**DURHAM PLANNING BOARD**
**REGULAR MEETING AGENDA**
**Durham Town Offices, 6:30 p.m.**
**June 7, 2023**

***NOTE: No public comment will be taken on individual applications at the meeting unless the Board schedules a formal public hearing with required notice posted. Comments on applications can be submitted in writing to the Town Planner and will be forwarded to the Planning Board and the applicants.***

1. Roll Call & Determination of a Quorum

2. Amendments to the Agenda

3. Acceptance of the Minutes of Prior Meetings (May 3, 2023)

4. Informational Exchange on Non-Agenda Items:
   a) Town Officials
   b) Residents (Public comment will be taken)
   c) Non-Residents (Public comment will be taken)

5. Continuing Business
   a) Substantive Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A (Public comment will not be taken)

6. Other Business:
   a) Board Discussion of Draft Land Use Ordinance Amendments (Public comment will not be taken)
   b) Board Discussion of June 14 Land Use Policy Summit with other Boards & Commissions (Public comment will not be taken)
   c) Order to Set the Date of the July Planning Board Meeting.

## 3. Acceptance of the Minutes of Prior Meetings (May 3, 2023)

# Town Of Durham

## Planning Board Minutes

**Town Offices, 6:30 pm**
**May 3, 2023**

DRAFT

1. **Roll Call & Determination of a Quorum**

   **In attendance:** John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Tyler Hutchison and George Thebarge (Town Planner).

   **Absent:** Ron Williams, Brian Lanoie, and Anne Torregrossa

2. **Amendments to the Agenda: None**

3. **Acceptance of the Minutes of prior meeting (April 5, 2023)**

   Tyler Hutchinson moved to accept the minutes from the April 5, 2023 meeting as presented. Juliet Caplinger seconded. Motion carried 4-0.

4. **Informational Exchange on Non-Agenda Items:**

   **a.) Town Officials (George Thebarge)**

   - Ordinance Committee – The Select Board recommended the Planning Board take the lead in the process on deciding what to put before the Select Board for consideration on town meeting warrants. The proposal is now to conduct a summit of the groups dealing with ordinance issues, rather than forming a standing committee. John Talbot will send out an invitation to the Board of Appeals, Conservation Commission, and Historic District Commission.

   **b.) Residents – None**

   **c.) Non-residents – None**

5. **Continuing Business**

   **a.) Substantive Review of Final Plan for the Deer Creek Crossing Subdivision Map 7, Lot 32A (Public comment will not be taken)**.

   The applicant is still waiting for the Army Corps of Engineers to submit their review. Allan Purinton moved to table the application until the next Planning Board meeting on June 7, 2023. Juliet Caplinger seconded. Motion carried 4 – 0.

6. **Other Business:**

**a.) Board Discussion of Draft Land Use Ordinance Amendments (Public comment will not be taken)**

Town Planner, George Thebarge presented a timeline for land use ordinance work:

- After Town Meeting (Spring/Summer) – Research Time
- Labor Day through Early December – Public Participation Process
- New Year's to Town Meeting (April) – Final Preparation & Public Hearings

The Maine Department of Economic and Community Development (DECD) released the final rule municipalities must follow on affordable housing/density regulations. The rule clarifies but does not substantially change the State requirements. The Comprehensive Plan recommendations to allow greater density but control the size of units is not permissible under the State requirements.

Barring an act of the Maine Legislature to amend the law and/or extend the deadline for compliance, the State requirements for increased housing density will go into effect on July 1, 2023, and towns will be required to follow them regardless of local regulations.

The prior public participation process on this issue indicated a split in citizen views on this issue.  Those concerned with housing options for families favored allowing more density.  Those concerned with taxes and rural character favored increasing lot sizes to offset any required increase in the number of housing units.

A hybrid approach to address both sets of concerns would be to allow multiple accessory units on standard-sized lots but to require larger lots for multiple, stand-alone, full-sized homes. The Town Planner checked with DECD staff, and this approach would be permissible.

