

**DURHAM PLANNING BOARD
REGULAR MEETING AGENDA
Durham Town Offices, 6:30 p.m.
July 5, 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 (June 7, 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)

3. Acceptance of the Minutes of Prior Meetings (June 7, 2023)



Town Of Durham

Planning Board Minutes

Town Offices, 6:30 pm
June 7, 2023

1. Roll Call & Determination of a Quorum

In attendance: John Talbot (Chair), Juliet Caplinger (Vice Chair), Allan Purinton, Tyler Hutchison, Anne Torregrossa, Brian Lanoie and George Thebarga (Town Planner).

Absent: Ron Williams

2. Amendments to the Agenda: None

3. Acceptance of the Minutes of prior meeting (May 3, 2023)

Tyler Hutchinson moved to accept the minutes from the May 3, 2023 meeting as presented. Juliet Caplinger seconded. Motion carried 4-0.

4. Informational Exchange on Non-Agenda Items:

a.) Town Officials (George Thebarga)

- Update on the Resource Protection District Amendments – Under Maine law, whenever you change zoning ordinances or zoning maps that affect Shoreland Zoning, you must send the amendments to DEP Staff to review and they send it to the commissioner who has 45 days to make a decision on it. We received a written response from the DEP the changes enacted at Town Meeting were approved.
- The Maine Association of Planners recognized the Town of Durham for the Resource Protection Realignment Project for its annual award. The factors that particularly led to this recognition were the Town's ability to do this level of community planning with limited resources, the innovative use of State natural resources data, the extensive public participation process, and the collaboration of the various boards and committees involved in developing land use policies. The Maine Association of Planners review committee saw the value of this project as an example for other small rural towns.

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 has asked the Board to table the application until the July 5th, 2023 Planning Board meeting. They hope to have information from the Army Corps of Engineers by mid-June.

Allan Purinton moved to table the application until the next Planning Board meeting on July 5th, 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 Thebarga:

- The Planner is continuing research on the Land Use Ordinance amendments for affordable housing as required by State law.
- Growth District – Mr. Thebarga gave an example of a neighboring town: North Yarmouth. Their comprehensive plan meets State requirements for growth areas and their public water system supports it.
- The Board briefly discussed the option of revisiting the idea of a designated growth area where smaller lots would be allowed with higher housing densities.
- Update on the status of legislation – The Joint Select Committee on Housing has come out with a proposal that would take all of the different ideas on delays and put them into one committee recommendation. That committee has proposed an emergency bill that's supported by eight members of the committee and opposed by two that would give communities that with town council form of government until January 1st, 2024 to implement the law and for those with town meeting, it would be kicked back a year to July 1st, 2024. (Amendment to LD1706)
- MMA is supporting extending the delay for two years.
- Mr. Thebarga is preparing analysis of baseline impacts of the legislation in Durham – what will change from what we have now.

b.) Board discussion of June 14 Land Use Policy Summit with other Boards & Commissions (Public comment will not be taken)

- 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.
- 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).
- The Historic District Commission (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.
- Responsibility for making zoning 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.
- 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.
- Simple amendments to the Land Use Ordinance would eliminate scattered specific references to fees and have a blanket provision referring to the fee schedule.

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

- The first Wednesday of July is the 5th, Board members are available.
- The Board plans to hold a second meeting on Monday, July 10th for a workshop.

7. Adjourn

Allan Purinton moved to adjourn the meeting. Juliet Capllinger seconded. Motion carried 4 – 0. Meeting adjourned at 8:41pm.

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 June 7, 2023 meeting at the applicant's request.
- The applicant has received the required permit for the stream crossing from the Army Corps of Engineers.
- 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****



TOWN OF DURHAM
630 Hallowell Road
Durham, Maine 04222

*Office of Code Enforcement
and Planning*

Tel. (207) 353-2561
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PRELIMINARY SUBDIVISION PLAN NOTICE OF DECISION

Date: September 8, 2022

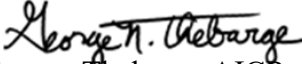
To: Jack Doughty
231 Flying Point Rd.
Freeport, Maine

Mr. Doughty;

This letter is to inform you that on September 7, 2022, the Durham Planning Board approved your preliminary subdivision plan application for the proposed 13-lot cluster subdivision on Hallowell Road (Map 7, Lot 32A).

In accordance with Section 6.6.K. of the Durham Land Use Ordinance, the Planning Board has granted preliminary approval subject to the attached approval conditions.

Sincerely,


George Theborge AICP
Durham Town Planner



TOWN OF DURHAM
630 Hallowell Road
Durham, Maine 04222

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and Planning**

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PRELIMINARY SUBDIVISION APPROVAL

Deer Creek Crossing Subdivision

Conditions of Approval

1. Per Section 6.6.C, the Planning Board will request technical peer review of the following submissions:
 - a. Determination of the need or lack thereof for a high intensity soil survey to confirm the wetland delineation and engineering designs;
 - b. Recommendation on the optimum location of the proposed stormwater detention basin with respect to the stream and associated wetlands;
 - c. Review of the engineering designs for road construction, utilities, stormwater management, erosion & sedimentation controls, and the proposed fire pond; and,
 - d. Review of the engineer's construction cost estimates for the project infrastructure.
2. Per Section 6.6.L.1., the applicant shall make the following changes to the preliminary plan as directed by the Planning Board decision:
 - a. A right of way shall be extended from the turnaround to the southwest tract boundary for future road connection; and,
 - b. A fire pond meeting the requirements of Section 6.16.C shall be constructed near the road turnaround but outside of the proposed road right of way extension.
3. Per Section 6.6.L.3., the Board considers that the engineer's construction estimates and performance guarantee for the project will include the following common improvements:
 - a. Access road construction;
 - b. Electrical service;
 - c. Stormwater management system;
 - d. Erosion and sedimentation control system; and,
 - e. Fire protection system.
4. Per Section 6.7.C.3. the applicant submitted a certified boundary survey showing all existing easements. That survey clearly indicated the areas of questionable title and calculation of the area that should be deducted from the proposed open space due to questionable title. The Board granted a waiver of the preliminary plan submission requirements to allow the applicant to place monuments on the corners of the subject parcel dividing Lot 32A from Lot 32L of Tax Map 7 after final approval when the monuments are set for the individual lots.
5. Per Section 6.7.E., to address concerns raised at the public hearing and in written comments, the applicant shall provide the following additional information with the final plan as required by Planning Board to verify compliance with the subdivision standards:

- a. Survey Accuracy – See draft approval condition #4 above.
 - b. Drainage Concerns – Engineering peer review of the stormwater and erosion control plans
 - c. Location of Stormwater Basin – See draft approval condition #1.c above.
 - d. Sensitivity of Stream Crossings – DEP & ACOE permits for stream restoration and new stream crossing.
 - e. Concern for Impacts on Aquifer – Review by the Durham Code Officer of standards applicable to portions of project in the Aquifer District boundary.
 - f. Concern for Continuing Zoning Violations – Review by the Durham Code Officer for zoning violations.
6. Per Section 6.8.A. the final plans shall be submitted within six (6) months of preliminary plan approval and shall be consistent with the preliminary plan except for changes required by the Planning Board or outside reviewing agencies (such changes will be reviewed per the subdivision review criteria & standards). Failure to submit a final plan application within six (6) months shall require resubmission & re-review of the preliminary plan. Prior to expiration of the preliminary plan approval, the applicant may request an extension accompanied by explanation of the causes for delay, documentation of progress made in fulfilling the preliminary plan approval conditions, and confirmation that the Land Use Ordinance has not been amended such that changes affect the project approval.
 7. Per Section 6.17.A & B., an erosion and sedimentation plan meeting the requirements of Appendix 2 shall be submitted with the final plans.
 8. Per Section 6.17.C., areas intended for vegetation clearing shall be shown on the final plan plans to support the stormwater management plan assumptions and required buffers along water bodies shown on the recording plan and referenced in the plan notes.
 9. Per Section 6.18.B.1 & 2., the final plan application shall include required MDOT permits. The applicant shall ask MDOT to address the safety of the intersection offset from Patriot Way.
 10. Per Section 6.18.C.2., the applicant shall obtain and submit with the final plan written approval for the street name and all other requirements of Article 13. by the Durham Street Addressing Officer.
 11. Per Section 6.18.D.2., the final plans shall include engineered drawings of the road meeting the requirements of Appendix 1.
 12. Per Section 6.21.A.1 & 2., the final plan shall delineate and note the limits of tree clearing.
 13. Per Section 6.21.B.1., the applicant shall seek consultation with the Maine Department of Conservation, Agriculture, and Forestry's Maine Natural Areas program for information on rare and exemplary botanical features in the project area and shall provide any response from the Department with the final plan application.
 14. Per Section 6.21.B.2., the applicant shall seek consultation with the Maine Historic Preservation Commission for information on any historic or prehistoric resources in the project area and shall provide any response from the Commission with the final plan application.
 15. Per Section 6.21.C., the applicant shall seek consultation with the Maine Department of Inland, Fisheries, and Wildlife for information on habitat for species appearing on the official state or

federal lists of endangered or threatened species in the project area and shall provide any response from the Department with the final plan application.

