

This section states “The ADU shall be no more than 1/2 the size of the existing home or in the case of a duplex shall be no more than 2/3 the size of the larger duplex unit.”

There was concern from the Affordable Housing Committee and the Town Council that this would penalize existing small homes and encourage demolition of smaller homes or the addition/construction of much larger homes. Several changes were made to this section after long deliberation by the Planning Commission with input by the Affordable Housing Committee. Regardless of existing home size, allowing accessory dwelling units for family use or in long term rental situations, in my professional opinion, will be to the benefit of Jamestown’s village character. We have been plagued with large homes all over the island. It should not be our intent or unintended consequence to encourage demolition of existing, smaller or historic homes, which seems to be all too prevalent these days. Allowing modest accessory dwelling units of 800 square feet on lots less than 20,000 square feet and larger, per 82-700, to serve the needs of family members or other long term rental needs seems to benefit Jamestown.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Sec. 82-1201.2. G. Accessory Dwelling Units – Standards

“Either the principal dwelling or the ADU must be owner occupied.”

This had much debate at the joint workshop on November 1 and again by the Planning Commission on November 15 and December 6. The state law RIGL 45-24-37 states:

Notwithstanding any other provision of this chapter, an accessory dwelling unit in an owner-occupied residence that complies with §§ 45-24-31 and 45-24-73 shall be permitted as a reasonable accommodation for family members with disabilities or who are sixty-two (62) years of age or older, or to accommodate other family members.

In my opinion this would indicate that Rhode Island believes it is appropriate/legal to utilize the requirement of owner occupancy.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Sec. 82-1203. Compact Cottage Development (CCD)

A detailed discussion at the Planning Commission yielded some useful discussion around design of these units. It was agreed that the purpose of the standards in this section are primarily to manage the massing of this type of compact development and to insure their appropriateness within a neighborhood or on a lot. One point of discussion being that they may be appropriate outside the village district and that RIDEM will dictate whether septic systems are appropriate for the density proposed. The continued discussion led to only allowing this type of development where public water and sewer are provided. The second discussion was around design and whether the footprint could be less and the height be more. This discussion resulted in proposed changes.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Sec. 82-1204. Solar Energy Systems and Facilities

Sec. 82-1204.3. General requirements.

The Solar Energy Systems Section of the Zoning Ordinance is a new section intended to provide guidance for solar energy systems. This section was not intended to hamstring or prevent the currently proposed solar energy system envisioned at the landfill. The Town will still be responsible for receiving a Special Use Permit from the Zoning Board of Review as noted in Table 6-1.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Sec. 82-1207. Keeping of chicken hens.

A discussion ensued at the Planning Commission meeting regarding the limitation of 6 chicken hens permitted regardless of the size of the lot. For the purposes of this discussion and the proposed changes that are shown in the ZONING ORDINANCE CHANGES document, RIDEM classifies a farm as follows:

Farmland Classification For the purposes of this Program, farmland means a parcel of land, exclusive of the house site, that meets any of the following conditions and has a current Conservation Plan (less than

*ten years old) or has applied for one. Farmland includes: * Land which constitutes a “farm unit,” meaning land owned by a farmer, including woodland and wetlands, at least five (5) acres of which are actively devoted agricultural and horticultural use, and which have produced a gross income from the sale of its farm products of at least \$2500.00 in one of the last two years. The farm unit may be less than (5) acres if the farmer is meeting the \$2500.00 or more gross income requirement. * Land that is actively devoted to agricultural use by a “subsistence farmer” who derives his or her primary means of sustenance from the consumption of agricultural products grown on their land. Non-farm related income must be low enough to make them eligible for assistance under Title 20 Programs. * Land that meets the requirements and qualifications for a Government set aside or land that has a combination of income, crop, and acreage which (in the Director’s opinion) qualifies it for inclusion.*

Land classified as farmland must be actively devoted to agricultural or horticultural use, using normally acceptable practices, in the production of plants and animals useful to man including but not limited to: forages and sod; fruits of all kinds including nuts, berries, grapes and vegetables; floral, ornamental and greenhouse products; poultry and poultry products; sheep and sheep products; livestock including beef cattle, swine, horses and mules, the stabling of horses; the commercial breeding or grazing of any or all such animals for the production of meat, milk, fiber in saleable livestock; and the production of fish, shellfish, plant material and fish products through aquacultural practices.

The definitions R.I.G.L. 44-27-2 specifies the house site means the zoned lot size or one acre, whichever is smaller, and land surrounding dwellings or devoted to developed facilities. If there is no house on the property, no site is excluded.

Please see the PROPOSED ORDINANCE CHANGES document for the proposed changes.

Article 14. Sign Regulations

Sec. 82-1407. Regulations for residential districts.

The requirement for temporary residential signage to be subject to a permit from the Building Official seemed overly onerous on the resident and overly burdensome on the Building Official. This section was changed to allow these types of signs by right and not with the issuance of a permit by the Building Official.