

Erin Zwirko

From: Rhonda Senger
Sent: Thursday, April 13, 2023 10:11 AM
To: Erin Zwirko
Subject: Please forward to the Planning Board-Comments on ADUs

Dear Erin and Planning Board members,

Thank you to Erin for the ADU presentation last night and the Planning Board for the thoughtful discussion. I appreciated the questions that were raised about the impact on our town.

1) I am curious how a change of omitting the clause of owner-occupied to ADUs could affect our town. Will Yarmouth become a town with an abundance of rentals? If most homes can add an ADU, and it doesn't need to be owner-occupied, we could end up with investors/developers buying homes and turning them into two rental units. The comparison was made between an ADU to a duplex. While there is a similarity in having a landlord, the difference as it stands today, is most houses can add an ADU. The increase in families and strain on our infrastructure could substantially affect the town. Most lots cannot add duplexes. The difference is the potential of doubling our population.

2) I am curious how increasing the square footage, having no limit on bedrooms, and no longer calling them accessory dwellings, will change each neighborhood. Isn't that essentially splitting the lot and having two homes on it?

My understanding is ADUs are intended to add housing for an in-law, a disabled child, or a studio/small home to bring in some income. These proposed changes seem to have a different goal.

Yarmouth hasn't "kept up" with housing production because it is not a large geographical town, and it's the most densely populated town in Cumberland County. In addition to that, housing costs have skyrocketed since the pandemic. Building an affordable home is a challenge because of the cost of building materials.

Yarmouth is a suburb of Portland. It's a bedroom community. People live in suburbs because they want a bit more land. It is well-loved for its historic character in the village, the Main Street, and the beauty of our surrounding island neighborhoods of Cousins Island and Little John. It's not Portland or South Portland. As it stands today, Yarmouth does not have the infrastructure (water and sewer) to support hundreds of new homes and our schools cannot accommodate hundreds of new families. The tax burden is already an issue for many families.

Has a housing production goal been determined for Yarmouth? What can our town handle? Some of the numbers discussed would have a dramatic impact on our community.

The comprehensive plan is more important than ever. I hope more residents become engaged in the process because some of the proposed changes will make Yarmouth a much different community than it is today.

Thank you for your time and attention to our town.

Rhonda Senger

Erin Zwirko

From: Edward F. Libby
Sent: Monday, April 17, 2023 3:41 PM
To: Erin Zwirko
Subject: LD 2003 ADU discussion
Attachments: City of Portland and Cumberland County_Analysis of Impediments to Fair Housing Choice_final.pdf; Analysis of Impediments to Fair Housing Choice-Zoning and Land Use.pdf; Analysis of Impediments to Fair Housing Choice-Executive Summary highlighted.pdf

Dear Erin,

I wanted to follow up on the PB meeting's consideration of aligning Town zoning to comply with and adoption of LD 2003, specifically the owner occupancy requirement in our current ADU ordinance. While the final rules have yet to be published by DECD, I have been following them closely and see no way that the owner occupancy requirement can be compliant with LD 2003. I come at it from two vantage points, which I will share here.

1. The plain language of LD 2003 mandates it. *A. At least one accessory dwelling unit **must** be allowed on **any** lot where a single-family dwelling unit is the principal structure;*. It does not allow that a municipality can "except" lots where a single-family dwelling unit is the principal structure, but not occupied by the owner. This seems pretty straightforward. I have not seen anything from DECD that provides municipalities this discretion. IF there is something you have seen, I would appreciate you sharing that with me. There is a Q&A tomorrow with DECD, when I plan on pressing this question.

2. I believe the second point is part of why there is no provision for municipal discretion in this regard, trying to regulate the user of a property rather than its use or the structure itself, is not consistent with the purposes of zoning and in this instance, leads to discrimination of protected classes (minorities) under the Federal Fair Housing Act and the Maine Human Rights Act, both of which LD 2003 requires municipalities to be affirmatively upholding in pursuit of housing production. Requiring owner occupancy disparately impacts minorities by restricting the development of housing types disproportionately used by minority residents, namely rental homes. This principle has been upheld in several recent court cases cited in the recently released report titled "Portland and Cumberland County Analysis to Impediments to Fair Housing Choice". Anyone interested in FFHA and disparate impacts should also become familiar with the landmark US Supreme Court Case *TDHCA vs. ICP*. While I introduced this concern at the PB meeting last week, I do not think the public nor the PB truly appreciated the nexus of affirmatively upholding the FFHA and disparate impacts caused by the owner occupancy requirement. As I said at the meeting, it is similar to our limitation on ADU's to 2 bedrooms with regard to FFHA, and both should be stricken from our ordinance based on FFHA. I have attached the complete AI report, as well as two sub-sections that I highlighted and annotated (Executive Summary and section on Zoning and Land Use) for relevance to Yarmouth. I believe that the Executive Summary and Zoning and Land Use sections would be extremely valuable to members of the newly formed Comp Plan Advisory Committee. Feel free to share it with them.