The Planning Board discussed options for moving forward. One was to try and develop a hybrid response with all of its concomitant complexities to address multiple concerns. The second is to keep it simple as possible and just add the language from the Statute and Rule into the Ordinance.

The Planning Board's goal is to respond to the State mandate in a way that addresses the Comprehensive Plan goals and concerns expressed by members of the public.

The Town Planner recommended to the Board to hold off on revisiting the growth area concept for higher housing density until the next meeting in June.

**7. Adjourn**

Juliet Caplinger moved to adjourn the meeting. Tyler Hutchison seconded. Motion carried 4 – 0. Meeting adjourned at 8:17 pm.

DRAFT

## 5. Continuing Business:

### a. Substantive Review of Final Plan Application for the Deer Creek Crossing Subdivision Map 7, Lot 32A.

**TOWN PLANNER COMMENTS:**

- The Planning Board tabled the application at the May 3, 2023 meeting and agreed to a 6 month extension of the time limit for a decision with the applicant at the April meeting.
- The Town's peer reviewing engineer (Will Haskell of Gorrill-Palmer Associates) has indicated that the applicant has satisfied all the peer review comments, including the hydraulic calculations for the fire pond.
- Stream Crossing – The Board indicated in the preliminary plan approval process that it would rely on State and Federal reviews as to environmental impacts for the new road that will cross the stream. The final plan and State reviews should address removal of the existing road crossing that is damming up the stream with an undersized culvert. The peer reviewer made note of State and Federal rules on the allowable period of construction around the stream bed (lowest water).
- Fire Pond – The Fire Chief has indicated acceptance of the pond design and hydrological analysis.
- Storm Water Treatment Basin – No easement was shown on the survey plan for the property to be retained by Dean Smith.
- Conditional Agreement – The applicant is requesting a restriction on lot sales and building permits in lieu of a financial performance guarantee (except for erosion controls). If approved, this condition should be indicated on the final plan.
- Complete Packet for the Final Plan – The Board needs a complete, up-to-date plan set with supporting documentation on which to base its final decision.
- DEP Stormwater Permit – In addition to the stream crossing, State approval of a stormwater management plan is required for development and disturbance over certain thresholds. In the initial stages of the project review, the applicant asserted that the triggers were not hit due to existing disturbance conditions on the site. They have since addressed this issue in their plans and the peer reviewer is satisfied that the plans meet the Durham standards, which are the same as DEP.
- The subdivision recording plan dated October 17, 2022 does not include an easement for the proposed stormwater treatment area on the land to be retained by Dean Smith, therefore the Homeowners Association will lack legal right to enter the property to do required maintenance of the underdrain treatment system.

- That subdivision recording plan does include an easement for the fire pond indicating that the easement is to be conveyed to the Town of Durham (Section 6.16.C.4). The Homeowner's Association is fully responsible for maintaining both the stormwater treatment and fire protection water supply systems (as well as the road and open space), and all final plan documents should clearly indicate that responsibility and authority. The access easement gives the Town authority to access the pond and take corrective action in cases of failure of the Homeowner Association to maintain the pond in working order.
- The Town Planner has prepared draft of findings and approval conditions based on the preliminary plan approval, the submissions, peer review, and checklist for Board processing of the application.
- The Board can vote to add, delete, or modify any of the draft findings and approval conditions.
- To grant approval, a Board majority must make findings that the applicant has met the burden of proof of compliance with each subdivision criterion and standard.
- The Board can apply approval conditions necessary to assure compliance and should seek applicant input on acceptance of such proposed conditions of approval.
- If a Board majority finds that the applicant has not met the burden of proof of compliance with one or more of the criteria and standards, it should adopt such findings to serve as the basis for denial.

