

City of Providence

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CHAPTER 2009-25

No. 144 An Ordinance in Amendment of Chapter 27 of the Code of Ordinances of the City of Providence Entitled "The City of Providence Zoning Ordinance," Approved June 27, 1994, as Amended.

Approved April 7, 2009

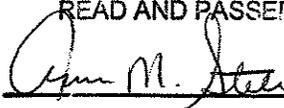
Be it ordained by the City of Providence:

Section 1. Section 902 of the City of Providence Zoning Ordinance entitled "Powers of the Board" is hereby amended by adding the following sentences to Section 902.4:

An applicant may apply for, and be issued, a dimensional variance in conjunction with a special use permit. If the special use could not exist without the dimensional variance, the Zoning Board of Review shall consider the special use permit and the dimensional variance together to determine if granting the special use is appropriate based on both the special use criteria and the dimensional variance evidentiary standards.

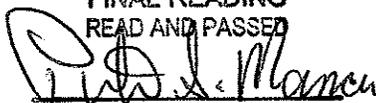
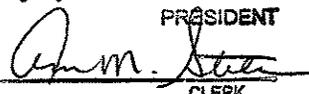
Section 2. This Ordinance shall take effect immediately upon passage.

IN CITY COUNCIL
MAR 18 2009
FIRST READING
READ AND PASSED


CLERK

IN CITY
COUNCIL

APR 2 2009
FINAL READING
READ AND PASSED


PRESIDENT

CLERK

APPROVED


MAYOR 4/7/09

THE MAYOR
OF THE CITY OF PROVIDENCE
APPROVED
APR 7 2009



Department of Law

February 26, 2009

Councilman Michael A. Solomon
City Hall
Providence, RI 02903

RE: Zoning Amendment - Dimensional Variances and Special Use Permits

Dear Councilman Solomon:

I am writing in response to your request for a legal explanation and opinion of the proposed amendment to the Zoning Ordinance that would allow the Zoning Board to issue a dimensional variance in conjunction with a special use permit. Under R.I.G.L. § 45-24-42(c), a zoning board may issue a dimensional variance in conjunction with a special use permit only if the municipality's zoning ordinance specifically permits this. The City of Providence's current Zoning Ordinance is silent on the issue.

In August of 2007, the Zoning Board granted Chipotle Mexican Grill a special use permit allowing the restaurant to occupy more than 2500 square feet in a C-2 zone on Thayer Street. The Board also granted Chipotle dimensional variances for parking and setback relief. A neighboring commercial property owner appealed the Board's decision to the Superior Court. In October of 2008, the Superior Court reversed the decision on the grounds that Providence's Zoning Ordinance "does not expressly allow a special use permit and dimensional variance to be issued in conjunction with one another."

The proposed zoning amendment is legally sound in that it mirrors the language of R.I.G.L. § 45-24-42(c), which is attached hereto, and would therefore allow the City of Providence's Zoning Board to issue dimensional variances in conjunction with special use permits.

Feel free to contact me if I may be of any further assistance.

Very truly yours,

A handwritten signature in cursive script that reads "Melissa Chesnov Tucker".

Melissa Chesnov Tucker
Assistant City Solicitor

Encl.

Cc: Anna Stetson, City Clerk ✓

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TITLE 45

Towns and cities

CHAPTER 45-24

Zoning Ordinances

SECTION 45-24-42

§ 45-24-42 General provisions – Special-use permits. – (a) A zoning ordinance shall provide for the issuance of special-use permits approved by the zoning board of review.

(b) The ordinance shall:

- (1) Specify the uses requiring special-use permits in each district;
 - (2) Describe the conditions and procedures under which special-use permits, of each or the various categories of special-use permits established in the zoning ordinance, may be issued;
 - (3) Establish criteria for the issuance of each category of special-use permit, that shall be in conformance with the purposes and intent of the comprehensive plan and the zoning ordinance of the city or town;
 - (4) Provide for public hearings and notification of the date, time, place, and purpose of those hearings to interested parties. Public notice shall be given at least fourteen (14) days prior to the date of the hearing in a newspaper of general circulation in the city or town. Notice of hearing shall be sent by first class mail to the applicant, and to all those who would require notice under § 45-24-53. The notice shall also include the street address of the subject property. A zoning ordinance may require that a supplemental notice, that an application for a special use permit is under consideration, be posted at the location in question. The posting is for information purposes only and does not constitute required notice of a public hearing. The cost of notification shall be borne by the applicant;
 - (5) Provide for the recording of findings of fact and written decisions; and
 - (6) Provide that appeals may be taken pursuant to § 45-24-70.
- (c) The ordinance additionally may provide that an applicant may apply for, and be issued, a dimensional variance in conjunction with a special use. If the special use could not exist without the dimensional variance, the zoning board of review shall consider the special use permit and the dimensional variance together to determine if granting the special use is appropriate based on both the special use criteria and the dimensional variance evidentiary standards.