16. Per Section 6.21.D., the final recording plan notes and the deeds shall include notice of the clearing restrictions for lots including areas covered by shoreland zoning or resource protection.
17. Per Section 6.23.A. and 6.34.A, the applicant shall submit an engineer's construction cost estimate to cover the full costs of all required improvements, including roads, utilities, stormwater management, fire protection water supplies, and erosion and sedimentation controls along with a letter of commitment from a lending institution referencing said engineer's cost estimates.
18. Per Section 6.28.B., the final plans shall include the DEP stormwater permit and shall be consistent with requirements of that permit.
19. Per Section 6.32.D. the final plans shall include copies of covenants, articles of incorporation, and homeowner association bylaws using the template prepared by the Town Attorney or a version reviewed and approved by the Town Attorney at the applicant's expense.
20. Per Section 6.33.B.8, the applicant shall provide detailed grading plans for the building sites on Lots 6 and 7 which shall become part of the final subdivision approval conditions that can be amended with further subdivision review.
21. Per Section 6.34.B., the final plan application shall include the proposed form and amount of the performance guarantee needed to cover the costs of all improvements noted in COA #17 above, which can be a cash deposit or irrevocable letter of credit in a form satisfactory to the Town Attorney (template provided). Any other proposed performance guarantee must be reviewed by the Town Attorney at the applicant's expense.



TOWN OF DURHAM
**630 Hallowell Road
Durham, Maine 04222**

*Office of Code Enforcement
and Planning*

**Tel. (207) 376-6558
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SUBDIVISION APPROVAL DECISION FINDING OF FACTS

PROJECT NAME: _____ Deer Creek Crossing _____

A. PROJECT DESCRIPTION

The application is for a thirteen-lot cluster subdivision off Hallowell Road. There is an existing gravel road that runs across the site. The southern end of the property has a very defined stream running along it. The stream will need to be crossed to access the site. The proposed subdivision is a clustered layout with each lot being at least 45,000 square feet per the allowance for lot-size and frontage regulations for cluster subdivisions.

The open space wraps around the perimeter of the site and includes the areas along the stream. A trail looping around the open space will provide recreational opportunities (hiking, cross country skiing, the observation of wildlife etc.). The open space protects important natural features (streams, hills, forested wetlands, existing rock walls etc.) from the adverse impacts of development. The cluster subdivision will put over 50% of the property into "open space" that belongs to the Homeowner's Association. The "open space" consists of large dry wooded areas along with the stream around the perimeter of the site.

The subdivision will be served by a 2400 linear-foot private road with a hammerhead turnaround. A dedicated right of way will be extended from the road turnaround to the project boundary for future street interconnection. The lots will be served by individual wells and septic systems. Utilities will be placed underground. A fire pond with dry hydrant will be provided as a water supply for fire protection.

B. PROJECT PLAN SUBMISSIONS

1. Deer Creek Crossing Final Subdivision Plan dated October 17, 2022, prepared by Cornerstone Professional Land Surveying Inc.
2. Sheet C-100 Existing Conditions Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
3. Sheet C-101 Overall Site Layout Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.

4. Sheet C-102 Grading and Erosion Control Plan dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
5. Sheet C-200 Plan and Profile dated May 18, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
6. Sheet C-201 Plan and Profile dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
7. Sheet C-300 Erosion Control Notes dated October 19, 2022, prepared by Grange Engineering LLC.
8. Sheet C-302 Civil Details 2 dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
9. Sheet C-303 Civil Details 3 dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
10. Sheet C-304 Fire Pond Details dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
11. Sheet C-305 Stream Crossing Details dated October 19, 2022, revised November 22, 2022, prepared by Grange Engineering LLC.
12. Sheet D-100 Existing Stormwater Plan dated October 19, 2022, prepared by Grange Engineering LLC.
13. Sheet D-100 Proposed Stormwater Plan dated October 19, 2022, prepared by Grange Engineering LLC.
14. The Simple Erosion and Sediment Control Plan for Small Sites (House lots) from the DEP Erosion Control Manual.
15. Figure 1 – Lot 6 and Lot 7 Layout dated October 13, 2022, prepared by Grange Engineering, LLC.

C. SUBDIVISION REVIEW CRITERIA

Section 6.2 SUBDIVISION REVIEW CRITERIA

A. When reviewing any application for a subdivision, the Planning Board shall find that the following criteria as found in 30-A M.R.S.A. §4404 as well as all applicable provisions of this Land Use Ordinance have been met before granting approval. The proposed project:

1. **Pollution:** Will not result in undue water or air pollution. In making this determination, the Planning Board shall at least consider:
 - a. The elevation of the land above sea level and its relation to the flood plains;
 - b. The nature of soils and subsoils and their ability to adequately support waste disposal;
 - c. The slope of the land and its effect on effluents;
 - d. The availability of streams for disposal of effluents; and,
 - e. The applicable State and local health and water resources rules and regulations;

Motion made by _____: The proposed subdivision project will not result in undue water or air pollution. In making this determination, the Board has considered the five adopted criteria for pollution, and the applicant has submitted evidence and testimony of compliance with the performance standards for elevation of land and relation to floodplain management contained in Section 6.25, for soils and wastewater disposal in Section 6.19, for

slope of land and effects on effluents through erosion control plans and stormwater management under Section 6.17 and 6.28, and for state and local health rules under Sections 6.16 for water supply, 6.19 for sewage disposal, and 6.24 for impact on groundwater quality.

Motion seconded by _____ :

Votes to approve: _____ Votes to deny: _____

- Sufficient Water:** Has sufficient water available for the reasonably foreseeable needs of the subdivision;

Motion made by _____ : The proposed subdivision will be served by individual wells per the requirements of Section 6.16.A and B., and the proposed fire protection water supply has been reviewed and approved by the Fire Chief per the requirements of Section 6.16.C.

Motion seconded by _____ :

Votes to approve: _____ Votes to deny: _____

- Erosion:** Will not cause unreasonable soil erosion or reduction in the land’s capacity to hold water so that a dangerous or unhealthy condition results;

Motion made by _____ : The proposed subdivision will prevent soil erosion and sedimentation through the procedures outlined in the erosion and sedimentation control plan meeting the requirements of Appendix 2 as determined by the Town’s peer review engineer. Topsoil will be retained and used on site.

Motion seconded by _____ :

Votes to approve: _____ Votes to deny: _____

- Traffic:** Will not cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed and, if the proposed subdivision requires driveways or entrances onto a state or state aid highway, located outside the urban compact area of an urban compact municipality, the Department of Transportation has provided documentation indicating that the driveways or entrances conform to 23 M.R.S.A. §704 and any rules adopted under that section;

Motion made by _____ : The proposed subdivision will not create unreasonable highway or public road congestion or unsafe conditions. Sight distances on Hallowell Road are adequate, and the slight intersection offset with Patriot Way does not constitute a safety hazard. The roadway serving the subdivision has adequate capacity to serve the anticipated levels of traffic and all road construction will meet the engineering standards of Appendix 1 as determined by the Town’s peer review engineer.

Motion seconded by _____ :

Votes to approve: _____ Votes to deny: _____

- Sewage Disposal:** Will provide for adequate sewage waste disposal;

Motion made by _____ : The proposed subdivision will provide for adequate sewage waste disposal. Soil test pits have been submitted to document that each lot

will have a septic system location that meets Maine wastewater disposal rules without the need for a variance or off-site easement.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

6. **Municipal Solid Waste Disposal:** Will not cause an unreasonable burden on the municipality’s ability to dispose of solid waste if municipal services are to be utilized;

Motion made by _____ : Solid waste generated by the proposed subdivision can be accommodated within the capacity of the Town’s current solid waste disposal services.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

7. **Aesthetic, Cultural, and Natural Values:** Will not have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline;

Motion made by _____ : The project will not have undue adverse effects on aesthetic, cultural, and natural values. The project limits clearing of trees to those areas designated on the plan and maintains a 50-foot vegetative buffer along existing roadways. The applicant has consulted with State agencies on historic resources, significant wildlife habitat, and unique natural areas, and available data indicates the absence of such natural and cultural resources on or adjacent to the project site.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

8. **Conformity with Local Ordinances and Plans:** Is in conformance with a duly adopted subdivision regulation or ordinance, comprehensive plan, development plan or land use plan, if any. In making this determination, the Planning Board may interpret these ordinances and plans;

Motion made by _____ : The proposed subdivision is in conformance with requirements of the Land Use Ordinance, which is consistent with the Comprehensive Plan. The Code Enforcement Officer has conducted inspections of the project site and determined that there are no current violations of the Land Use Ordinance and that standards of the Aquifer Protection District will be met with the proposed road construction.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

9. **Financial and Technical Capacity:** The developer has adequate financial and technical capacity to meet the standards of this Article;

Motion made by _____ : The applicant has demonstrated financial capacity under Section 6.23.A. by submitting engineering cost estimates for required improvements. A conditional agreement per Section 6.34.C. will require the completion of all

project infrastructure prior to sale of lots or issuance of building permits until a performance guarantee is approved by the Board. The applicant has demonstrated adequate technical capacity under Section 6.23.B. through the submission of technical drawings and studies that have been peer reviewed, and through the provision of an inspection escrow fund to verify satisfactory completion of the project improvements, which is a condition of final approval.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

10. **Surface Waters:** Whenever situated entirely or partially within the watershed of any pond or lake or within two hundred and fifty (250') feet of any wetland, great pond or river as defined in 38 M.R.S.A. §§ 435-490, will not adversely affect the quality of such body of water or unreasonably affect the shoreline of such body of water;

Motion made by _____: The proposed subdivision is not located within the watershed of Runaround Pond and is not located on property subject to mandatory shoreland zoning. Construction of the new stream crossing and removal of the existing stream crossing have been approved by the Maine Department of Environmental Protection and Army Corps of Engineers. The stormwater treatment facilities have been moved away from the stream in accordance with DEP standards.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

11. **Groundwater:** Will not, alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water;

Motion made by _____: Septic systems will be required to meet the Maine subsurface wastewater disposal rules and wells will be required to meet State rules for well drilling, including the well exclusion zones on each lot as shown on the subdivision plan. There are no documented problems with obtaining an adequate supply of potable water in the project area, and the density of the proposed development and projected household water consumption do not raise concerns for the effect of ground water withdrawals.

