

MEMORANDUM

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CC: Juliana Dubovsky, Assistant Planner

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RE: Yarmouth Ordinance Audit & Recommendations – Barriers to Housing

Date: December 13, 2024

Overview

Yarmouth's 2024 Comprehensive Plan demonstrated that the town faces more acute housing demand, affordability, and availability challenges than the region at large. Housing conditions created in part by Yarmouth's current zoning contribute to less economic diversity in town, and ongoing development pressure causes friction between housing needs, the desire to maintain the Town's look and feel, and conservation of open space and protection of natural resources.

Based on the needs identified in the Comprehensive Plan, North Star Planning (NSP) and Levine Planning Strategies (LPS) were engaged to conduct an audit of Yarmouth's land use ordinances to identify barriers to housing development and identify best practices for housing production. NSP and LPS thoroughly reviewed:

- Chapter 601 Subdivision
- Chapter 701 Zoning
- Chapter 702 Site Plan
- Chapter 703 Character Based Development Code

NSP and LPS also reviewed Chapter 317, Sprinkler Ordinance and Chapter 401, Fees and Permits. In particular, the requirements of Chapter 317 have been identified as a barrier to housing development, but as it is beyond the scope of Yarmouth's various land use ordinances further input from the Town's public safety personnel should be sought by the Town Council.

The Ordinance Audit and Recommendations that follow establish a groundwork for potentially amending the current ordinance language and starting community discussions about new policies or amendments to existing standards.

Key Recommendations

Usability Recommendations

- Create a development review flowchart that shows the process for site plan, subdivision, and historic preservation review
- Create submission checklists for site plan and subdivision
- Create land use and dimensional tables to replace the lists under each zone
- Add a fee schedule to the Planning & Codes website

Ordinance Changes - General

- Update the purpose statement to align with the Comprehensive Plan, and include housing targets
- ADUs are held to a higher review standard than single-family or duplexes, despite being smaller development
- Lot sizes are too large in RR, LDR, MDR, and the size required for additional dwelling units is too high. Consider reducing minimum lot sizes. Consider allowing up to 4 units in growth areas and up to 2 units in non-growth areas on the minimum lot size to support Comprehensive Plan goal H-4.4 and H-4.6.
- Create a definition for “cottage court” in zoning to allow this type of development in MDR.
- Add additional housing types to the CBDC for missing middle housing types, including triplex, fourplex, cottage court, and four-story workforce housing.
- Extend nonconforming use time limit. The foreclosure process can take longer than two years.
- Sprinkler ordinance creates a high a burden for single-family, two-family, and ADUs, and is far more restrictive than peer communities. Town Council should consider amendments to reduce requirements for single-, two-family, and ADUs on public water in consultation with public safety personnel.
- Update ordinances to create usable mobile home park districts and manufactured housing standards that comply with state requirements. Include tiny homes in manufactured housing standards to meet to meet Comprehensive Plan action item H-4.7.
- Add emergency housing as an allowed use (Comprehensive Plan action item H-5.13.)
 - For example, consider adding as a definition and a use, “Emergency housing: temporary indoor accommodations for individuals or families who are homeless or at imminent risk of becoming homeless. Emergency housing may or may not require occupants to enter into a lease or an occupancy agreement.”
 - A time limit for “temporary” may be included, such as a maximum of 365 days.
 - This use could include situations ranging from temporary housing for homeless individuals at a church, to a shelter housing people after a natural disaster.

Ordinance Changes – Bonuses and Incentives

- Combine the local affordable housing density bonus and the LD2003 affordable housing density bonus to create a simpler and more effective program of incentives. (Comprehensive Plan action items H-2.1 and H-5.7)
- Increase Open Space density bonuses to provide a greater incentive.

- Reconsider the Consolidated Review Committee to streamline reviews for affordable housing projects that meet the building type standards of the CBDC.
- Consider fee waivers for affordable housing projects for building permits and planning board review (Chapter 401).
- Consider fee waivers for the sewer connection fee, and make it easier for affordable units to receive the discounted annual fee (Chapter 304).

