



# YARMOUTH MAINE

To: Town Council and Nat Tupper, Town Manager  
From: Yarmouth Affordable Housing Committee  
Re: Implementation of LD 2003  
Date: August 9, 2023

At our July 10, 2023, meeting, the Yarmouth Affordable Housing Committee (YAHC) heard from Erin Zwirko, Director of Planning & Development, regarding the implementation of LD 2003, *An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*. The Planning Board recently issued recommendations to the Town Council on zoning amendments that would implement the provisions of LD 2003, including for Accessory Dwelling Units (ADUs), Affordable Housing Developments, and Dwelling Unit Allowances.

YAHC understands that LD 2003 and its implementing regulations offer discretion to cities and towns in the implementation of the various zoning mandates. The Planning Board was presented with the minimum requirements of the law as well as options to go beyond the minimum requirements. YAHC acknowledges that the Planning Board made recommendations beyond the minimum requirements, but in other cases, the Planning Board recommended the minimum requirements.

YAHC recommends that the Town Council make further amendments to the Planning Board's recommendation in order to unlock the potential of LD 2003 and create needed housing opportunities within the Town of Yarmouth. LD 2003 is designed to remove unnecessary regulatory barriers to housing production in Maine, while preserving local ability to create land use plans and protect sensitive environmental resources. YAHC believes that there are more barriers in our land use ordinances that must be removed and asserts that the Town Council should consider these recommendations in their deliberations.

At our August 7, 2023, meeting, YAHC also heard from Councilor Meghan Casey regarding amendments that she and Councilor Orenstein will be proposing. YAHC supports the amendments proposed by the Councilors as consistent with the Committee's recommendations. On August 7<sup>th</sup>, YAHC voted unanimously to submit this memo to the Town Council and Town Manager.

### Accessory Dwelling Units (ADUs)

YAHC recommends that the Town Council eliminate the owner occupancy requirement of the ADU requirements found in Chapter 702, Site Plan Review. Best practices on the reasonable regulation of ADUs suggest that ADUs should be subject to the same set of rules that governs the use of other housing. AARP, a leader in identifying those best practices, suggests that:<sup>1</sup>

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<sup>1</sup> <https://www.aarp.org/content/dam/aarp/livable-communities/housing/2021/AARP%20ADU%20Model%20State%20Act%20and%20Local%20Ordinance-0212021-08.pdf>

*...There is a problem with the logic and fairness of applying an occupancy standard to ADUs if there is no such requirement for single-family homes generally. If single-family homes can be rented out (by a nonresident owner), then what is the policy basis for requiring occupancy when there is an ADU on the property? One of the justifications for the owner occupancy requirement is the assertion that owners take better care of their property than nonresident owners. But there certainly resident homeowners who do not take care of their property and nonresident owners who keep their property in excellent condition. ...ADUs [are] an equal and important type of housing that, in general, should be subject to the same set of rules that governs the use of other housing. ADUs should not be treated as an inferior form of housing that requires additional restrictions and policing. Authorizations of or prohibitions on renting out dwellings should be applied consistently to ADUs and other homes; if there is no owner occupancy requirement for primary residences, there should be none for ADUs.*

YAHC notes that the only housing type in Yarmouth that has a tenure restriction is ADUs. YAHC acknowledges that the use of ADUs for short-term rentals (STRs) is a concern and points to the Department of Planning & Development's analysis of ADUs and STRs shows that there are approximately 50 ADUs in Yarmouth that have been approved or are pending approval.<sup>2</sup> A review of short-term rental websites (AirBnB, VRBO, ForRentByOwner) returned 48 short term rentals, and a quick analysis shows overlap with 1 known and recently approved ADU. Many of the STRs are luxury properties on the water.

YAHC argues that requiring owner occupancy is counter to best practices and does not further the goals of LD 2003 in removing unnecessary barriers. Councilor Orenstein and Councilor Casey will be proposing this amendment with the added control of requiring leases to have a term of 30 days or more.

#### Affordable Housing Developments

YAHC applauds the Planning Board's recommendations of additional incentives for Affordable Housing Developments including expedited permitting and flexibility to modify provisions related to minimum lot size, minimum lot area per unit, and setback size, as well as to allow stacked units, to permit innovative approaches to housing and environmental design.