Motion seconded by _____:

Votes to approve: _____ Votes to deny: _____

12. **Flood Areas:** Based on the Federal Emergency Management Agency's Flood Boundary and Floodway Maps and Flood Insurance Rate Maps, and information presented by the applicant determine whether the subdivision is in a flood-prone area. If the subdivision, or any part of it, is in such an area, the applicant shall determine the 100-year flood elevation and flood hazard boundaries within the subdivision. The proposed subdivision or project plan must include a condition of plan approval prohibiting the construction of any dwellings or other structures except for access roads and essential utilities within the 100-year floodplain;

Motion made by _____: No development is proposed within areas mapped as being flood-prone.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

13. **Fresh Water Wetlands:** All freshwater wetlands within the proposed subdivision have been identified on maps submitted as part of the application, regardless of the size of these wetlands;

Motion made by _____: All freshwater wetlands within the proposed subdivision have been mapped by qualified professionals.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

14. **Farmland:** All farmland of five (5) or more acres that is in active farm production or consisting of five (5) or more acres of prime farmland soil or soil classified as unique farmland or farmland of State or local importance has been identified on maps submitted as part of the application;

Motion made by _____: There is no active farmland nor prime farmland of five or more acres within the project site.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

15. **River, Stream, or Brook:** Any river, stream or brook within or abutting the proposed subdivision has been identified on maps submitted as part of the application. For purposes of this section, "river, stream or brook" has the same meaning as in 38 M.R.S.A. §480-B.9;

Motion made by _____: All streams meeting the definition of a regulated stream under the Natural Resources Protection Act have been identified on maps by the applicant and appropriate stream buffers are shown on the subdivision plan.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

16. **Storm Water:** The proposed subdivision will provide for adequate storm water management;

Motion made by _____: Per Section 5.28.B., the applicant has submitted a stormwater management plan meeting the requirements of DEP regulations and that stormwater management plan has been peer reviewed.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

17. **Spaghetti-Lots Prohibited:** If any lots in the proposed subdivision have shore frontage on a river, stream, brook, great pond as these features are defined in 38 M.R.S.A. §480-B, none of the lots created within the subdivision have a lot depth to shore frontage ratio greater than five (5:1) to one;

Motion made by _____: No lots are proposed within an area regulated by Mandatory Shoreland Zoning that would violate the “spaghetti-lot” rule.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

18. **Great Pond Phosphorus Concentration:** The long-term cumulative effects of the proposed subdivision will not unreasonably increase a great pond's phosphorus concentration during the construction phase and life of the proposed subdivision;

Motion made by _____: The project site is not located within the watershed of Runaround Pond.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

19. **Impact on Adjoining Municipalities:** For any proposed subdivision that crosses municipal boundaries, the proposed subdivision will not cause unreasonable traffic congestion or unsafe conditions with respect to the use of existing public ways in an adjoining municipality in which part of the subdivision is located.

Motion made by _____: The proposed residential subdivision will not generate levels of traffic that would cause unreasonable traffic congestion within Durham or any adjacent municipality.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

20. **Land Subject to Liquidation Harvesting:** Timber on the tract being subdivided has not been harvested in violation of rules adopted pursuant to 12 M.R.S.A §8869.14.

Motion made by _____: The applicant has submitted certification by a licensed forester that timber harvesting on the site was conducted in compliance with Maine forestry management rules.

Motion seconded by _____:

Votes to approve: _____ **Votes to deny:** _____

D. CLUSTER SUBDIVISION APPROVAL

Section 6.33 CLUSTER DEVELOPMENT ALTERNATIVE

- A. **Purpose of Clustering:** The purpose of these provisions is to allow for flexibility in the design of subdivisions to allow for the creation of open space which provides recreational opportunities or protects important natural features from the adverse impacts of development, provided that the net residential density shall be no greater than is permitted in the district in which the development is proposed. Notwithstanding provisions of Article 4 relating to dimensional requirements, the Board, in reviewing and approving proposed residential subdivisions, may modify the provisions related to dimensional requirements to permit flexibility in approaches to housing and environmental design in accordance with the following guidelines. This shall not be construed as granting variances to relieve hardship, and action of the Zoning Board of Appeals shall not be required.

Motion made by _____ : The proposed subdivision meets the intent of clustering lots to allow for creation of open space, to provide recreational opportunities, and to protect important natural features and complies with the density limitations and design standards for cluster developments of Section 6.33 B.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

E. CONDITIONS OF APPROVAL & DECISION

Section 6.8. FINAL PLAN APPLICATION PHASE

J. Decision on Final Plan Application: Within thirty (30) days from the public hearing or within sixty (60) days of determining a complete application has been received, if no hearing is held, or within another time limit as may be otherwise mutually agreed to by the Board and the applicant, the Board shall make findings of fact, and conclusions relative to the criteria for approval contained in 30-A M.R.S.A., §4404 and the standards of these regulations. If the Board by majority vote finds that all the criteria of the statute and the standards of these regulations have been met, they shall approve the final plan. If by majority vote the Board finds that any of the individual criteria of the statute or the performance standards of these regulations have not been met, the Board shall either deny the application or approve the application with conditions to ensure all of the standards will be met by the subdivision. The reasons for any conditions shall be stated in the records of the Board.

Motion made by _____ : To approve the final subdivision application with the following conditions of approval.

Motion seconded by _____ :

Votes to approve: _____ **Votes to deny:** _____

1. Per Section 6.10.E., the recording plan must be recorded in the Androscoggin County Registry of Deeds within ninety (90) days of the Planning Board signing. Failure to record within that time frame will require resubmission and reapproval of the final plan.
2. Per Section 6.10.G., no changes, erasures, modifications, or revisions shall be made unless an amended plan is submitted per the terms of Section 6.11.
3. Per Section 6.10.I., the applicant shall commence construction of the required improvements within twelve (12) months and shall substantially complete said improvements within thirty-six (36) months. The applicant shall maintain a performance guarantee for any remaining required improvements throughout the construction period.
4. Per Section 12.A., at least five (5) days prior to the start of construction the applicant shall notify the Road Commissioner in writing of the time of construction commencement so the Town can arrange for inspections by a qualified engineer.
5. Per Section 6.34.C., the Planning Board approves a conditional agreement that requires the completion of all project infrastructure prior to sale of lots or issuance of building permits. The applicant may return to the Planning Board at any point in the construction

to seek approval of a performance guarantee for remaining improvements to allow lot sales and building permit issuance. A performance guarantee shall be submitted for the full cost of erosion and sedimentation controls and site stabilization. Per Section 6.34.F., prior to release of the performance guarantee or any portion thereof, the Road Commissioner or their designee shall determine and provide written certification to the Planning Board that all improvements have been constructed in conformance with the final plan and all applicable codes and ordinances. Partial drawdowns will be allowed.

6. Per Section 6.34.B., no lot in the subdivision may be sold, leased, or otherwise conveyed until the street leading up to and along the frontage of said lot is constructed unless a performance guarantee has been approved and the Fire Chief has provided written verification that said road and lot are accessible by emergency vehicles.
7. Per Section 6.6.C. and 6.34.E., prior to release of the recording plan, deposit a check for two (2%) percent of the engineer's construction cost estimate to pay for the cost of Town inspections of the project improvements by a qualified engineer.
8. Prior to the issuance of any certificate of occupancy, the proposed trail shall be fully constructed.
9. The Planning Board approval of Deer Creek Crossing Subdivision is contingent upon the adoption of and compliance with the draft Homeowner Association legal documents submitted by the applicant on November 22, 2022 (Attachment H).

