

860-RICR-00-00-3

TITLE 860 - RHODE ISLAND HOUSING RESOURCES COMMISSION

CHAPTER 00 – N/A

SUBCHAPTER 00 – N/A

PART 3 – Rules and Regulations for Expedited Permitting for Affordable Housing

3.1 Purposes

The State of Rhode Island and Providence Plantations herein establishes regulations for an expedited permit review process, as set forth in R.I. Gen. Laws § 42-128-2 et seq., for housing projects of critical concern. The purpose of these rules and regulations is to: encourage and promote affordable housing production and rehabilitation; to assist local cities and towns achieve their ten (10) percent affordable housing goals; to facilitate implementation of local and state plans for the provision of affordable housing; and, to optimize the use of public resources, including proceeds from bond issues, by providing expedited consideration by state agencies of applications for permits for projects that would provide affordable housing.

3.2 Legal Authority

These rules and regulations are promulgated pursuant to the requirements and provisions of the Expedited Permit Process Act, R.I. Gen. Laws § 42-128-2 et seq., and the Administrative Procedures Act, R.I. Gen. Laws § 42-35-1 et seq.

3.3 Definitions

- A. For the purposes of these regulations, the following terms shall have the following meanings:
1. "Affordable housing plan" means a component of a housing element of a municipal comprehensive plan, as defined in R.I. Gen. Laws § 45-22.2-4(33), that is prepared in accordance with guidelines adopted by the state planning council, to meet housing needs in a city or town and/or to meet the provisions of R.I. Gen. Laws § 45-53-4(b)(1) and (3).
 2. "Applicant" means public agency, non-profit organization, any limited equity housing cooperative, or any private developer eligible who is the project owner or development partner.

3. "Associate director" means the associate director for planning in the department of administration.
4. "Chairperson" means the chairperson of the housing resources commission.
5. "Comprehensive plan" means a comprehensive plan adopted and approved by a city or town pursuant to R.I. Gen. Laws Chapters 45-22.2 and 45-22.3.
6. "Determination of probable consistency" means a determination by the associate director that an eligible affordable housing project appears to be consistent with the applicable provisions of the state plans pertaining to affordable housing development; a determination of probable consistency shall not be deemed to be conclusive, final, or binding determination of conformity with such plans or with any specific requirements adopted pursuant to such plans.
7. "Development stage" means the point at which the project has been certified as meeting the eligible affordable housing criteria and has been permitted by local and state agency to proceed with construction.
8. "Eligible affordable housing project" means low and moderate income housing (LMIH) or housing development in which at least twenty-five percent (25%) of the dwelling units are low or moderate income housing.
9. "Executive director" means the executive director of the housing resources commission.
10. "Housing project of critical concern" or, "project" means an eligible affordable housing project designated by the housing resources commission to be significant by its ability to advance affordable goals set forth in duly approved plans for affordable housing and to help alleviate affordable housing shortages in Rhode Island.
11. "Housing Resources Commission" or, "Commission" means the housing resources commission established by R.I. Gen. Laws Chapter 42-128.
12. "Low and moderate income housing" means any housing whether built or operated by a public agency or any nonprofit organization or any limited equity housing cooperative or any private developer, subsidized by a federal, state, or municipal government subsidy under any program to assist the construction or rehabilitation of housing affordable to low and moderate income households, as defined in the applicable federal or state statute, or local ordinance and that will remain affordable through land lease and/or deed restriction for ninety-nine (99) years or such other period that is either agreed to by the applicant and town or prescribed by

federal, state, or municipal government subsidy program but that is no less than thirty (30) years from initial occupancy.

13. "Person" means any natural person, company, commission, corporation, partnership, or any type of business entity.
14. "Proforma" means any analysis done in order to demonstrate the feasibility and viability of the proposed project.
15. "State agency" means any office, department, board, commission, bureau, division, authority, public corporation, agency or instrumentality of the State.
16. "Statewide Planning" means the statewide planning program established by R.I. Gen. Laws § 42-11-10.

3.4 Request for Status as a Housing Project of Critical Concern

A person requesting designation as a Housing Project of Critical Concern must apply to the Commission on application forms that must be obtained from the Commission.

3.4.1 Contents of Application

- A. Applicants must submit to the Commission one (1) original and three (3) copies of the application. Each applicant must provide the following information together with such other information that the Commission may request:
 1. Name, address, telephone number, fax number, e-mail address and taxpayer identification number of the applicant;
 2. Address, if available, or plat and lot number of site;
 3. A description of the proposed development;
 4. Evidence that the development meets Eligible Affordable Housing Project criteria;
 5. A description of how the development is consistent with the applicable provisions of the local and state plans pertaining to affordable housing development including, but not limited to, local comprehensive plans and "Land Use 2025;"
 6. Evidence of ownership or site control;
 7. Proforma and a development budget;

8. Schedule of permitting needs;
9. Identification of development partners, if any;
10. Description of the experience of the applicant and the development team including identification of key staff, their qualification and experience, past projects undertaken and current housing projects underway;
11. If the property is occupied, a plan for relocation of displaced individuals.