****DUE TO THE LARGE FILE SIZE, SUBMISSIONS FOR DEER CREEK ARE SEPARATE FROM THE PACKET****

## 6. Other Business:

### a. Board Discussion of Draft Land Use Ordinance Amendments

- At the April meeting, The Planning Board established priorities for drafting amendments to the Land Use Ordinance for consideration at the 2024 Town Meeting:
    1. Response to LD 2003, the State's affordable housing mandate for higher density housing;
    2. Enactment of standards and procedures for review of solar energy installations; and,
    3. Enactment of standards and procedures for review of wireless transmission towers (cell towers).
- The Planning Board also supported making the process for expansion of non-conforming residential properties easier for landowners and recognized that amendments may be needed to fully adjust permit fees.
- The Planning Board indicated it is prepared to add a monthly workshop meeting to work on research and drafting for the three policy areas.
- The Maine Department of Economic and Community Development released the final rule municipalities must follow on affordable housing/density regulations (final version attached).
- Barring an act of the Maine Legislature to amend the law and/or extend the deadline for compliance, the State requirements for increased housing density will go into effect on July 1, 2023 and towns will be required to follow them.
- During the public participation process over the past year, the Planning Board explored two different approaches to complying with the new State law apart from just following the law with no local tailoring of the standards per the flexibility provided in the new statute.
- The first option was to follow the Comprehensive Plan recommendations by allowing up to three housing units per 2-acre lot but restricting the added units to accessory apartments.
- The second option was to allow the added units to be full-sized but to require 2 acres of land per housing unit as allowed by the new law.
- The rules prohibit restrictions based on housing unit sizes, indicating that the first option would not meet state requirements.
- A hybrid approach that might pass muster would be to allow the multiple smaller accessory units on a 2-acre lot following the Comprehensive Plan but to require larger lots for full-sized units per the new law's requirements and provisions.
- The Board briefly discussed a third option of revisiting the idea of a designated growth area where smaller lots would be allowed with higher housing

densities.

- This option would require amending the comprehensive plan (since the current plan specifically calls for growth area elimination and getting a designated growth & rural area exemption).
- It would also require a public sewer or public water system to effectively support the higher density housing (North Yarmouth Village would be an example of this type of development).
- A State requirement for designating growth areas is that the Town direct 75% of its capital improvement budgeting to those growth areas.
- Re-establishing a designated growth area with higher density housing would not eliminate the need to increase density in rural areas.

# RE: Dual Approaches to Accommodating Increased Density?

Averill, Benjamin <Benjamin.Averill@maine.gov>

Tue 5/2/2023 3:12 PM

To: George Thebarge <townplanner@durhammaine.gov>

Hi George,

Taking a look at the proposed language, yes this should meet the requirements of statute as long as your district requirements allow for the same lot area requirements for each additional principle dwelling unit ( and exempt accessory apartments from any density requirements). Quickly looking at your comp plan I assume both the exemption for a designated growth area was approved by DACF as well as the rate of growth ordinance was repealed? If there is not an exemption for the DGA then you would need to allow up to 4 units on a lot in the zoning district designated as the growth area ( which I'm sure you have figured out by now) but otherwise you should be all set as proposed.

Also thank you for letting us know about the errors in the final rules for Chapter 5. We became aware of the last week and reached out to the Secretary of State's office to correct the errors. We will update the website with a revised version of the rules that fixes those grammatical errors when possible.

Please let me know if you have any additional questions. I hope all is well!

Best,

Ben

Ben Averill
Housing Opportunity Program Coordinator
Dept. of Economic & Community Development
111 Sewall Street, 3rd Floor
59 State House Station
Augusta, ME  04330
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www.maine.gov/decd

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**From:** George Thebarge <townplanner@durhammaine.gov>
**Sent:** Monday, May 1, 2023 1:31 PM
**To:** Averill, Benjamin <Benjamin.Averill@maine.gov>
**Cc:** Gove, Hilary <Hilary.Gove@maine.gov>
**Subject:** Dual Approaches to Accommodating Increased Density?

**EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.**

Ben,

One more question in advance of tomorrow's Durham Planning Board meeting.

As mentioned in previous communications, Durham had set out to comply with the new law by allowing multiple accessory apartments/dwelling units on 2 acre lots.  We learned that the goal to limit the size

of the added units to follow Comprehensive Plan recommendations (fit in to rural & neighborhood character) was impermissible under the law and administrative rule.