Program Changes

- Update the sewer connection fee to support capital improvements to the sewer system.
- Create a framework to use the Capital Reserve Account funds for affordable housing, and explore directing additional funding into that account for affordable housing.
- Continue to use TIFs to support affordable housing projects.
- Continue to seek town-owned land or other excess land that can be used for town-led affordable housing projects.
- Reconsider implementing inclusionary zoning.
- Reconsider a mandatory rental registry, including tracking short-term rentals.

General

While conducting our review, NSP noted several general ordinance recommendations to improve usability for development in Yarmouth.

- Review the number of paper copies required by site plan, subdivision, and other submissions to determine if such numbers are still needed and are consistent.
- Consider moving all definitions to the same place in the zoning ordinance (701) and referencing these definitions in other ordinances and sections.
- Create a development review flowchart to help users navigate the site plan, subdivision, and historic preservation review processes.
- Create submission requirement checklists for site plan, subdivision, and historic preservation review.
- Add the demolition delay overlay layer to the general Yarmouth GIS map – it's not clear that you have to look in the historic properties map to find it.
- Reference the fee ordinance by name to direct applicants where to find fees

Chapter 601, Subdivision

General Recommendations:

Amend the ordinance so multifamily housing goes through the major site plan review process and is exempt from subdivision.

For example, Portland's Land Use Code classifies as major site plan review "any division of a new or existing structure into 3 or more dwelling units whether the division is accomplished by sale, lease, development, or otherwise."

Article I C, Definitions

The definitions for “subdivision, major” and “subdivision, minor” are confusing. Amend to state clearly a major subdivision is more than 4 lots, and a minor subdivision is 4 lots or fewer.

Article I D, Review Standards

This section is directly copied from MRSA §4404. If the intent is to use the state review standards, consider replacing with a reference to state law to avoid having to amend local ordinances whenever state law is amended.

Article III A 2, Review by Municipal Committees

This process and timeline should be clarified to better define the advisory role of these committees, including in what situations their comments should be requested, the scope of comments and recommendations, the format of comments, and the advisory nature. The section in Subdivision is clearer than Site Plan in this regard.

Article III A 5

Why does the Planning Board need to classify if a project is a major or minor subdivision? It is already defined under Definitions.

Article III C 1 a (and elsewhere)

Reference the Fee ordinance to make it clear where to find the fee (or put a fee info sheet on the website.)

Article V, Technical and Design Standards

There are references to various manuals and excerpts from a trip generation manual in these standards as well as other technical references. Consider replacing and indicating the applicant should reference the latest edition of the manual or other reference, so the ordinance stays up to date.

Chapter 701, Zoning

General Recommendations:

- Add a table of land uses
- Add a table of dimensional standards
- Re-order the zoning ordinance to have definitions, zoning districts, and use and dimensional standards after Article I, before moving to the sections on excavation, signs, etc.
- Add language to clarify that secondary dwelling units (*not* ADUs, but a second primary dwelling unit) are allowed, and include language on ownership structures, such as if it is possible for them to be condominiums.

Article I

B. Purpose

Statement needs updating. It refers to limiting housing in unsanitary areas, but does not include any needs for housing production or other positives.

C. Intent

This section states that any use not specifically allowed is specifically prohibited. Some communities are moving away from this in order to allow some discretion on new and emerging uses.

For example, Chapter 6.2.2 of Portland's Land Use Code, "Unlisted Uses", states, "Uses not expressly listed as permitted or conditional in are prohibited as principal uses except that a use may be permitted subject to meeting the following performance-based standards:

1. The proposed use is consistent with the purposes of the zone.
2. The proposed use is closely related to a permitted or conditional use in terms of character, scale, and external impacts.
3. The buildings and structures associated with the proposed use are designed and operated so that it will prevent undue adverse environmental impacts, substantial diminution of the value or utility of neighboring structures, or significant hazards to the health or safety of neighboring residents by controlling noise levels, emissions, traffic, lighting, odor, and any other potential negative impacts.

The review authority shall determine whether the uses not listed as permitted or conditional uses meet the above standards. If it is determined that the use does not meet the above criteria, it shall not be permitted.