DATE OF FINAL APPROVAL:

6. Other Business:

a. Board Discussion of Draft Land Use Ordinance Amendments

- On June 14, the leaders of the Planning Board, Conservation Commission, Board of Appeals, and Historic District Commission met to discuss potential land use policy initiatives for the 2024 Town Meeting.
- The goal of the meeting was to coordinate efforts and collaborate on areas where group missions and land use policy overlap.
- The leaders came to consensus on the following items:
 - The Planning Board will focus on housing policies;
 - The Conservation Commission will work on standards for solar farms and cell towers;
 - The Board of Appeals will look at simplifying the process for expansions of existing homes and businesses in the Resource Protection District and the authority for making zoning boundary determinations; and,
 - The Historic District Commission will prepare draft amendments to clarify standards and streamline procedures for historic preservation.
- A complete summary of the joint land use policy workshop is included in the agenda packet.
- On June 16, the Governor signed into law LD 1706 that clarifies some of the provisions of the new State requirements for affordable housing projects and increased housing density. The action of the Legislature also extended the compliance deadline for towns with town meetings until July 1, 2024 (enacted LD 1706 in packet).
- The Town Planner prepared graphics to illustrate and explain the requirements of the State's new housing law and a hybrid approach that will allow landowners to add multiple accessory apartments on standard lots per Durham's Comprehensive Plan but will require larger lots for multiple, full-sized housing units on the same lot as required and allowed by LD 2003 & LD 1706 (graphics in packet).
- The Town Planner sought and received confirmation from the Maine Department of Economic and Community Development and MMA legal staff that the hybrid approach is permissible under the new law (legal Opinion in packet).
- If the Planning Board wants to proceed with preparation of the hybrid response for the 2024 Town Meeting, a public participation process should be planned for early Fall, followed by preparation of an amendment package to be processed starting in January.

Joint Workshop on Land Use Policy – Summary Outcomes



June 14, 2023

PARTICIPANTS: Planning Board, Board of Appeals, Conservation Commission, Historic District Commission

INTRODUCTION

The Planning Board has been directed by the Select Board to take the lead in developing draft amendments to the Town's Land Use Ordinance for consideration at the next Town Meeting. Over the past few years, experience has indicated the need to limit the scope of issues and warrant articles within the capacity of the community to process and decide in the Town Meeting format. Another limiting factor is the availability of staff support for research on the issues and development of the public participation process.

GOALS OF THE SESSION:

- 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.

POLICY DIRECTION

(Based on Town Planner's Assessment, Planning Board Discussions, and Joint Workshop Input)

PLANNING BOARD

- The Planning Board will focus efforts on implementation of the new State requirements for increased housing density.
- The State has delayed the implementation deadline to July of 2024, giving time for Durham to enact regulations tailored to the Town's needs in April of 2024.

- The Planning Board will also review recommended changes to the Land Use Ordinance to finalize the transition to Select Board establishment of all permit fees.

CONSERVATION COMMISSION

- The Conservation Commission has an interest in taking the lead on developing standards for solar energy systems.
- The Commission sees a potential need to cap the size of facilities and to develop a map showing feasible and preferred locations in Durham.
- Community-based systems such as those serving individual subdivisions should be treated differently and more favorably than regional generators.
- Input from other Joint Workshop representatives indicated the need to address cell towers at the same time as solar energy systems.
- The impact of these facilities within 1500 feet of any of the 10 officially designated historic structures must be considered under the current Land Use Ordinance.
- Analyzing suitable/acceptable locations for either form of infrastructure will be controversial and beyond the Town's ability to prepare in time for the next Town Meeting.
- At the same time the current Land Use Ordinance lacks adequate technical standards and administrative procedures to ensure legally defensible decisions by the Planning Board, and there have been multiple inquiries regarding solar energy projects in Durham.
- Developing performance standards and review procedures for solar energy systems and cell towers could be done in 2 phases.
- The first phase would enact standards based on similar ordinances in other communities, and those standards would be applied on a town-wide basis.
- A second phase could explore whether to restrict installations for both types of infrastructure to certain parts of the community through overlay zones.
- The first phase could be completed in time for the April 2024 Town Meeting but not the second phase.

BOARD OF APPEALS

- The Board of Appeals recognizes the impacts on property owners with existing residences of the expansion of the Resource Protection District.
- The Board would likely support streamlining and simplifying the process for obtaining permits for modest expansion of those residences.
- Allowances for expansion should be limited to the structures and not the uses unless a Board review is involved.

- The Town should also at least consider making allowance for modest expansions of existing non-conforming business structures, but those too should be limited to structures and not uses.
- The Board of Appeals also is likely to support transferring the responsibility for making zoning district boundary determinations and non-conforming structure expansions from the Board of Appeals to the Planning Board, as the Planning Board meets more regularly and has adequate technical support to deal with the issues.

HISTORIC DISTRICT COMMISSION

- The 2018 Comprehensive Plan calls for better coordination of the historic preservation programs in the Land Use Ordinance.
- Authority and responsibility for enforcing historic preservation requirements are currently split between the Code Officer, Historic District Commission, and Planning Board.
- There has been confusion over the roles of the three agencies and conflicts between them because of vague language in the Land Use Ordinance.
- The Historic District Commission wants to take the lead in preparing any changes to the Land Use Ordinance dealing with historic preservation to address these issues.
- The Commission supports clarifying the standards and simplifying the review process.
- The Commission opposes elimination of the Southwest Bend Historic District and the Commission's regulatory authority within that district.
- The Commission favors expansion of its regulatory authority to apply to all officially designated historic structures in Durham (i.e., the 10 listed or eligible for listing properties identified by the Maine Historic Preservation Commission).
- The Commission recognizes the need for more technical expertise to deal with historic preservation issues.

STATE OF MAINE

IN THE YEAR OF OUR LORD

TWO THOUSAND TWENTY-THREE

H.P. 1095 - L.D. 1706

An Act to Clarify Statewide Laws Regarding Affordable Housing and Accessory Dwelling Units

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, current law requires, beginning July 1, 2023, all municipalities to allow a certain number of dwelling units under certain circumstances and the construction of accessory dwelling units on the same lot as a single-family dwelling unit and to comply with certain other zoning requirements; and

Whereas, it is the intent of this legislation to extend the implementation date for certain municipalities; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 30-A MRSA §4364, first ¶, as enacted by PL 2021, c. 672, §4, is amended to read:

For an affordable housing development approved on or after ~~July 1, 2023~~ the implementation date, a municipality with density requirements shall apply density requirements in accordance with this section.

Sec. 2. 30-A MRSA §4364, sub-§1, as enacted by PL 2021, c. 672, §4, is amended to read:

1. Definition. For the purposes of this section, "affordable housing development" means:

A. 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

51% or more of the units that the developer designates as affordable in the development without spending more than 30% of the household's monthly income on housing costs; and

B. 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~~ 51% or more of the units that the developer designates as affordable in the development without spending more than 30% of the household's monthly income on housing costs.

Sec. 3. 30-A MRSA §4364, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" means:

A. January 1, 2024 for municipalities for which ordinances may be enacted by the municipal officers without further action or approval by the voters of the municipality; and

B. July 1, 2024 for all other municipalities.

Sec. 4. 30-A MRSA §4364, sub-§3, as enacted by PL 2021, c. 672, §4, is amended to read:

3. Long-term affordability. Before ~~approving~~ granting final approval of an affordable housing development, including but not limited to issuing an occupancy permit, a municipality shall require that the owner of the affordable housing development have executed a restrictive covenant, recorded in the appropriate registry of deeds, for the benefit of and enforceable by a party acceptable to the municipality, to ensure that for at least 30 years after completion of construction:

A. For rental housing, occupancy of all of 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 of 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.

Sec. 5. 30-A MRSA §4364, sub-§6, as enacted by PL 2021, c. 672, §4, is amended to read:

6. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 6. 30-A MRSA §4364-A, sub-§1, as enacted by PL 2021, c. 672, §5, is amended to read:

1. Use allowed. Notwithstanding any provision of law to the contrary, except as provided in Title 12, chapter 423-A, for any area in which ~~housing is residential uses are~~ allowed, including as a conditional use, a municipality shall allow structures with up to 2 dwelling units per lot if that lot does not contain an existing dwelling unit, except that a municipality shall allow up to 4 dwelling units per lot if that lot does not contain an existing

dwelling unit and the lot is located in a designated growth area within a municipality consistent with section 4349-A, subsection 1, paragraph A or B or if the lot is served by 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.

A municipality shall allow on a lot with one existing dwelling unit the addition of up to 2 dwelling units: one additional dwelling unit within or attached to an existing structure or one additional detached dwelling unit, or one of each.

A municipality may allow more units than the number required to be allowed by this subsection.

Sec. 7. 30-A MRSA §4364-A, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" has the same meaning as in section 4364, subsection 1-A.

Sec. 8. 30-A MRSA §4364-A, sub-§2, ¶B, as enacted by PL 2021, c. 672, §5, is amended to read:

B. A municipal zoning ordinance may establish a prohibition or an allowance for lots where a dwelling unit in existence after ~~July 1, 2023~~ the implementation date is torn down and an empty lot results.

Sec. 9. 30-A MRSA §4364-A, sub-§3, as enacted by PL 2021, c. 672, §5, is amended to read:

3. General requirements. A municipal ordinance may not establish dimensional requirements ~~or, including but not limited to~~ setback requirements, for dwelling units allowed under this section that are greater than dimensional requirements ~~or, including but not limited to~~ setback requirements, for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit.