During our year-long public participation process, we presented two options to the community. The first was to allow the accessory units as mentioned without increasing lot sizes. The second option was to allow the added units, but to increase the lot size when units are added, with 2 acres for each unit. The community was evenly split on the two options, and the Planning Board recommended putting the comprehensive plan recommendations (no increase in lot size) on the April 1 Town Meeting warrant. When we discovered the prohibition on limiting expansions to accessory apartments, the Planning Board pulled the proposal for this year.

I am advising the Planning Board to continue its deliberations and to revisit the two options previously considered and to look at a combination of the two for all lots in Durham:

- Allow a single-famly home to have 2 accessory apartments and a duplex to have 1 accessory apartment; and,
- Require 2 acres of lot area for each full-sized dwelling unit.

The following language that was added to the rule seems to support this approach:

**SECTION 4. ACCESSORY DWELLING UNITS**

**A. GENERAL**

1. A municipality must allow, effective July 1, 2023, one accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is allowed, subject to the requirements outlined below. The requirements listed in Section 4 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, set back, density, septic requirements, shoreland zoning and subdivision law may also apply to lots.
2. A municipal ordinance that allows more than one accessory dwelling unit or that allows accessory dwelling units to be established in relation to duplex, triplex and other multi-unit buildings shall be considered consistent with the goals of P.L. 2021 Ch. 672.

Are you able to indicate whether this language does, in fact, support the conceptual, 2-pronged approach to bringing Durham into compliance with Chapter 672?

Thanks,

George

George Thebarge
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townplanner@durhammaine.gov
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**19-100 DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT**

**Chapter 5: HOUSING OPPORTUNITY PROGRAM: MUNICIPAL LAND USE AND ZONING ORDINANCE RULE**

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**Summary:** This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.

**Note:** This chapter incorporates by reference certain material. The Appendix lists the material that is incorporated by reference, the date for each reference, and the organization where copies of the material are available.

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## SECTION 1. PURPOSE AND DEFINITIONS

### A. PURPOSE

1. This chapter sets forth the provisions which require municipalities to create or amend local ordinances to allow for (1) additional density for affordable housing developments in certain areas; (2) multiple dwelling units on lots designated for housing; and (3) one accessory dwelling unit located on the same lot as a single-family dwelling unit in any area where housing is permitted.

2. Municipalities need not adopt this rule language or the statutory language in P.L. 2021 Ch. 672 word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of this legislation. Municipalities may wish to adopt ordinances that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of increasing housing opportunities. If a municipality does not adopt ordinances to comply with P.L. 2021 Ch. 672, this legislation will preempt municipal home rule authority.

3. These rules do not:

   a) Abrogate or annul the validity or enforceability of any valid and enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this rule, as long as the agreement does not abrogate rights pursuant to the United States Constitution or the Constitution of Maine;

   b) Exempt a subdivider from the requirements in Title 30-A Chapter 187 subchapter 4;

c) Exempt an affordable housing development, a dwelling unit, or accessory dwelling unit from the shoreland zoning requirements established by the Department of Environmental Protection pursuant to Title 38 Chapter 3 and municipal shoreland zoning ordinances; or

d) Abrogate or annul minimum lot size requirements under Title 12 Chapter 423-A.

## B. DEFINITIONS

All terms used but not defined in this chapter shall have the meanings ascribed to those terms in Chapter 187 of Title 30-A of the *Maine Revised Statutes*, as amended. Municipalities need not adopt the terms and definitions outlined below word for word. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community. Municipalities may wish to adopt terms and definitions that are more permissive, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities.

**Accessory dwelling unit**. "Accessory dwelling unit" means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land. An accessory dwelling unit must be a minimum of 190 square feet and municipalities may impose a maximum size.

**Affordable housing development**. “Affordable housing development” means

1. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

2. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the *United States Housing Act of 1937*, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

3. For purposes of this definition, “majority” means more than half of proposed and existing units on the same lot.

4. For purposes of this definition, “housing costs” include, but are not limited to:

    a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowners' association fees.