The review authority may impose reasonable conditions of approval on the proposed use to ensure that it is similar in character and impact to a permitted or conditional use."

D. Definitions

- Confirm the description of AMI levels in the definition of "Affordable Housing Unit", "Affordable Development", and "Affordable Rental Unit." Cite state/federal statute instead of quoting it where possible.
- Define "ruins" (used later in Article II B).
- Consider striking the definition of "family". It is almost impossible to enforce this provision and verify that people living together are or are not related.
- Simplify the definition of "dwelling unit":
 - For example, change to:
 - Dwelling unit. One or more rooms forming a single unit for habitation by one family, including food preparation, living, sanitary, and sleeping facilities. In the SOD, a dwelling unit includes a motel, hotel, boarding house, Inn, Bed and Breakfast, or similar commercial use.
 - Dwelling, single-family. A single building containing one dwelling unit.
 - Dwelling, two-family. A single building containing two dwelling units.
 - Dwelling, multi-family. A building or portion thereof containing three or more dwelling units.
- Consider removing the definitions for "dwelling, single-family detached" and "dwelling, two family detached". They seem unnecessary as "detached" and "attached" dwelling units are both defined.
- Consider striking the definition of "multiplex" to be replaced by "dwelling, multi-family" above, which is clearer and offers more flexibility.

- If multiplex must be retained, consider changing to “Residential development consisting of three or more horizontally or vertically attached dwelling units, or a series of such attached dwelling units.” Remove the number of dwelling units from the definition.
- Add definition for bed & breakfast (motel, hotel, and inn/lodging house are already defined. Boarding house is not used elsewhere in the ordinance.) Definitions should reflect that these are considered units in the SOD.
- Consider striking the definition for “elderly housing.” There are federal definitions and state/federal requirements for elderly housing. There appear to be no local zoning or land use connections in the ordinance that require it to be defined here.

Article II

H. Off-Street Parking & Loading

- Parking requirement of 2 spaces per dwelling unit is excessive, especially in areas where the town is trying to promote public transit-centered development.
- Consider changing to a 2 space per dwelling unit maximum. This change has already been made in the CBDC (Chapter 703), but that change is not reflected in this section.

K. Height Regulations

- Height maximum of 35’ is restrictive. Allowing a taller maximum in the village and/or along the Route 1 Corridor could maintain community character while improving flexibility for housing projects. Consider increasing the height maximum in the CBDC zones and implementing a height bonus for affordable housing development.

M. Open Space Residential Development

- The density bonuses in the open space residential development section are complex and confusing calculations. They are also very limited bonuses that do not offer a significant incentive, starting at just 5% for 25% open space reserved.
- A bonus should be at least 25% to be a meaningful incentive to the developer. Consider setting the bonus equal to the land preserved – i.e., 25% for 25% preserved, 40% for 40% preserved, etc.
- Clarify if you can stack density bonuses (i.e., open space and affordable housing.)
- Consider making open space residential development a requirement in the RR zone to allow more density while preserving more open space.

S. Manufactured Housing on Individually Owned Lots

- Standards for manufactured housing on individual lots comply with state law.
- Clarify if manufactured housing can be used for ADUs if it follows the standards.

DD. Affordable Housing Programs

Consolidate the affordable housing incentives (Section 1) and density bonuses (Section 2) into a single affordable housing density bonus, where the bonus increases based on the amount of affordable housing in the project. The following table provides a suggestion for how to condense these two density bonuses.

Affordability Standard	Density Bonus
10% units at 80% AMI	25%
25% units at 80% AMI or 10% units at 60% AMI	50%
51% or more units at 80% AMI, or that meet the affordability standards of 30-A MRSA §4364*	250%

*Growth Area projects only

All projects that meet these affordability standards may not require more than 2 parking spaces per 3 units.

- Connect this section to the comprehensive plan housing goals, and reference Council housing targets.
- 1.c.ii: requires common entrance; potential conflict with ADU requirement for having a separate entrance.
- 2.d contains general water and wastewater standards. If these are no different from any other type of development, remove from this section.
- Review the deed restriction language for affordable housing.