LD 2003 mandates that cities and towns may not require more than 2 parking spaces for 3 units in their land use ordinances. YAHC recommends that the Planning Board should also have flexibility in modifying the parking requirement to less than 2 parking spaces per 3 units. There are provisions in the existing land use ordinances that allow the Planning Board to reduce the parking requirement of any project through a variety of avenues, such as shared parking, but YAHC believes that it should be explicitly called out as something the Board can modify in the section on Affordable Housing Developments.

YAHC understands that context is important when considering the availability of parking, but also asserts that it is incumbent on the developer to make the project marketable and will choose the best parking ratio to meet their needs and market.

#### Dwelling Unit Allowances

YAHC acknowledges that the Dwelling Unit Allowance provisions of LD 2003 are the most difficult provision to implement due to the significant discretion that the law gives cities and towns. However, for areas within the Growth Area, Yarmouth should be embracing the LD 2003 mandate to allow up to 4 units on a vacant lot and up to 2 additional units on lots with 1 existing unit without requiring significant amounts of acreage to do so. The 2010 Comprehensive Plan indicates that the Growth Area includes *"those areas that are or can be conveniently served by public facilities and services, are physically suited for development, and promote a compact rather than sprawling pattern of development. From a policy standpoint, these are the areas in which much of the anticipated nonresidential and residential growth will be accommodated."*

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<sup>2</sup> The Department's data on ADUs is not definitive. Tracking of ADU approvals prior to 2017 is not great, but we know that we have issued administrative approval of 25 ADUs since 2017. The Assessor's Database is also inconclusive and returns 23 ADUs, which do not overlap with the administrative approvals. There are likely other ADUs that are not on our list that were approved prior to any formal process established by the Town of Yarmouth.

For the Growth Area, YAHC acknowledges that, as the Planning Board did, that the Medium Density Residential (MDR) District is where LD 2003 could have the greatest impact, although there are other zoning districts, as well as the character districts, within the Growth Area.

YAHC disagrees with the Planning Board's recommendation for areas within the Growth Area in two ways:

1. In cases where there is an existing dwelling unit, no additional lot area should be required for either of the two additional units allowed. This is consistent with Councilor Orenstein and Councilor Casey's proposed amendments.
2. In cases where a dwelling unit is demolished or removed resulting in a vacant lot for the purposes of LD 2003, the property should be considered a vacant lot and be allowed up to four units if the minimum lot area of the zoning district is met. This is consistent with Councilor Orenstein and Councilor Casey's proposed amendments.

For improved lots, especially those in the MDR, an acre can support the additional allowed dwelling units. The two additional dwelling units may be created within the existing structure or attached to the existing structure, or within a detached structure, or one of both. As the Planning Board noted, there would only be two structures if the maximum allowance is obtained. YAHC notes that the median lot size of improved lots in the MDR is half an acre, so two structures on 1 acre is not out of context with the development pattern of the community.

For lots where a dwelling unit is demolished or removed resulting in a vacant lot, the Planning Board recommends that each allowed unit would require the minimum lot area in the relevant zoning district. In the MDR, that would require 4 acres of land. YAHC believes that requirement does not further the goals of LD 2003 to remove barriers. YAHC notes that there are only 11 lots in the MDR with at least 4 acres as opposed to 251 lots in the MDR with at least 1 acre. YAHC notes that if the Town Council applies the same logic as recommended above for improved lots, the four units would be 2 acres, or a half-acre each, consistent with the development pattern of the community.

YAHC notes that Councilor Orenstein and Councilor Casey will propose amendments to create allowances for lots within the Growth Area where two units are in existence. YAHC notes that the law allows municipalities to grant allowances for lots with two dwelling units but are not mandated to do so. YAHC supports the Councilors' amendments to go beyond this minimum requirement of the law.

YAHC agrees with the Planning Board's recommendation for areas outside of the Growth Area. The 2010 Comprehensive Plan indicates that *"the goal of the community is to preserve the rural character within this portion of Yarmouth while protecting the property rights and development potential for landowners... From a policy perspective, these are areas in which intensive development is discouraged."* YAHC believes that this context is important to maintain in Yarmouth.

### Conclusion

YAHC looks forward to the Town Council's deliberations on LD 2003 and welcomes the opportunity to provide input on the implementation. The recommendations outlined in this memo are consistent with YAHC's recommendations outlined in our January 2022 report to the Town Council. YAHC urges the Town Council to look toward the goal of LD 2003 and create opportunities to increase housing production in Yarmouth.