**Area median income.** "Area median income" means the midpoint of a region's income distribution calculated on an annual basis by the U.S. Department of Housing & Urban Development.

**Attached**. "Attached" means connected by a shared wall to the principal structure or having physically connected finished spaces.

**Base density**. "Base density" means the maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements in a local land use or zoning ordinance. This does not include local density bonuses, transferable development rights, or other similar means that could increase the density of lots not used for affordable housing.

**Centrally managed water system**. "Centrally managed water system" means a water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This water system may be privately owned.

**Certificate of occupancy.** "Certificate of occupancy" means the municipal approval for occupancy granted pursuant to 25 M.R.S. §2357-A or the *Maine Uniform Building and Energy Code* adopted pursuant to Title 10 Chapter 1103. Certificate of occupancy may also be referred to as issuance of certificate of occupancy or other terms with a similar intent.

**Comparable sewer system**. "Comparable sewer system" means any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

**Comprehensive plan.** "Comprehensive plan" means a document or interrelated documents consistent with 30-A M.R.S. §4326(1)-(4), including the strategies for an implementation program which are consistent with the goals and guidelines established pursuant to Title 30-A Chapter 187 Subchapter II.

**Density requirements.** "Density requirements" mean the maximum number of dwelling units allowed on a lot, subject to dimensional requirements.

**Designated growth area.** "Designated growth area" means an area that is designated in a municipality's or multi-municipal region's comprehensive plan as suitable for orderly residential, commercial, or industrial development, or any combination of those types of development, and into which most development projected over ten (10) years is directed. Designated growth areas may also be referred to as priority development zones or other terms with a similar intent. If a municipality does not have a comprehensive plan, "designated growth area" means an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial

Census as a census-designated place or a compact area of an urban compact municipality as defined by 23 M.R.S. §754.

**Dimensional requirements.** "Dimensional requirements" mean requirements which govern the size and placement of structures including, but limited not to, the following requirements: building height, lot area, minimum frontage and lot depth.

**Dwelling unit.** "Dwelling unit" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments.

**Existing dwelling unit**. "Existing dwelling unit" means a residential unit in existence on a lot at the time of submission of a permit application to build additional units on that lot. If a municipality does not have a permitting process, the dwelling unit on a lot must be in existence at the time construction begins for additional units on a lot.

**Housing**. "Housing" means any part of a structure which, through sale or lease, is intended for human habitation, including single-family and multifamily housing, condominiums, time-share units, and apartments. For purposes of this rule, this does not include dormitories, boarding houses or other similar types of housing units. This also does not include transient housing or short-term rentals, unless these uses are otherwise allowed in local ordinance.

**Land use ordinance.** "Land use ordinance" means an ordinance or regulation of general application adopted by the municipal legislative body which controls, directs, or delineates allowable uses of land and the standards for those uses.

**Lot.** "Lot" means a single parcel of developed or undeveloped land.

**Multifamily dwelling.** "Multifamily dwelling" means a structure containing three (3) or more dwelling units.

**Potable.** "Potable" means safe for drinking as defined by the U.S. Environmental Protection Agency's (EPA) Drinking Water Standards and Health Advisories Table and Maine's interim drinking water standards for six different perfluoroalkyl and polyfluoroalkyl substances (PFAS), Resolve 2021 Chapter 82, *Resolve, To Protect Consumers of Public Drinking Water by Establishing Maximum Contaminant Level for Certain Substances and Contaminants*.

**Principal structure.** "Principal structure" means a structure in which the main or primary use of the structure is conducted. For purposes of this rule, principal structure does not include commercial buildings.

**Restrictive covenant**. "Restrictive covenant" means a provision in a deed, or other covenant conveying real property, restricting the use of the land.

**Setback requirements**. "Setback requirements" mean the minimum horizontal distance from a lot line, shoreline, or road to the nearest part of a structure, or other regulated object or area as defined in local ordinance.

**Single-family dwelling unit**. "Single-family dwelling unit" means a structure containing one (1) dwelling unit.

**Structure.** "Structure" means anything temporarily or permanently located, built, constructed or erected for the support, shelter or enclosure of persons as defined in 38 M.R.S. §436-A(12).