EE. Dwelling Unit Allowance

- The dwelling unit allowances from LD2003 listed here should be integrated into the text of the code – i.e. dimensional tables – more directly. For example, Low Density Residential dimensional requirements on p. 102 appear to conflict with these standards.
- Clarify if Limited Growth is a growth or rural area in this text.

Article III

C. Nonconforming Buildings, Structures, and Site Improvements

- Has a 2-year limit on reconstructing or replacing nonconforming uses. Note that this may not be enough time in cases such as foreclosure, which often take 3 years or more.

Article IV

General Recommendations

- It would be helpful to state where to find the Official Zoning Map if it is not appended to the ordinance.
- In general, lot sizes are large in comparison with existing lots across all zones.
- It's not clear why multiple Village and Commercial districts are required. The Village II district seems to serve to limit commercial in the Village area, and the density requirements for Village II and III are confusing. If the goal is to create a traditional New England village, consider combining the existing Village zones CD4, Village II, and Village III. Commercial could combine CD4-C and C to create a unified Route 1 Corridor district.

F. Rural Residential

- Doubling the lot size for a two-family is unnecessary, considering you are allowed to have 2 units on a 3-acre property if you have a single-family and an ADU. Change to allow up to 2 units for the minimum lot size of 3 acres, and change the density for multiplexes to reflect that (1 unit per 1.5 acres.)

G. Low Density Residential

- As in RR, doubling the lot size for a two-family is unnecessary, considering you are allowed to have 2 units on a 2-acre property with a single-family and an ADU. Change to allow up to 2 units per the minimum lot size of 2 acres.
- 30 acres are required for multiplex development, which is exclusionary and unnecessary. Consider making this 1 unit per acre, or lower if a development is designed to be low-impact.
- Consider low-impact development standards for all subdivision here to allow for clustering development while protecting open space and water quality in these coastal areas.

H. Medium Density Residential

- Lot sizes are too large. The team will be reviewing this zone in-depth in the next phase of the project and will provide more fine-grained recommendations then.
- Allow up to 4 units on the minimum lot size.
- Define “cottage court” as a use, and allow this use in the MDR to increase ability to build on existing lots.
- 10 acres are required for multiplex development, which is exclusionary and unnecessary, and may not align with the LD2003 dwelling unit allowances.

Article IX

- Consider allowing a reduced demolition delay in the Historic Preservation Advisory Ordinance for accessory or secondary structures like sheds, garages, etc., or for partial demolition of later additions.
- Consider incorporating the definitions for this section into the main definitions section of the zoning ordinance.

Chapter 702, Site Plan Review

Article I

B. Definitions

- The definitions of major vs minor site plan would more accurately be called “Project Classification.”
- Clarify the minimum size of new structures that trigger major site plan review in B.1.a.
- Allow multifamily buildings to be reviewed by SPR instead of subdivision by adding to major development: “any division of a new or existing structure into 3 or more dwelling units whether the division is accomplished by sale, lease, development, or otherwise.”
- “Affordable housing development” is classified as major review. Strike this provision. If the ordinance is amended to allow multifamily housing to go through SPR (see above), multifamily affordable housing developments will go through major review. If a single-family detached home subdivision that is affordable is

proposed, it is logical for that project to go through subdivision review and not have to additionally go through major site plan.

- B.2.h: Alteration of site layout, footprint, or number of units of multifamily housing triggers minor site plan review. If the change is made to exempt multifamily buildings from subdivision, strike this provision. New multifamily projects reviewed through SPR will be amended through SPR if they are altered. If the change is not made, 601 article III.D.2 applies.
- Accessory dwelling units are required to go through minor site plan review, yet single or two-family dwellings or not. This is a discriminatory burden on ADUs that will discourage development. Either all dwelling units should have to go through the process, or none should.
- Minor review mentions the Planning Director may combine multiple items into one review and elevate it to a major review. This seems unnecessary – if all items are minor, they should be reviewed as a minor review.

