



Erin Zwirko, AICP, LEED AP, Town Planner
E-mail: ezwirko@yarmouth.me.us

Tel: 207-846-2401
Fax: 207-846-2438

TOWN OF YARMOUTH
200 Main Street, Yarmouth, Maine 04096
www.yarmouth.me.us

LD 2003, Implementation and Applicability to Yarmouth
June 1, 2022

Introduction

The legislation creates four new elements:

- Creation of statewide housing production goals and regional housing production goals;
- Provisions for affordable housing developments;
- Provisions for increased residential density; and
- Provisions for accessory dwelling units (ADU).

The Department of Economic and Community Development is directed to oversee these new sections. This department is directed to adopt rules to administer and enforce these sections in consultation with other state departments. At this time, there have been no other legislative briefs or explainers that have supported understanding the implications of this legislation, so there are still a number of unknown implications due to the vague language of the legislation, which are highlighted here. In addition, on the new ADU provisions, since Yarmouth has regulations regarding ADUs, notes are provided where Yarmouth's ordinance may become out of compliance. As additional information becomes available, I will review and share.

Statewide Housing Production Goals and Regional Housing Production Goals

The legislation requires that there be adopted statewide and regional housing production goals. The Department of Economic and Community Development is required to consult with the Maine State Housing Authority and municipalities to develop these goals are increase the availability and affordability of all types of housing in all parts of Maine.

The Department is directed to:

- Establish measurable standards and benchmarks for success;
- Consider information submitted by municipalities regarding current and pipeline housing developments and permits issued for housing construction;
- Consider any other information necessary.

In support, municipalities must ensure that ordinances and regulations affirmatively further the purposes of the Fair Housing Act and the Maine Human Rights Act. Additionally, municipalities may also regulate short-term rentals in order to achieve the statewide or regional housing production goals.

The legislation does not indicate whether there are any municipal benefits or detriments to meeting or exceeding the statewide or regional housing production goals.

"Our Latchstring Always Out"

Provisions for Affordable Housing Developments

These provisions apply to “affordable housing developments” approved on or after July 1, 2023. “Affordable housing development” is defined in the legislation based on what affordable rental housing and affordable homeownership housing means, **but it does not define the size of the development nor whether all of the units must be affordable or at least a majority of the units be affordable. This remains an unknown and additional information would be helpful to fully understand the applicability.** The definitions are as follows:

- For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area and can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.
- For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area and can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

Of interest might be that the Yarmouth Affordable Housing Committee’s focus is on both rental and homeownership housing affordable to households making between 50% and 80% of the area median income.

Affordable housing developments are allowed in growth areas designated by the municipality’s comprehensive plan (see attached from the 2010 Comprehensive Plan) or in a location served by public, special district, or centrally managed water system and public, special district, or comparable sewer system. The legislation indicates that if an affordable housing development is not on public sewer, it would have to comply with the minimum lot size requirements for subsurface waste disposal in accordance with Title 12, Chapter 423-A, as applicable. Written verification of the adequacy of the water and sewer system is required. **As written, the legislation suggests that affordable housing developments could be allowed anywhere in a municipality, even if it is located outside of a growth area so long as there is adequate water and wastewater services offered publicly or privately. This would be the case in Yarmouth.**

The legislation offers two incentives: density and parking. On density, the legislation requires that municipalities allow affordable housing developments where multifamily dwellings are allowed to have a dwelling unit density of at least 2.5 times the base density that is otherwise allowed in that location (see attached calculations). **It is unclear whether this is also a locational restriction in addition to the above, or that where multifamily structures are allowed, the density is allowed at a greater rate and that in all other locations, the base density rules. In Yarmouth, multifamily is allowed in the CD4 and CD4-C. Multiplex is allowed in other areas of town, but the legislation is not clear on whether the word is specific to multifamily or to reference structures with 3 or more units.** On parking, the legislation prohibits requiring a parking ratio greater than 0.67 spaces per unit for affordable housing developments.

Finally, shoreland zoning is still in effect as are any requirements under subdivision. Long term affordability is required for at least 30 years, enforceable by a party acceptable to the municipality. Income requirements are required at initial occupancy so a tenant or homeowner can increase their household income.

Provisions for Increased Residential Density

The legislation enacts provisions to enable increased residential density in municipalities and becomes effective on July 1, 2023. In the case of Yarmouth, which has an accepted comprehensive plan and will start the development of an updated comprehensive plan, the following conditions appear to be applicable:

- In growth areas as determined by the comprehensive plan, up to 4 dwelling units shall be allowed if the lot does not already contain an existing dwelling unit; and,
- In any area where housing is allowed:
 - If the lot does not already contain an existing dwelling unit, up to 2 dwelling units shall be allowed; or
 - If the lot already contains an existing dwelling unit, up to 2 dwelling units shall be allowed either within or attached to an existing structure or as a detached dwelling unit or one of each.

A municipality may increase these allowances, but also note that the minimum lot sizes required for subsurface waste disposal in accordance with Title 12, Chapter 423-A are still applicable. Further, municipalities may create provisions or allowances for dwelling unit(s) existing on a lot after July 1, 2023, which are subsequently torn down resulting in an empty lot. **The designated growth areas cover a large area where housing is allowed, but in Yarmouth, housing is**

allowed in nearly every zoning district, so these provisions could have implications for growth and development in the community in the future.