**Zoning ordinance.** "Zoning ordinance" means a type of land use ordinance that divides a municipality into districts and that prescribes and reasonably applies different regulations in each district.

## SECTION 2. AFFORDABLE HOUSING DENSITY

### A. GENERAL

This Section requires municipalities to allow an automatic density bonus for certain affordable housing developments approved on or after July 1, 2023, as outlined below. This section only applies to lots in zoning districts that have adopted density requirements.

### B. ELIGIBILITY FOR DENSITY BONUS

1. For purposes of this section, a municipality shall verify that the development:

   a) Is an affordable housing development as defined in this chapter, which includes the requirement that a majority of the total units on the lot are affordable;

   b) Is in a designated growth area pursuant to 30-A M.R.S. §4349-A(1)(A) or (B) or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system;

   c) Is located in an area in which multifamily dwellings are allowed per municipal ordinance;

   d) Complies with minimum lot size requirements in accordance with Title 12 Chapter 423-A; and

   e) Owner provides written verification that each unit of the housing development is proposed to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:

      i. If a housing unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

ii. If a housing unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

iii. If a housing unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

iv. If a housing unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

2. Long-Term Affordability

Prior to granting a certificate of occupancy or other final approval of an affordable housing development, a municipality must require that the owner of the affordable housing development (1) execute a restrictive covenant that is enforceable by a party acceptable to the municipality; and (2) record the restrictive covenant in the appropriate registry of deeds to ensure that for at least thirty (30) years after completion of construction:

a) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and

b) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

**C. DENSITY BONUS**

If the requirements in Section 2(B)(1) and (2) are met, a municipality must:

1. Allow an affordable housing development to have a dwelling unit density of at least 2.5 times the base density that is otherwise allowed in that location; and

2. Require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units of an affordable housing development.

If fractional results occur when calculating the density bonus in this subsection, the number of units is rounded down to the nearest whole number. Local regulation that chooses to round up shall be considered consistent with and not more restrictive than this

law. The number of motor vehicle parking spaces may be rounded up or down to the nearest whole number.

## SECTION 3. DWELLING UNIT ALLOWANCE

### A. GENERAL

This section requires municipalities to allow multiple dwelling units on lots where housing is allowed beginning on July 1, 2023, subject to the requirements below. The requirements listed in Section 3 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, lot size, set back, density, septic requirements, minimum lot size, additional parking requirements, growth ordinance permits, shoreland zoning and subdivision law, may also apply to lots.

### B. REQUIREMENTS

1. Dwelling Unit Allowance

a) If a lot does not contain an existing dwelling unit, municipalities must allow up to four (4) dwelling units per lot if the lot is located in an area in which housing is allowed, meets the requirements in 12 M.R.S. Ch. 423-A, and is:

i. Located within a designated growth area consistent with 30-A M.R.S. §4349 A(1)(A)-(B); or

ii. Served by both a public, special district or other centrally managed water system and a public, special district or other comparable sewer system in a municipality without a comprehensive plan.

b) If a lot does not contain an existing dwelling unit and does not meet i. or ii. above, a municipality must allow up to two (2) dwelling units per lot located in an area in which housing is allowed, provided that the requirements in 12 M.R.S. Ch. 423-A are met. The two (2) dwelling units may be (1) within one structure; or (2) separate structures.

c) If a lot contains one existing dwelling unit, a municipality must allow the addition of up to two (2) additional dwelling units:

i. One within the existing structure or attached to the existing structure;
ii. One detached from the existing structure; or
iii. One of each.

d) If a lot contains two existing dwelling units, no additional dwelling units may be built on the lot unless allowed under local municipal ordinance.

e) A municipality may allow more units than the minimum number of units required to be allowed on all lots that allow housing.

2. Zoning

With respect to dwelling units allowed under this Section, municipalities with and without zoning ordinances must comply with the following:

a) If more than one dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.

b) Municipalities may establish a prohibition or an allowance for lots where a dwelling unit in existence after July 1, 2023, is torn down and an empty lot results.