C. Exemptions

- Clarify that single-family and duplexes, and anything related to their structure or accessory uses, is exempt from site plan review.
- Consider adding ADUs as exempt from Site Plan Review. If ADUs are not made exempt, make it clear they will only be reviewed under minor site plan, regardless of ADU size, in B.2.m.

E. Notification

It is unusual for minor (administrative) site plan applications to be publicly noticed. This could add burden for staff. It also adds additional barriers for ADUs since they require minor site plan – again, it sets them apart a single-family home or duplexes, would not need to be noticed, despite being larger structures.

F. Application and Review Process

F.5.b. Review by Municipal Committees: this process and timeline should be clarified to better define the advisory role of these committees, including in what situations their comments should be requested, the scope of comments and recommendations, the format of comments, and the advisory nature. The section in Subdivision is clearer than Site Plan in this regard.

H. Review Criteria

It is a best practice for review criteria to correspond directly to a submission requirement. This is not the case with all items here, such as utilities, which have review criteria but are included possible “site improvement details” as a submission.

J. Technical Standards

- J.13. These technical standards for accessory dwelling units are in excess of the minor site plan review requirements. Some of this information seems unnecessary, such as the use of all rooms and the location of all plumbing facilities.
- These additional review criteria do not correspond directly to the minor site plan or additional submission requirements.
- These review criteria are in excess of what is reviewed to construct a single-family home or duplex.

- There are numbering issues in this section, and the purpose statement here seems unnecessary.

Chapter 703, Character Based Development Code

- A flowchart and checklist to assist people in using this section of the code would be very helpful.
- The Character District Descriptions could be updated to include descriptions from the Future Land Use section and housing goals of the most recent Comprehensive Plan. On Main Street, this should tie into the Comprehensive Plan action item E-4.3 to allow a greater range of businesses on Main Street. In CD-4, this should be updated to emphasize mixed-use development in close proximity to transit to tie into Comprehensive Plan action item FLU-8.4.
- Consider eliminating parking minimums (Table 5.K.1) and leaving only the maximums. The CBDC Districts are located along transit corridors, and developing additional housing near transit stops is an action item in the 2024 Comprehensive Plan (FLU-8.6.)
- Add building types for missing middle housing, including triplex, fourplex, and cottage court.
- Add a building type for four-story workforce housing, and exempt this building type from the waiver required to build to 45’.
- Consider using the Consolidated Review Committee process to allow streamlined review for affordable housing constructed in approved building types in the CBDC.

Chapter 317, Sprinkler Ordinance

The sprinkler ordinance requires sprinklers in all new buildings, including single-family homes, duplexes, and ADUs, and many existing buildings if they are added to. This ordinance is in excess of peer communities and NFPA standards. The sprinkler requirements impose a very high cost to new small-scale housing development.

The Yarmouth Town Council should consider changing these requirements, so sprinklers are not required in new single-family, duplex, or ADU buildings that are on the public water supply. For new home construction in areas outside the public water supply, consider a regulation in line with peer communities that states these developments have the option of sprinklers, a fire pond, or a dry hydrant.

Comparative Residential Sprinkler Requirements

Yarmouth	All new residential buildings (including single-family, duplex, ADU) Additions when cumulative building area is > 4, 000 SF
Cumberland	New homes in major subdivisions located more than 1,000 feet away from public water supply

	May be required for new homes and multifamily when buildings are less than 100 feet apart
Freeport	New subdivisions located more than ½ mile from public water supply
Falmouth	New buildings more than 3 stories tall or more than > 10,000 SF New multifamily dwellings Renovations 50% or greater of building's value where existing building would have required sprinkler
Gorham	New buildings more than 3 stories tall or > 10,000 SF New attached (vertical or horizontal) residential of 3 or more units All residential units in mixed-use buildings
Scarborough	New buildings more than 3 stories or 40 feet tall, or > 10,000 SF New attached (vertical or horizontal) residential of 3 or more units Renovations that cause a building to meet the above criteria
NFPA	All residential buildings with more than 2 dwelling units All buildings more than 55 feet tall