Sec. 10. 30-A MRSA §4364-A, sub-§7, as enacted by PL 2021, c. 672, §5, is amended to read:

7. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 11. 30-A MRSA §4364-A, sub-§10, as enacted by PL 2021, c. 672, §5, is amended to read:

10. Implementation. A municipality is not required to implement the requirements of this section until ~~July 1, 2023~~ the implementation date.

Sec. 12. 30-A MRSA §4364-B, sub-§1, as enacted by PL 2021, c. 672, §6, is amended to read:

1. Use permitted. Except as provided in Title 12, chapter 423-A, a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which ~~housing is~~ residential uses are permitted, including as a conditional use.

Sec. 13. 30-A MRSA §4364-B, sub-§1-A is enacted to read:

1-A. Implementation date. For purposes of this section, "implementation date" has the same meaning as in section 4364, subsection 1-A.

Sec. 14. 30-A MRSA §4364-B, sub-§2, as enacted by PL 2021, c. 672, §6, is amended by amending the first blocked paragraph to read:

This subsection does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to ~~July 1, 2023~~ the implementation date.

Sec. 15. 30-A MRSA §4364-B, sub-§3, as enacted by PL 2021, c. 672, §6, is amended to read:

3. Zoning requirements. With respect to accessory dwelling units, municipal zoning ordinances 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 under this section ~~or section 4364-A~~, the lot is not eligible for any additional increases in density except as allowed by the municipality; ~~and~~

C. An accessory dwelling unit is allowed on a lot that does not conform to the municipal zoning ordinance if the accessory dwelling unit does not further increase the nonconformity.

Sec. 16. 30-A MRSA §4364-B, sub-§4, ¶B, as corrected by RR 2021, c. 2, Pt. A, §110, is amended to read:

B. For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of ~~July 1, 2023~~ the implementation date, in which case the requisite setback requirements for such a structure apply. A municipality may establish more permissive dimensional and setback requirements for an accessory dwelling unit.

Sec. 17. 30-A MRSA §4364-B, sub-§4, ¶D is enacted to read:

D. An accessory dwelling unit that was not built with municipal approval must be allowed if the accessory dwelling unit otherwise meets the requirements for accessory dwelling units of the municipality and under this section.

Sec. 18. 30-A MRSA §4364-B, sub-§5, as enacted by PL 2021, c. 672, §6, is amended to read:

5. Shoreland zoning. An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances, except that a municipality may not categorically prohibit accessory dwelling units in the shoreland zone that would otherwise meet requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

Sec. 19. 30-A MRSA §4364-B, sub-§8, ¶A, as enacted by PL 2021, c. 672, §6, is amended to read:

A. Establish an application and permitting process for accessory dwelling units that does not require planning board approval;

Sec. 20. 30-A MRSA §4364-B, sub-§10, as enacted by PL 2021, c. 672, §6, is amended to read:

10. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements ~~for division of a tract or parcel of land in accordance with~~ subchapter 4.

Sec. 21. 30-A MRSA §4364-B, sub-§13, as enacted by PL 2021, c. 672, §6, is amended to read:

13. Implementation. A municipality is not required to implement the requirements of this section until ~~July 1, 2023~~ the implementation date.

Emergency clause. In view of the emergency cited in the preamble, this legislation takes effect when approved.

LD 2003 Implementation

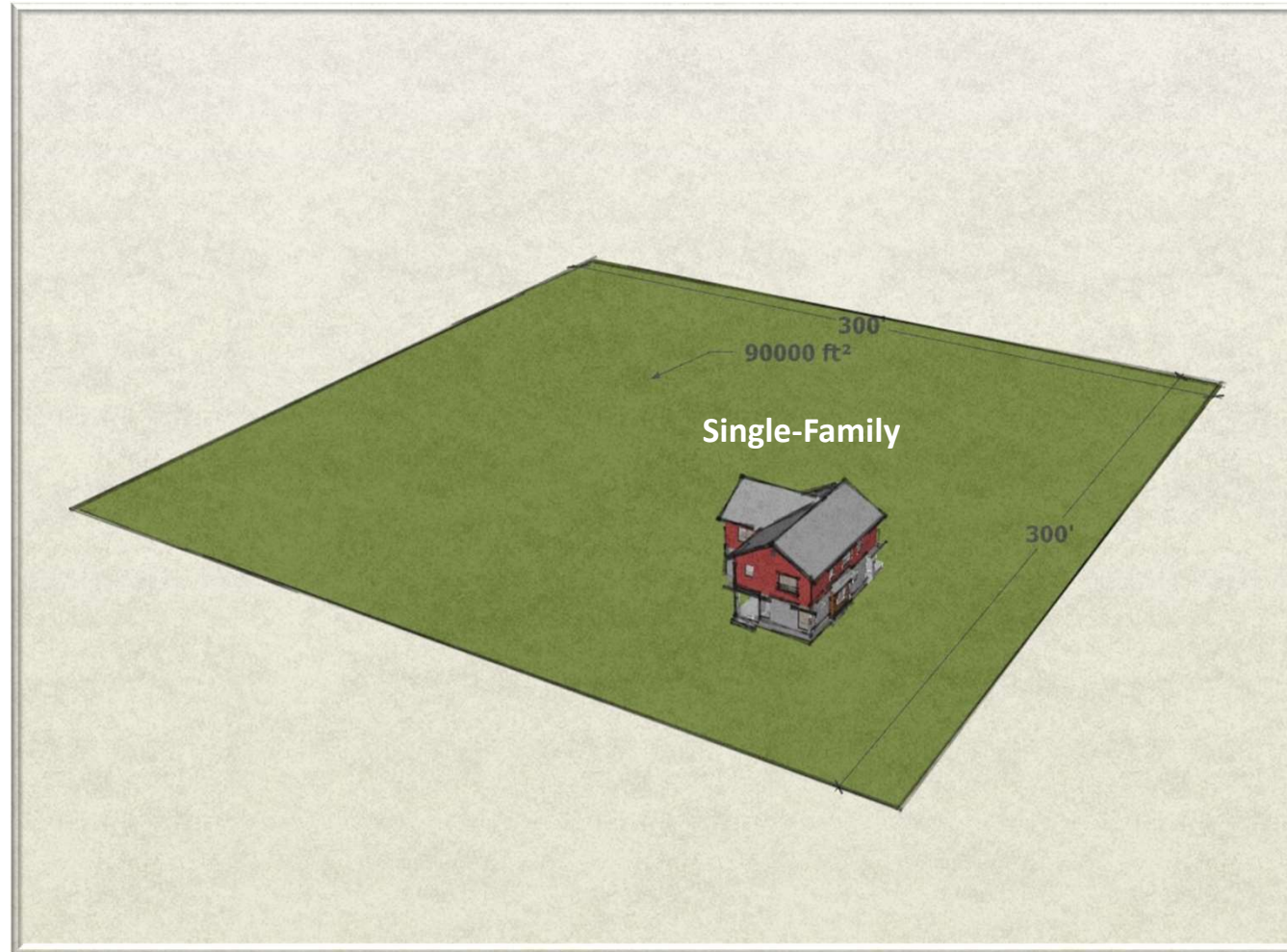
BASELINE IMPACTS OF THE
LEGISLATION ON DURHAM

WHAT WILL CHANGE?

WHAT ARE THE OPTIONS
FOR RESPONDING TO
THE STATE MANDATE?

