



# YARMOUTH MAINE

To: Town Council

From: Nat Tupper, Town Manager, and Erin Zwirko, Director of Planning & Development

Re: Councilor Proposed Amendments on LD 2003

Date: August 14, 2023, **With Revising Notes 8/16/23**

Assuming there is a motion on the floor to adopt the Planning Board's recommendations on LD 2003 compliance, below please find some potential amendments to accomplish the additional changes favored by some (or all) of the Town Council. These amendments would modify the Planning Board recommendations as detailed in the June report issued by Erin.

The Council would begin with a motion to approve the Planning Board's recommendations on LD 2003, and then the Council could proceed with the following further amendments organized by topics:

### **Main Motion:**

Be it Ordained by the Yarmouth Town Council in town council assembled that Chapters 601, 701, 702, and 703 of the Yarmouth Town Code are hereby amended as the recommendations of the Yarmouth Planning Board voted May 24, 2023 and detailed in a "Planning Board Report to the Town Council prepared by Erin Zwirko, Director of Planning & Development dated June 22, 2023, a copy of which to be attached to the Minutes of this meeting, and

Be it ordered that the Town Clerk is hereby authorized to incorporate all amendments herein approved into the Yarmouth Town Code including making of formatting, numbering and renumbering adjustments, indexing and Table of Contents modifications, and any grammatical, spelling, or punctuation corrections as may be needed.

### **Amendment to the Dwelling Unit Allowances – Lots with 1 Existing Dwelling Unit in the Growth Area**

This first amendment would adjust the Planning Board's recommendation on how to handle lots within the Growth Area where there is 1 existing dwelling unit on the lot. In this situation, the law requires that municipalities allow up to 2 additional dwelling units on the lot. The Planning Board recommended that the first allowed dwelling unit needs to have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located. The third allowed dwelling unit does not require any additional lot area.

The proposed amendment would adjust that recommendation so that neither the first nor second allowed dwelling unit requires any additional lot area, so long as the existing dwelling unit has at least the minimum lot area for the zoning district the lot is located in.

**I move to amend the motion as follows:**

**Chapter 701 Article II.EE.3.b.ii shall be revised to read:**

### 3. Density and Dimensional Standards

b. The following density standards apply for lots located within the Growth Area:

- ii. For a lot that contains one dwelling unit and has at least the minimum lot area or minimum lot area per unit identified in Article III for the zoning district in which the lot is located, the first and second additional allowed dwelling units the first and second additional allowed dwelling units are allowed without any additional lot area per dwelling unit. ~~must also have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located. The second additional allowed dwelling unit is allowed without any additional lot area per dwelling unit.~~

#### **Amendment to the Dwelling Unit Allowances – Lots with 2 Existing Dwelling Units in the Growth Area**

This second amendment would adjust the Planning Board's recommendation on how to handle lots within the Growth Area where there are 2 existing dwelling units on the lot. In this situation, the law does not give any allowances to lots with 2 existing dwelling units; instead, the law gives municipalities the discretion on whether to grant any additional allowances. The Planning Board recommended that lots with 2 existing dwelling units, including those with Accessory Dwelling Units, receive no additional allowances.

The proposed amendment would adjust the recommendation so that lots with 2 existing dwelling units are allowed 1 additional dwelling unit so long as the lot is located within the Growth Area, there are no more than two structures containing dwelling units on the lot, and the existing dwelling units have at least the minimum lot area for the zoning district the lot is located in. The provisions also do not apply to lots where an Accessory Dwelling Unit exists on the lot as of or is added after January 1, 2024.

**I move to amend the motion as follows:**

**Chapter 701 Article II.EE.2 shall be revised to read:**

#### 2. Applicability

- a. If a lot does not contain an existing dwelling unit, up to four dwelling units per lot are allowed if the lot is located in an area in which housing is permitted and is located in the designated growth area of the most recently adopted Town of Yarmouth Comprehensive Plan.
- b. If a lot does not contain an existing dwelling unit, up to two dwelling units per lot are allowed if the lot is located in an area in which housing is permitted and is located outside the designated growth area of the most recently adopted Town of Yarmouth Comprehensive Plan. The two dwelling units may be in one structure or two separate structures.
- c. If a lot contains one existing dwelling unit, up to two additional dwelling units per lot are allowed, subject to the following:
  - i. One within the existing structure or attached to the existing structure; or
  - ii. One detached from the existing structure; or
  - iii. One of each.
- d. If a lot contains two existing dwelling units, **one** additional dwelling unit per lot is allowed subject to the following:
  - i. The lot must be located in the designated growth area of the most recently adopted Town of Yarmouth Comprehensive Plan, and
  - ii. No more than two structures containing dwelling units are allowed.

~~This provision is not applicable to any lot where an accessory dwelling unit exists on the lot as of or is added after January 1, 2024. If a lot contains two existing dwelling units, no further allowances are granted under this section. This includes any lot where an accessory dwelling unit exists on the lot as of or is added after January 1, 2024.~~

**And Chapter 701 Article II.EE.3.b shall be revised to read:**

3. Density and Dimensional Standards

b. The following density standards apply for lots located within the Growth Area:

i. Notwithstanding the minimum lot area or minimum lot area per unit requirements identified in Article III, for a lot that does not contain a dwelling unit, up to four dwelling units are allowed regardless of lot area per dwelling unit subject to the limitations of ARTICLE II.EE.3.c below.

ii. For a lot that contains one dwelling unit, the first additional allowed dwelling unit must also have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located. The second additional allowed dwelling unit is allowed without any additional lot area per dwelling unit.

iii. For a lot that contains two dwelling units and has at least the minimum lot area or minimum lot area per unit identified in Article III for the zoning district in which the lot is located, a third dwelling unit is allowed without any additional lot area per dwelling unit.