In addition to the above, requiring owner occupancy for an ADU property is completely inconsistent with Yarmouth's existing housing policies. We do not regulate users we regulate use. Rental of single-family homes is not predicated on owner occupancy. Rental of either, or both, units of a duplex is not predicated on owner occupancy. I defy anyone to present a valid reason for requiring owner occupancy of a single-family home that the owner or wishes to add an ADU, whether inside the existing building, attached or detached. The Town has no legitimate health or safety argument for requiring owner occupancy only when associated with an ADU, and no other type of housing. The policy is indefensible on its face. Separately, the Town may want to regulate Short Term Rentals. IF we decide to, then we can apply those regulations consistently across ADU's, single family homes, and multi-family buildings.

I do not believe waiting for a "wider community discussion", as was put forth at the PB meeting, is a viable option given that the section of LD 2003 requiring FFHA compliance was not subject to the July 1, 2023 delayed implementation. It is already the law. I would ask that you share my email and attachments with the PB as they continue to review Yarmouth's

current ordinances to come into compliance with the implementation of LD 2003. Additionally, since failure to affirmatively uphold FFHA and MHRA would expose the Town to legal challenge, perhaps a deliberate review by our Town attorney on this aspect of LD 2003 would be prudent.

I know you are super busy, so thank you for your time, as always.

Sincerely,
Ed Libby

Executive Summary: Portland and Cumberland County Analysis of Impediments to Fair Housing Choice.

In fall 2021, the City of Portland and Cumberland County initiated a study of fair housing choice in the city and county called an Analysis of Impediments to Fair Housing Choice (AI). The fair housing study was completed to fulfill a requirement by the U.S. Department of Housing and Urban Development (HUD) to "affirmatively further fair housing" or AFFH.

The study was a collaborative effort between the City of Portland and Cumberland County and covered the 27 jurisdictions that represent the Consortia receiving federal HOME Partnership Investment Funds (HOME) from HUD. The HOME Consortia jurisdictions include: Baldwin, Bridgton, Brunswick, Cape Elizabeth, Casco, Chebeague Island, Cumberland, Falmouth, Freeport, Gorham, Gray, Harpswell, Harrison, Long Island, Naples, New Gloucester, North Yarmouth, Portland, Pownal, Scarborough, Sebago, South Portland, Standish, Raymond, Westbrook, Windham, and Yarmouth, within Cumberland County.

This study was informed by local knowledge and data, and robust community engagement through a resident survey, focus groups, and interviews with local leaders and stakeholders who work in the housing and planning industries or provide services to low and moderate income residents—advocates, community groups, service providers, educators, housing providers, and developers. Engagement occurred throughout the development of the study.

Altogether, more than 750 residents and stakeholders in the county took part in the development of the AI. The residents who participated in the survey were 52% owners, 40% renters, and 8% precariously housed. They were part of families with children (28%), single parent households (24%), older adults (24%), persons with disabilities (30%). They included income-diverse households and represented the racial and ethnic distribution of the county.

This Executive Summary:

- Provides background on the study;
- Presents the primary findings from the research that supported the AI;
- Identifies fair housing issues in the City of Portland and Cumberland County and participating jurisdictions; and
- Concludes with an action plan to address the issues residents face in accessing housing and economic opportunity.

as the 17th and 18th centuries, where both slave labor and profits derived from enslaved people helped develop many Maine businesses and communities. The slave economy in Maine was built mainly through the trading of lumber, molasses, and rum by merchants and shipbuilders.

The population of Black Mainers has historically been small compared to the white population. From 1830 to 1950, the Black population increased from 1,000 to 2,000 and the white population soared from 398,000 to 910,000. During this time, the state had a strong Nativist movement and presence of the Ku Klux Klan that ensure Black Mainers did not feel welcome despite their multi-generational residency. Although segregation was never formally codified into law, other forces led to segregation—namely, housing discrimination.¹ Discrimination was also routinely experienced by Native Americans, Irish Catholics, French Canadians, and Jews.

According to Eben Simmons-Miller, a scholar in the politics of fair housing in Maine, housing discrimination "was the most recognized form of oppression faced by Maine's African Americans" as late as the 1960s.² While some middle class African American households found housing options in the broader region, African American households in Portland "...remained in ethnically mixed neighborhoods on the Portland peninsula as they could not afford the expensive rents elsewhere due to limited employment options."³ Homes were often in substandard condition in these areas, thus impacting the value of the home and the amount of economic resources the neighborhood could attract. Discrimination within the housing market severely limited choices for racial and ethnic minorities and thus resulted in segregation within the city.