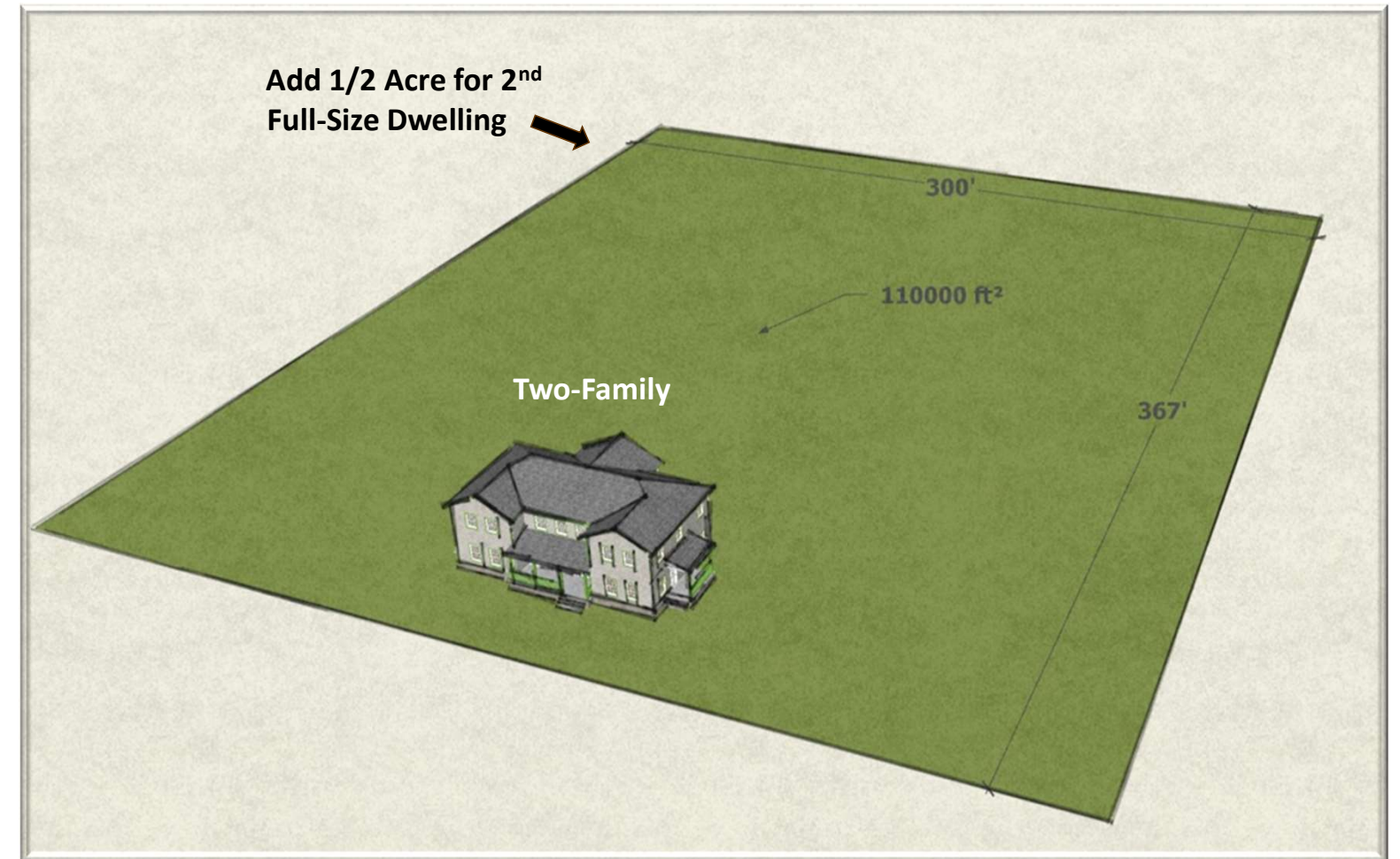
Current Durham Requirements

SINGLE-FAMILY



- 2 Acre Lot
- 300 Ft Road Frontage
- 1 Accessory Apartment
- 50% Floor Area of House
- Maximum of 2 Units

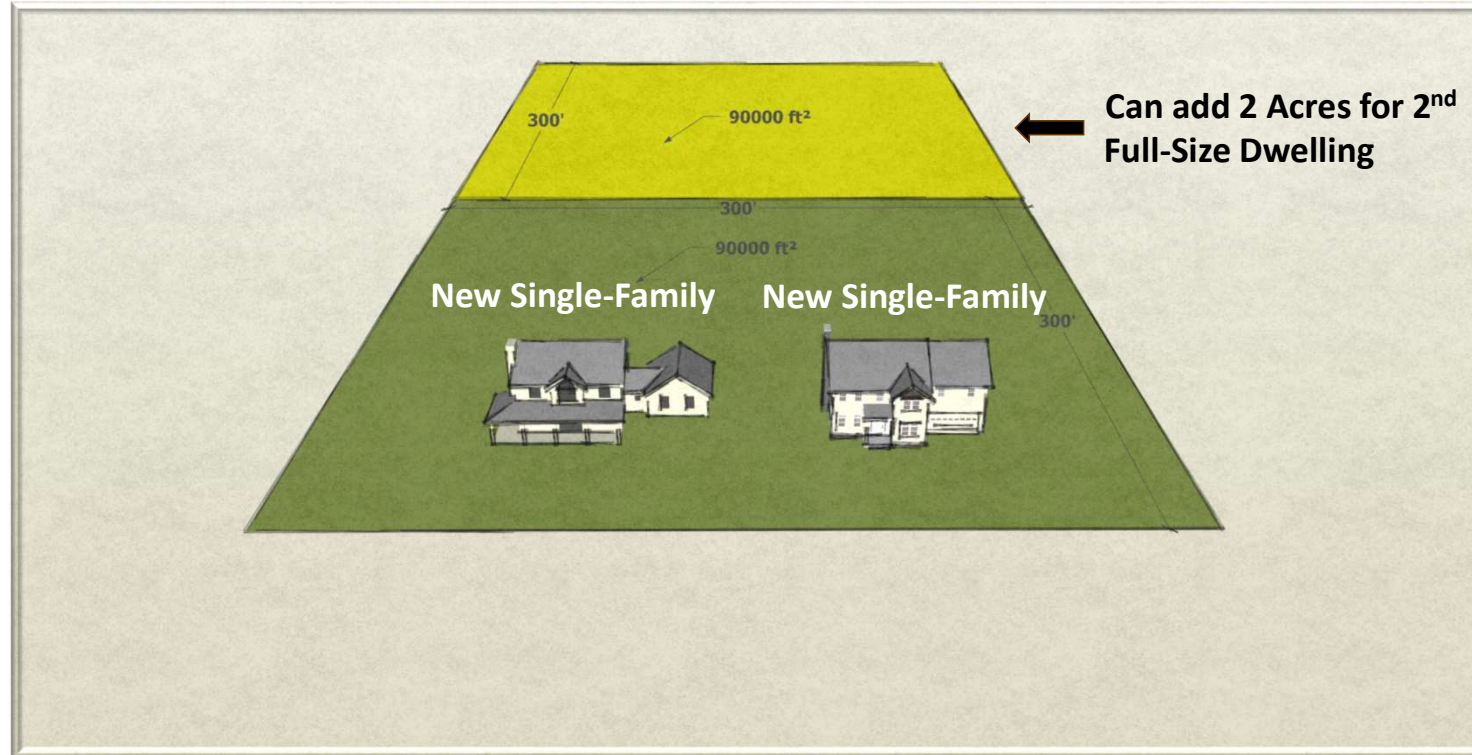
TWO-FAMILY (DUPLEX)



- 2^{1/2} Acre Lot
- 300 Ft Road Frontage
- No Accessory Apartment
- Maximum of 2 Units

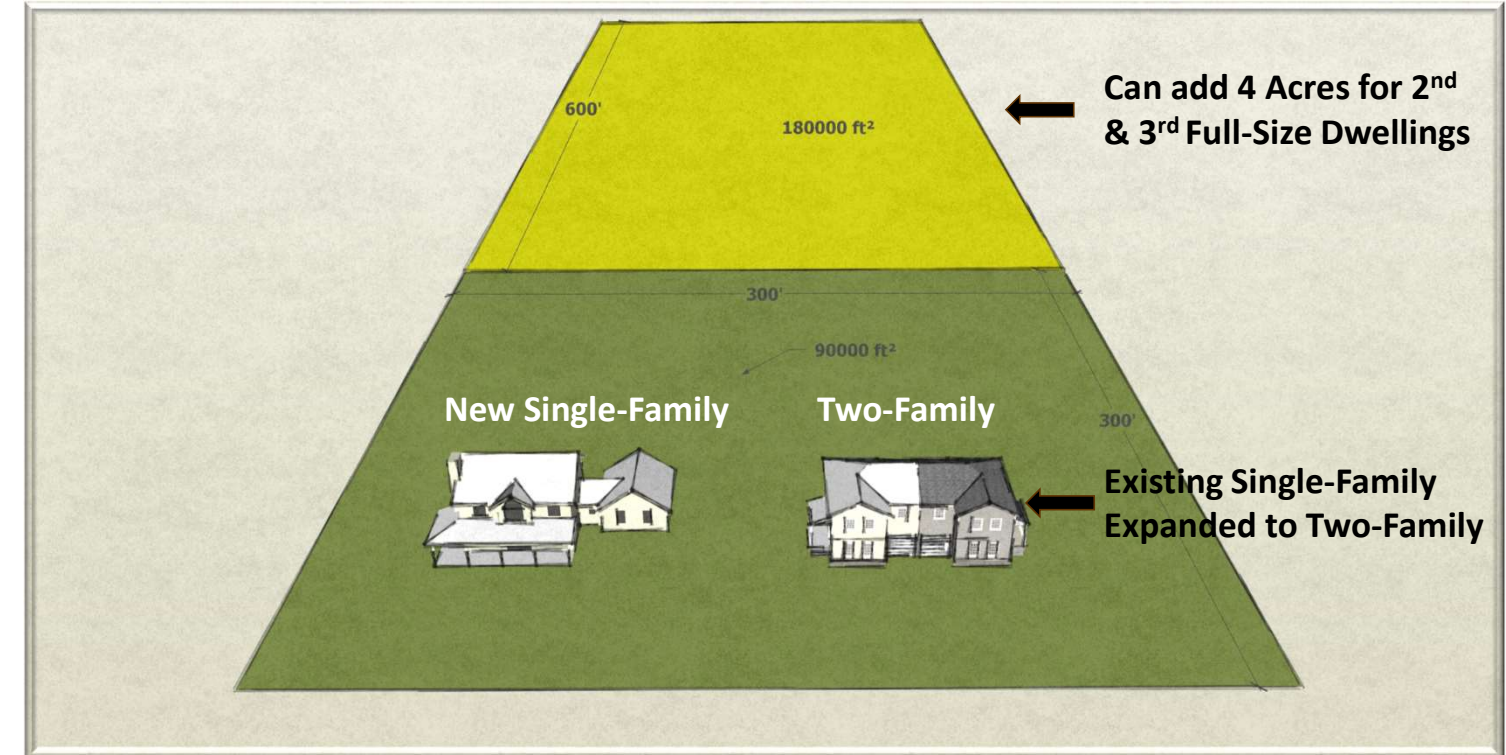
LD 2003 Requirements (Effective July 1, 2024)