3. Dimensional and Setback Requirements

a) A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed pursuant to this Section that are more restrictive than the dimensional requirements or setback requirements for single-family housing units.

4. A municipality may establish requirements for a lot area per dwelling unit as long as the additional dwelling units required for each additional dwelling unit is proportional to the lot area per dwelling unit of the first unit.

Water and Wastewater

a) The municipality must require an owner of a proposed housing structure to provide written verification that each proposed structure is to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:

i. If a housing structure is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

ii. If a housing structure is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

iii. If a housing structure is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

iv. If a housing structure is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

### C. MUNICIPAL IMPLEMENTATION

In adopting an ordinance, a municipality may:

1. Establish an application and permitting process for dwelling units;

2. Impose fines for violations of building, site plan, zoning, and utility requirements for dwelling units; and

3. Establish alternative criteria that are less restrictive than the requirements of Section 3(B)(4) for the approval of a dwelling units only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

## SECTION 4. ACCESSORY DWELLING UNITS

### A. GENERAL

1. A municipality must allow, effective July 1, 2023, one accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is allowed, subject to the requirements outlined below. The requirements listed in Section 4 apply to municipalities with and without zoning. Private, state or local standards such as homeowners' association regulation, deed restrictions, set back, density, septic requirements, shoreland zoning and subdivision law may also apply to lots.

2. A municipal ordinance that allows more than one accessory dwelling unit or that allows accessory dwelling units to be established in relation to duplex, triplex and other multi-unit buildings shall be considered consistent with the goals of P.L. 2021 Ch. 672.

### B. REQUIREMENTS

1. Accessory Dwelling Unit Allowance

   An accessory dwelling unit may be constructed only:

   a) Within an existing dwelling unit on the lot;

b) Attached to a single-family dwelling unit; or

c) As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

A municipality may allow an accessory dwelling unit to be constructed or established within an existing accessory structure, except the setback requirements of Section 4(B)(3)(b)(i) shall apply.

2. Zoning

With respect to accessory dwelling units, municipalities with zoning ordinances and municipalities without zoning must comply with the following conditions:

(a) At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and

(b) If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance pursuant to this Section, the lot is not eligible for any additional units or increases in density, except as allowed by the municipality. Municipalities have the discretion to determine if a dwelling unit or accessory dwelling unit has been constructed on a lot for purposes of this provision.

3. Other

With respect to accessory dwelling units, municipalities must comply with the following conditions:

a) A municipality must exempt an accessory dwelling unit from any density requirements or lot area requirements related to the area in which the accessory dwelling unit is constructed;

b) For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to a single-family dwelling unit, the dimensional requirements and setback requirements must be the same as the dimensional requirements and setback requirements of the single-family dwelling unit;

i. For an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, the required setback requirements in local ordinance of the existing accessory or secondary building apply.

c) A municipality may establish more permissive dimensional requirements and setback requirements for an accessory dwelling unit.

d) An accessory dwelling unit may not be subject to any additional motor vehicle parking requirements beyond the parking requirements of the

single-family dwelling unit on the lot where the accessory dwelling unit is located.

4. Size

a) An accessory dwelling unit must be at least 190 square feet in size, unless the Technical Building Code and Standards Board, pursuant to 10 M.R.S. §9722, adopts a different minimum standard; if so, that standard applies.

b) Municipalities may set a maximum size for accessory dwelling units in local ordinances, as long as accessory dwelling units are not less than 190 square feet.

5. Water and Wastewater

A municipality must require an owner of an accessory dwelling unit to provide written verification that the proposed accessory dwelling unit is to be connected to adequate water and wastewater services prior to certification of the accessory dwelling unit for occupancy or similar type of approval process. Written verification must include the following:

a) If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system;

b) If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*;

c) If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

d) If an accessory dwelling unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

## C. MUNICIPAL IMPLEMENTATION

In adopting an ordinance under this Section, a municipality may:

1. Establish an application and permitting process for accessory dwelling units;

2. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and

3. Establish alternative criteria that are less restrictive than the above criteria in Section 4 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance pursuant to 30-A M.R.S. §4353(4)(A), (B), or (C).