Further, municipalities may not establish dimensional or setback requirements that are greater than what is otherwise required for a single-family home and municipalities may not establish lot area per unit requirements for the subsequent units that is greater than what is required for the first unit. For example, Yarmouth requires a 1-acre minimum lot size in the Medium Density Residential District for one single-family home. Each subsequent dwelling unit added may be required to meet a minimum lot area per unit, but it cannot be greater than 1 acre.

Shoreland zoning is still in effect as are any requirements under subdivision. Adequate water and wastewater services must be documented.

Finally, a municipality may establish an application and permitting process for the increased density **which I would strongly recommend. Additional guidance would be beneficial in order to create an appropriate permitting process through our existing processes (i.e., Site Plan Review).**

Provisions for Accessory Dwelling Units

The legislation enacts minimum requirements for municipal regulation of accessory dwelling units (ADUs) effective July 1, 2023. Generally, the legislation allows ADUs wherever single-family dwelling units are permitted in a municipality.

Yarmouth currently regulates ADUs through an administrative minor site plan review process as outlined in Chapter 702 that is carried out by the Department of Planning and Development in consultation with other Department Heads, such as the Fire Chief, the DPW Director, and the Town Engineer, among others. The regulations for ADUs were adopted in 2015 and were revised a number of occasions since the original adoption. In February 2022, the Yarmouth Town Council adopted an amendment to remove the requirement for public water and public sewer as a minimum requirement for ADUs in Yarmouth.

In reviewing the legislation, it appears that Yarmouth may need to process additional amendments to be in compliance with the legislation. These include allowing ADUs in certain zoning districts where single-family dwellings are allowed (RPD, WOC I, Village III, and GD, and potentially WOC III) as well as eliminating the requirement for additional parking above what is required for the single-family home. Beyond these amendments, Yarmouth could also consider allowing more than 1 ADU on a property and establishing more permissive dimensional and setback requirements for an ADU.

It should be noted that the legislation makes it clear that any permitting requirements for compliance with shoreland zoning is still required. Additionally, subdivision is also still in force, although Yarmouth's ordinance does not allow the primary dwelling unit and the accessory dwelling unit to be conveyed separately.

Relationship between ADU provisions and residential density provisions

In both the provisions for increased residential density and provisions for ADUs, the legislation includes the following language: *"If more than one dwelling unit has been constructed on a lot as a result of the allowance under this section or section 4364-A (4364-B), the lot is not eligible for any additional increases in density except as allowed by the municipality."*

It appears that this suggests that a property owner would not be able to double dip into the residential density provisions and the ADU provisions. After July 1, 2023, for example, it seems that the legislation would prohibit a property owner from increasing the residential density on a property, and then also adding an ADU(s) as well, or vice versa. **Additional clarification may be needed.**

Other Unknowns

"Our Latchstring Always Out"

As noted in this memo, there are a number of areas where additional clarification or the rulemaking would be helpful for understanding Yarmouth's responsibilities. In addition, I have also identified a few other areas that will hopefully be addressed in the future:

- Nonconforming lots: A question has been asked whether the increased residential densities would be allowed on nonconforming lots. **If the lot was not built upon, it is likely not possible. However, if the lot has an existing dwelling unit already, it may be possible depending on whether Yarmouth determines that a lot area per dwelling unit is desirable and selects a lot area per dwelling unit that would not be met by a nonconforming lot.**
- Rounding up or rounding down: The legislation does not make clear if fractional density is rounded up or down. **It is anticipated that rulemaking would address this.**
- Can additional density be conveyed separately? Yarmouth's ADU regulations do not allow a primary dwelling unit to be conveyed separately from an ADU. **The legislation does not make clear whether any additional dwelling units allowed per this legislation could be conveyed separately. The legislation does indicate that subdivision requirements are still in force, so 3 or more dwelling units would trigger review under Chapter 601, Subdivision, and the technical requirements for private and public roads.**

Growth Areas Identified in the 2010 Comprehensive Plan:

Note that the zoning districts corresponding with the growth area have changed with the adoption of the Character Based Districts, and the growth area could change with the next update to the Comprehensive Plan.



"Our Latchstring Always Out"

Density Calculations:

Starting with the Medium Density Residential (MDR) which requires 1-acre minimum lot size for 1 single family dwelling. The affordable housing development provisions allow 2.5 dwellings per 1 acre. First, the minimum lot size for 2.5 dwellings per 1 acre must be determined, so:

$43,560 \text{ sf (1 acre)} \div 2.5 = 17,424 \text{ square feet (0.4 acres)}$ becomes the minimum lot size under the affordable housing development provisions.

To scale up, if there is a 5-acre lot in the MDR, instead of 5 houses (1 dwelling unit per 1 acre), you would be able to have 12.5 houses:

$5 \times 43,560 \text{ sf} / 17,424 \text{ minimum lot area} = 12.5 \text{ dwelling units.}$

The legislation would probably indicate if the rounding goes up or down.

The same calculation could be used for other districts by figuring out the minimum lot size and applying it to the parcel in question.