3.4.2 Criteria to Determine the Significance of Any Application in Meeting the Purposes of this Act

- A. In order to qualify as a Project of Critical Concern, the applicant must demonstrate to the Commission:
1. That application has been made to secure federal, state or municipal subsidies, or that the Project supports the implementation of the American Recovery and Reinvestment Act of 2009 and/or other federal housing stimulus efforts and;
 2. That the project addresses the critical housing needs identified in the “Rhode Island Five Year Strategic Housing Plan: 2006-2010: Five Thousand in Five Years” including a priority for rental housing, and;
 3. That the project promotes smart growth, including but not limited to: compact development, reuse of buildings, proximity to public transportation, use of existing infrastructure, brownfields redevelopment, historic preservation, and mixed use, and;
 - a. In a community that has not reached its 10% goal, or in a community that is exempt due to rental housing stock, that the Project meets a minimum of 5% of the LMIH units needed, as determined by Rhode Island Housing pursuant to R.I. Gen. Laws § 42-55-5.3 et seq.; or
 - b. In a community that has reached its 10% goal, that the Project adds at least 5% additional LMIH units to the existing LMIH stock, as determined by Rhode Island Housing pursuant to R.I. Gen. Laws § 42-55-5.3 et seq.
 5. Notwithstanding the above criteria, to qualify for expedited permitting, a project must provide at least 10 LMIH units. Any project that provides at least 40 units of LMIH housing shall be eligible for consideration as a Project of Critical Concern regardless of location.

6. That the Project incorporates Green Building, Energy Star, or other energy efficient technologies to reduce operational costs.

3.4.3 Certificate of Critical Concern to Meet Emergency Need

Notwithstanding the above criteria, the chairperson of the Commission, or the executive director acting on behalf of the chairperson, may determine that an emergency need for housing, caused by a natural disaster or other dire circumstances leading to homelessness exists, and may issue a Certificate of Critical Concern to meet this need.

3.5 Procedure for Review

- A. Not more than five (5) business days after receiving the request for status as a Housing Project of Critical Concern, the chairperson of the Commission, or the executive director acting on behalf of the chairperson, shall refer the request to Statewide Planning for review of the probable consistency of the project with the applicable provision of the state guide plan.
- B. The Associate Director shall issue a determination of probable consistency to the chairperson within twenty (20) business days.
- C. If the Associate Director has made the determination of probable consistency, the chairperson of the Commission, or the executive director acting on behalf of the chairperson, shall render a written decision on the request within sixty (60) calendar days of the filing and receipt of the application.
- D. If a Project receives a certificate of critical concern, the chairperson of the Commission, or the executive director acting on behalf of the chairperson, may convene appropriate state agencies that have licensing or permitting authority over the Project in order to inform the agencies about the planned development.
- E. The chairperson of the Commission, or the executive director acting on behalf of the chairperson, will report to the Commission on applications for Certificates of Critical Concern and on the status of applications.

3.6 No Right to Review

A review by Commission shall not constitute a “contested case” under the Administrative Procedures Act, R.I. Gen. Laws § 42-35-9. No opportunity to object to a request shall be afforded, nor shall judicial review be available from a decision rendered by the Commission.

3.7 Validity of Certificate

A Certificate shall be valid as to each and every state agency by which the Project must be licensed or permitted until the Project reaches its Development Stage, or two (2) years from the date of issuance. The Certificate is issued to the Project and remains valid regardless of any change in ownership or developer; however, any such change must be reported to the Commission within 30 calendar days of the recording of such change.

3.8 Rescission of Authorization

The Executive Director may revoke any Certificate upon a finding that the Project has been significantly altered in size, scope or impact since the issuance of the Certificate in such a way as to no longer qualify as a housing project of critical concern.

3.9 Action by State Agency

A Certificate may be filed with each and every state agency with licensing or permitting authority over a Project. The state agency shall give priority to the Project in the handling and processing of the application in accordance with R.I. Gen. Laws § 42-128-2 so that within three (3) months of the submission of a substantially complete application, the state agency must render a written report on the status of the application. The report shall contain information, which will enable the person to make a sound business decision as to whether to proceed with the application. The report shall be delivered to the applicant. If the application is not granted, then the state agency shall on the fourth, fifth and sixth months of the anniversary of the submission render a written report on the status of the application. If at the end of the sixth month, a decision has not been rendered on the application, then, in addition to the applicant, a copy of the written report shall be rendered monthly thereafter to the Associate Director and the Commission until a decision to accept or reject the application has been made.

3.10 Preliminary Review by State Agencies

In no instance do these rules and regulations prohibit any state agency from providing initial feedback and recommendations regarding a Project prior to a developer's formally filing for a permit.

3.11 Liberal Application

The terms and provisions of these rules and regulations shall be liberally construed to allow the Commission to effectuate the purposes of state law, goals, and policies.

3.12 Performance

A Person which has been granted a Certificate of Critical Housing Concern shall provide a report to the Commission certifying that it has met the provisions stated in the application which justified the approval of the Certificate, in accordance with the timeframe specified in the application. This report shall be made at the time of completion of the project, or, for phased projects, at the completion of each phase.

3.13 Penalties

A Person failing to meet provisions stated in the application that justified the approval of the Certificate shall be subject to a revocation of the Certificate and any other penalties permitted by law.

3.14 Severability

- A. If a court of competent jurisdiction invalidates any provision of these rules and regulations, or their application to any local government unit or circumstance, the remaining rules and regulations will not be affected. The invalidity of any section or sections, or parts of any section or sections, shall not affect the validity of the remainder of these rules and regulations.
- B. The foregoing rules and regulations, after due notice and an opportunity for hearing, are hereby adopted and filed with the Secretary of State this 20th day of March, 2009, to become effective twenty (20) days after filing, in accordance with the provisions of R.I. Gen. Laws §§ 42-35-2(a), 42-35-3, and 42-128-2.

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Editorial Note: This Part was filed with the Department of State prior to the launch of the Rhode Island Code of Regulations. As a result, this digital copy is presented solely as a reference tool. To obtain a certified copy of this Part, contact the Administrative Records Office at (401) 222-2473.