**D. RATE OF GROWTH ORDINANCE**

A permit issued by a municipality for an accessory dwelling unit does not count as a permit issued toward a municipality's rate of growth ordinance pursuant to 30-A M.R.S. §4360.

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STATUTORY AUTHORITY:
PL 2021 Ch. 672 codified at 30-A M.R.S. §§ 4364, 4364-A, 4364-B.

EFFECTIVE DATE:
April 18, 2023 – filing 2023-056

6. **Other Business:**

   b. **Board Discussion of June 14 Land Use Policy Summit with Other Boards & Commissions**

- The goals of this joint workshop are to:
  - Explore needed changes to the Land Use Ordinance;
  - Identify options for responding to land use policy challenges;
  - Establish priorities for which challenges to address at the 2024 Town Meeting;
  - Assign responsibility for developing a policy direction for each challenge; and,
  - Foster communication and cooperation between the Town's land use policy groups.

**CONSERVATION COMMISSION**

- The Town Planner and Planning Board Chairman met with the Conservation Commission on May 17 to discuss possible development of standards and a review process for approvals of solar energy systems.
- Durham currently has no standards for reviews and approvals of solar energy systems.
- The Town Planner presented a summary of goals other communities have used for regulating development of solar energy systems:
  - Promotion of alternative energy sources;
  - Safety of alternative energy systems;
  - Operation and maintenance;
  - Discontinuance and decommissioning;
  - Protection of resources (agriculture, habitats, scenic views); and,
  - Protection of neighbors (visual, noise, signal interference).
- Most communities differentiate between residential, commercial, and industrial systems.

**HISTORIC DISTRICT COMMISSION**

- The Town Planner met with the Town Manager, Code Officer, and Historic District Commission (HDC) Chair on May 18 to discuss possible policy changes.
- The Chair of the HDC sent a message to the Select Board on May 22 (attached) summarizing the results of that meeting.
- The HDC supports making changes to simplify the regulations and the process.
- The HDC recognizes the need for specialized technical assistance for doing

reviews of consistency with historic preservation standards.

- The HDC has spent considerable time reviewing the complicated and confusing language of Section 5.14 and Articles 12 and 19 containing Durham's standards, definitions, and process for historic properties reviews.
- The Historic District Commission, Code Officer, and Planning Board have overlapping jurisdictions for reviews of projects involving historic properties.

**BOARD OF APPEALS**

- The Town Planner met with the Chair of the Board of Appeals on May 23.
- The realignment of the Resource Protection District at the April 1, 2023 Town Meeting added six Land Use Ordinance criteria for placement of property into Resource Protection.
- Amendments to the Zoning Map per the new criteria added approximately 120 properties into Resource Protection.
- Responsibility for making District boundary determinations is currently assigned to the Board of Appeals.
- Many communities assign such technical reviews to the Planning Board for coordination with subdivision and site plan reviews.
- Article 16 contains confusing and complicated provisions for expansions of non-conforming residences in the Resource Protection District.
- During the public participation process leading up to this year's Ordinance and Zoning Map amendments, the flexible Ordinance provisions for boundary interpretations and residential expansions were emphasized for affected property owners.
- Improving these regulatory tools will continue building public confidence in Durham's growth management efforts.

**SELECT BOARD**

- The Select Board has authority to establish permit fees indicated in the Land Use Ordinance.
- The Select Board has increased fees for conditional use permits and other permits issued by the Town.
- The Town Attorney has indicated that the Select Board can enact fees for any permits required by the community.
- The Land Use Ordinance does not mention a fee requirement for driveway opening and street addressing permits that are required.
- It would be helpful to reference the fee schedule in all instances of the Land Use Ordinance where a permit is required.

6. **Other Business:**

   c. **Order to set the Date of the July Planning Board Meeting**

- The first Wednesday of July is the 5th.
- This may create a conflict with the vacation plans of the Board members.
- The Board can vote to change the date of the meeting to assure a quorum.