VACANT LOT



- Must allow 2 Dwelling Units
- Can be Duplex or 2 Single-Family
- Maximum of 2 Units
- Can Require 2 Acres per Dwelling Unit
- (Without Town Action by July 1 2024, Must Allow on 2 Acres)

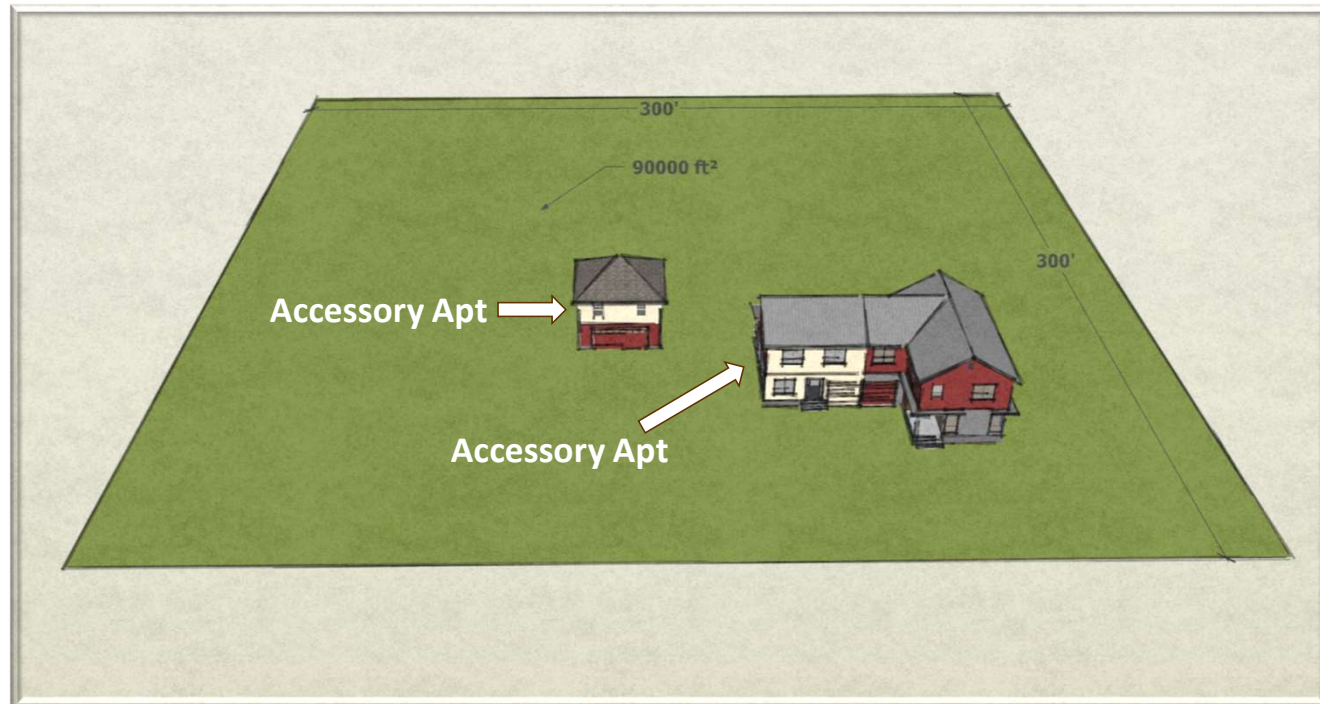
DEVELOPED LOT



- Must allow 3 Dwelling Units
- Can be One Attached, One Detached, or One of Each
- Maximum of 3 Units
- Can Require 2 Acres per Dwelling Unit
- (Without Town Action by July 1 2024, Must Allow on 2.5 Acres)

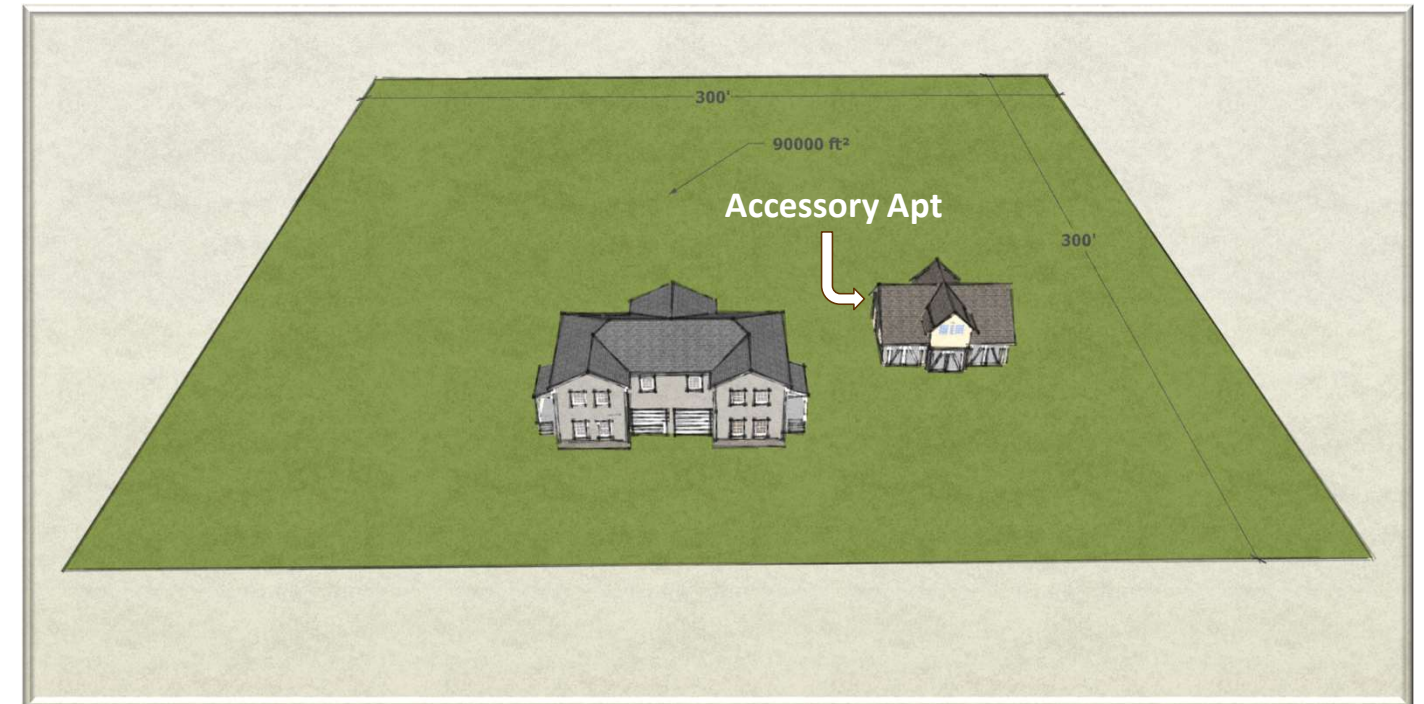
DURHAM COMPREHENSIVE PLAN RECOMMENDATIONS

SINGLE-FAMILY



- Allow 2 Accessory Apartments
- Limit Size to 50% of Main Dwelling Unit
- Maximum of 3 Units

TWO-FAMILY

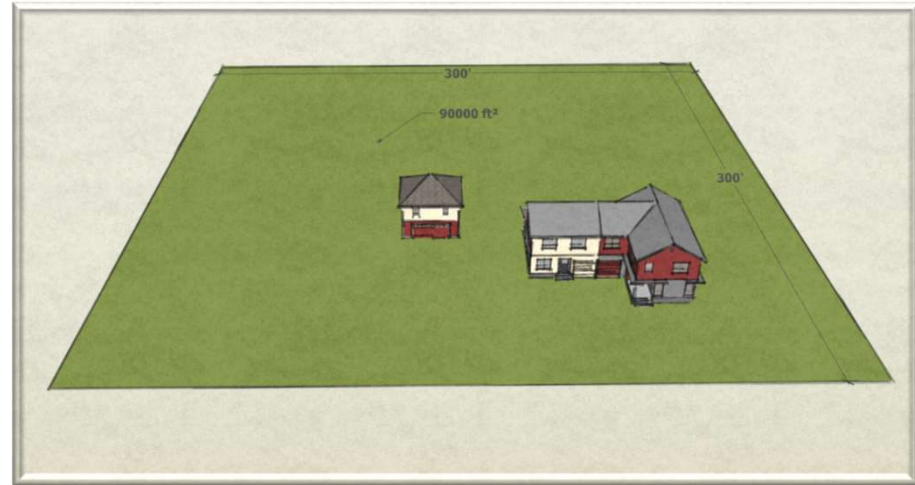


- Reduce Lot Size from 2^{1/2} Acres to 2 Acres
- Allow 1 Accessory Apartment
- Limit Size to 50% of Either Dwelling Unit
- Maximum of 3 Units