**Amendment to the Dwelling Unit Allowances – Where a Dwelling Unit is Removed Resulting in a Vacant Lot within the Growth Area**

This third amendment would adjust the Planning Board’s recommendation in situations where a dwelling unit is removed resulting in a vacant lot per LD 2003. The law gives municipalities the discretion on how to address. The Planning Board recommended that when a dwelling unit is removed resulting in a vacant lot, each allowed dwelling unit must have the minimum lot area per dwelling unit for the zoning district in which the lot is located. Per the law, within the Growth Area, a vacant lot is allowed up to 4 dwelling units, and outside the Growth Area, a vacant lot is allowed up to 2 dwelling units.

The proposed amendment would adjust how lots within the Growth Area are handled. When a dwelling unit is removed resulting in a vacant lot, so long as the lot has the minimum lot area per unit for 1 dwelling unit for the zoning district in which the lot is located, up to 4 dwelling units are allowed. Lots outside of the Growth Area where a dwelling unit is removed resulting in a vacant lot would still require the minimum lot area per dwelling unit for the zoning district in which the lot is located.

**I move to amend the motion as follows:**

**Chapter 701 Article II. EE.3.a. shall be revised to read:**

3. Density and Dimensional Standards

a. The following density standards apply for lots located outside the Growth Area:

i. For a lot that does not contain a dwelling unit, each allowed dwelling unit must have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located.

ii. For a lot that contains one dwelling unit, each additional allowed dwelling unit must also have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located.

iii. If a dwelling unit in existence as of January 1, 2024, is demolished resulting in a lot without a dwelling unit, each allowed dwelling unit must have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located.

**And Chapter 701 Article II. EE.3.b. shall be revised to read:**

3. Density and Dimensional Standards

b. The following density standards apply for lots located within the Growth Area:

i. Notwithstanding the minimum lot area or minimum lot area per unit requirements identified in Article III, for a lot that does not contain a dwelling unit, up to four dwelling units are allowed regardless of lot area per dwelling unit subject to the limitations of ~~ARTICLE II.EE.3.c~~ ARTICLE II.EE.3.b.iv below.

ii. For a lot that contains one dwelling unit and has at least the minimum lot area or minimum lot area per unit identified in Article III for the zoning district in which the lot is located, **the first and second additional allowed dwelling units are allowed without any additional lot area per dwelling unit.** ~~must also have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located. The second additional allowed dwelling unit is allowed without any additional lot area per dwelling unit.~~ **(ASSUME THIS IS ADOPTED)**

iii. For a lot that contains two dwelling units and has at least the minimum lot area or minimum lot area per unit identified in Article III for the zoning district in which the lot is located, a third dwelling unit is allowed without any additional lot area per dwelling unit. **(ASSUME THIS IS ADOPTED)**

iv. Notwithstanding the minimum lot area or minimum lot area per unit requirements identified in Article III, if a dwelling unit in existence as of January 1, 2024, is demolished resulting in a lot without a dwelling unit and the lot has at least the minimum lot area or minimum lot area per unit for one dwelling unit for the zoning district in which the lot is located, up to four dwelling units are allowed.

**And Chapter 701 Article II. EE.3.c. shall be revised to read:**

~~c. If a dwelling unit in existence after January 1, 2024, is demolished resulting in a lot without a dwelling unit, each allowed dwelling unit must have at least the minimum lot area per dwelling unit for the zoning district in which the lot is located.~~

**Amendment to Accessory Dwelling Units – Owner Occupancy**

LD 2003 is silent on owner occupancy of Accessory Dwelling Units. Guidance received by Maine Department of Economic and Community Development staff indicated that owner occupancy requirements associated with ADUs is not in conflict with the law. The Planning Board does not recommend removing this standard.

This amendment eliminates the owner occupancy requirement for Accessory Dwelling Units and sets a lease term of no less than 30 consecutive days.

**I move to amend the motion as follows:**

**Chapter 702 Article I. J.13 is revised to read:**

- j. (previously k) Before obtaining a building permit for an ADU the property owner shall file with the registry of deeds a declaration of restrictions containing a reference to the deed under which the property was acquired by the present owner and stating that:
- a. The accessory unit shall not be sold separately.
  - b. The unit is restricted to the approved size.

- ~~c. The use permit for the accessory unit shall be in effect only so long as either the main residence, or the accessory unit, is occupied by the owner of record as the principal residence.~~
- c. The accessory unit shall not be leased for any period of less than 30 consecutive days.
- d. The above declarations are binding upon any successor in ownership of the property.
- e. The deed restrictions shall lapse upon removal of the accessory unit.

### **Amendment to comply with Mandatory Shoreland Zoning Standards**

**I move to amend the motion as follows:**

Chapter 701 Article IV. I (eye). 3 and Article IV. I (eye).4.e is revised to read:

#### **Article IV.I, "RPD" – Resource Protection District, Paragraph 3 Special Exceptions**

Essential Services and Single-Family residential Structures, are allowed by special exception approval and shall conform to the special performance standards listed below:

#### **Article IV.I, "RPD" – Resource Protection District, Paragraph 4.e Special Performance Standards**

e. Single Family Home. In addition to the criteria specified in IV.R.12 excepting Structure setback requirements, the Planning Board may approve a permit for a single-family residential Structure in a RPD provided that the applicant demonstrates that all of the following conditions are met: *[subsections 4.e (1-5) remain unchanged]*