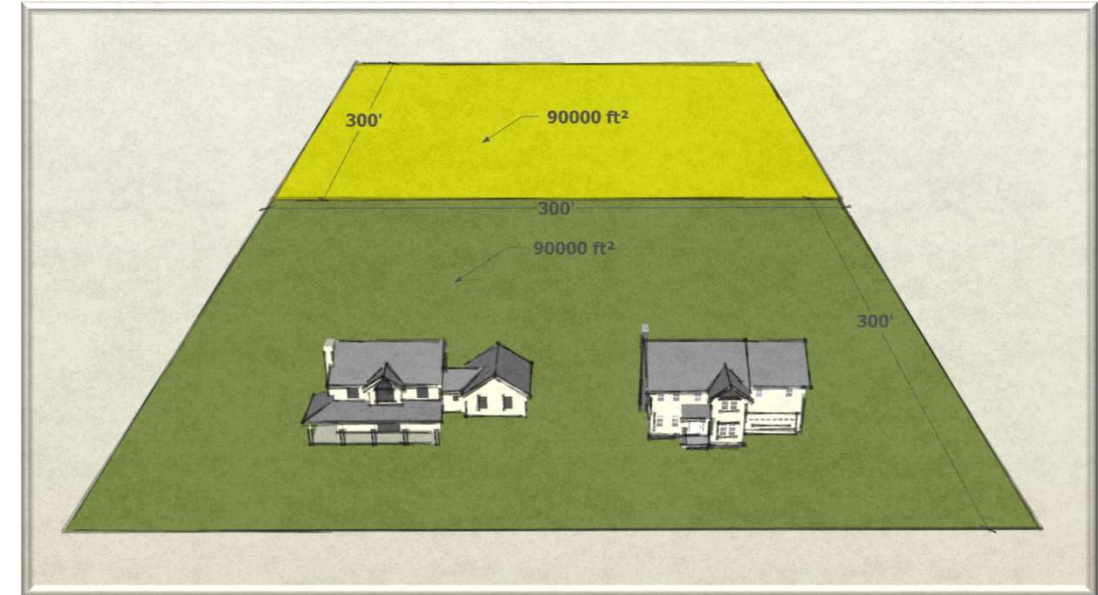
PLANNING BOARD HYBRID PROPOSAL

COMPREHENSIVE PLAN FOR SMALLER ACCESSORY APARTMENTS

LD 2003 FOR FULL SIZED HOUSING UNITS



- Single-Family with 2 Accessory Apartments
- 2-Acre Lot
- Maximum of 3 Units



- 2 Single-Family Homes
- 4-Acre Lot
- Maximum of 2 Units



- Two-Family with 1 Accessory Apartment
- 2-Acre Lot
- Maximum of 3 Units



- 1 Single-Family and 1 Two-Family
- 6-Acre Lot
- Maximum of 3 Units

- OR -



- OR -

Re: Durham Concept for Compliance with LD 2003

George Theborge <townplanner@durhammaine.gov>

Mon 6/26/2023 8:35 AM

To: Legal Services Dept <legal@memun.org>

Cc: Jerry Douglass <townmanager@durhammaine.gov>; Alan Plummer <ceo@durhammaine.gov>; Anne Torregrossa <atorregrossa@durhammaine.gov>; Juliet Caplinger <jcaplinger@durhammaine.gov>; Allan Purinton <apurinton@durhammaine.gov>; John Talbot <jtalbot@durhammaine.gov>; Tyler Hutchison <thutchison@durhammaine.gov>; Ron Williams <rwilliams@durhammaine.gov>

Garrett,

Thank you for responding to our inquiry on the legal viability of a hybrid approach to responding to LD 2003's requirements for increased density. We understand the limitations of your analysis. At this point, we are looking for initial confirmation that allowing multiple accessory apartments on standard lots and requiring larger lots for multiple, full-sized dwelling units (i.e., single-family homes) is permissible under the new statutory framework. It was through a similar exploration that Durham learned that limiting the increased housing unit density to accessory apartments is not permissible.

This level of legal analysis will support moving forward with a public participation process to see if there is public support for this hybrid approach to meeting Durham's housing needs and complying with State law. The alternative is to follow the requirements of LD 2003 without tailoring the Land Use Ordinance to follow the Comprehensive Plan recommendations for protecting neighborhood integrity and Durham's rural character (to the extent allowed under LD 2003).

George

George Theborge
Durham Town Planner
630 Hallowell Rd
Durham, ME 04222
townplanner@durhammaine.gov
207-353-2561

From: Legal Services Dept <legal@memun.org>

Sent: Friday, June 23, 2023 2:28 PM

To: George Theborge <townplanner@durhammaine.gov>

Cc: Jerry Douglass <townmanager@durhammaine.gov>; Alan Plummer <ceo@durhammaine.gov>; Anne Torregrossa <atorregrossa@durhammaine.gov>; Juliet Caplinger <jcaplinger@durhammaine.gov>; Allan Purinton <apurinton@durhammaine.gov>; John Talbot <jtalbot@durhammaine.gov>; Tyler Hutchison <thutchison@durhammaine.gov>; Ron Williams <rwilliams@durhammaine.gov>

Subject: FW: Durham Concept for Compliance with LD 2003

Good afternoon George,

I want to start by being mindful of Maine's Freedom of Access Act and noting that this email is intended to be received in a one-way manner; I strongly encourage those who are copied to save any further discussion for a public meeting rather than a "reply all" email conversation.

With that disclaimer out of the way, it seems based on the proposal you attached and your description that the “hybrid” approach you are considering would regulate additional (“full size”) and accessory dwelling units differently in terms of lot size and density. If I am understanding this correctly, then I agree that approach should be permissible. This is based on my understanding that it is consistent with the “LD 2003” law, now [Public Law 2021, Chapter 672](#), to regulate additional and accessory dwelling units differently.

Specifically, [Title 30-A, section 4364-B](#) in subsection 4(A) requires municipalities to exempt accessory dwelling units from density requirements and lot area requirements (but not necessarily setback or other dimensional requirements). [Title 30-A, section 4364-A](#) does not contain this exemption for additional dwelling units and explicitly authorizes in subsection 3 the establishment of lot area requirements for additional dwelling units.

Beyond this, I am inclined to defer to the DECD’s answer to the question as it was posed to them. If you sense I may be missing the mark or have any clarifying questions, you are welcome to circle back. Either way, I very much advise consulting the town’s legal counsel on the wording of any amendments prior to recommending them to the town’s legislative body for adoption.

Finally, I also want to note the very recent enactment of a law which is now in effect that modifies some of the provisions enacted by LD 2003. The new law is known as LD 1706, now codified as Public Law 2023, Ch. 192, [available online here](#). It seems you are aware that LD 1706 has extended the effective date of LD 2003, giving Durham until July 1 of 2024 to comply. So far as I can tell based upon an initial review of the new law, it does not appear its terms would alter my analysis above under the existing law.

I hope this is helpful. Again, you are welcome to let me know if you have any follow up questions.

Best,
Garrett

Garrett Corbin, Staff Attorney

Legal Services Department

Maine Municipal Association

60 Community Drive, Augusta, ME 04330

Phone: 207-623-8428

FAX: 207-624-0187

legal@memun.org

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From: George Thebarg <townplanner@durhammaine.gov>

Sent: Wednesday, June 21, 2023 3:01 PM

To: Legal Services Dept <legal@memun.org>

Cc: Jerry Douglass <townmanager@durhammaine.gov>; Alan Plummer <ceo@durhammaine.gov>; Anne Torregrossa <anne_torregrossa@yahoo.com>; Anne Torregrossa <atorregrossa@durhammaine.gov>; Juliet Caplinger <jcaplinger@durhammaine.gov>; Allan Purinton <apurinton@durhammaine.gov>; John Talbot <jtalbot@durhammaine.gov>; Tyler Hutchison <thutchison@durhammaine.gov>; Jerry Douglass <townmanager@durhammaine.gov>; Ron Williams <rwilliams@durhammaine.gov>

Subject: Durham Concept for Compliance with LD 2003

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The Durham Planning Board will be doing research over the summer and preparing a public participation process for developing draft Land Use Ordinance amendments for consideration at the

April 2024 Town Meeting. Durham's 2018 Comprehensive Plan made recommendations for expanding housing diversity that are very much in line with LD 2003. The Town's housing recommendations, however, call for controlling the design of added housing units to protect neighborhood integrity and Durham's rural character.

LD 2003 and DECD's administrative rules placed restrictions on Durham's ability to follow its comprehensive plan in terms of limiting the size of the added housing units to fit town and neighborhood character. We believe that the dual tracks of Sections 3 and 4 of the Legislation provide opportunity to pursue a hybrid solution that will comply with the State mandate for full-sized housing units while favoring development of smaller accessory apartments.

Staff at Maine DECD have indicated that they consider that this hybrid concept would be viable under the State's new housing requirements. Could MMA legal staff also provide feedback on whether this concept would pass muster? The attached graphics provide explanation and illustration of our analysis.

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