Ethnic minorities were also confronted with prejudice. Early census records in the Northeast recorded Acadians (French descendants living in Nova Scotia who had been forcibly removed by the British during the 1754-1763 French and Indian War), Irish, Jewish, and French-Canadian populations separately from the white population—indicating a different classification of residency. Although the 1820 Maine Constitution allowed Black men and people with no property to vote, it disenfranchised paupers who resided in houses made for poor people and those who received public assistance. Census data from 1850 to 1904 shows this population was mostly immigrants and people of color.⁴ In 1893,

¹ Tomkins, Charles. "Quakerism Activism in Maine, 1845-1971." *Maine History* 36 (3-1989): 79-83. <https://digitalcommons.library.umaine.edu/mah/history/vol36/iss3/2>

² Tomkins, Charles. "Quakerism Activism in Maine, 1845-1971." *Maine History* 36 (3-1989): 79-83. <https://digitalcommons.library.umaine.edu/mah/history/vol36/iss3/2>

³ Simmons-Miller, Eben. "Housing Choice for Maine's NAACP: A History of Fair Housing Legislation." *Maine History* 36 (3-1989): 95-125. <https://digitalcommons.library.umaine.edu/mah/history/vol36/iss3/3>

⁴ Hubbard, Julia. "Maine's Anti-Slavery Movement and the Formation of Community and Policy Change in 1820s and 1830s Portland." *United Maine History* 29 (1-2015): 35-67. <https://digitalcommons.library.umaine.edu/mah/history/vol29/iss1/2>

⁵ Viall, James (2020) *Race and Public Policy in Maine: Past Present and Future*. Maine Policy Review, vol. 22, no. 2.

Data and Methodology

The primary data sources and local knowledge and information that were used to develop the AI include:

- The Census' American Community Survey (ACS) from 2010 and 2020 (5-year data);
- Local housing development and permitting data from the City of Portland Housing and Community Development Department;
- Affordable housing development data from the National Preservation Database;
- Characteristics of residents of publicly supported housing from HUD's AFFH data and mapping tool;
- Home Mortgage Disclosure Act data from mortgage transactions;
- A resident survey developed and fielded for this study; and
- Interviews and focus groups with stakeholders who work in the housing and planning industries or provide services to low and moderate income residents.

Background

The Federal Fair Housing Act of 1968 requires HUD to administer its programs and activities in a manner which "affirmatively furthers" the policies of the Federal Fair Housing Act (FHA)—also known as affirmatively furthering fair housing or AFFH. This obligation extends to all federal agencies that administer housing and urban development programs, as well as subrecipients of those funds—including cities, counties, and states. As such, the City of Portland and Cumberland County, as recipients of housing and community development block grant funds, must demonstrate their commitment to AFFH.

One of the ways that communities can AFFH is to conduct an analysis of issues negatively affecting fair housing choice, and develop an action plan to meaningfully address the effects of the legacy of public and private policies and practices that intentionally or unintentionally created inequities. That process is often referred to as an Assessment of Fair Housing, or Analysis of Impediments to Fair Housing Choice (AI), or, in a new rule to update AFFH, an Equity Plan.

This study accomplishes the identification of fair housing issues led by a robust community process, and development of a meaningful action plan—all core aspects of the Equity Plan.

History of Housing Discrimination in the Region

Cumberland County's settlement history is closely linked with its economy and geographic location. Fishing, and the other types of agriculture that dominated the economy as the region was formed, as well as the area's distance from the center of the country's slave trade, discouraged the use of slavery. Yet Maine still played a role in the slave trade as early

an amendment was added to the state constitution that required literacy tests to vote, this was a major barrier to poor white immigrants in the state. Mainers voted to enfranchise paupers in 1965 through a constitutional amendment and removed the literacy requirement in 1970 following an amendment to the Voting Rights Act.⁵ **The history of voter enfranchisement is important to recognize, as the laws that elected officials dictated often reflected the attitudes of the white, economically powerful actors within the housing market.**

A map of Portland made in 1935 used by bankers and real estate agents to evaluate mortgage risks designates "foreign-born, negro, or lower grade populations" as "hazardous." It also labels where Irish, Italian, Jewish, and Polish neighborhoods were located. The practice of rating neighborhoods based on perceived risk was largely based on prejudice and excluded people in "hazardous" neighborhoods from accessing homeownership and the generational financial benefits that come with it. According to David Freidenreich, Professor of Jewish Studies at Colby College, real estate agents also steered Jewish and immigrant families away from affluent areas of town, thus creating segregated neighborhoods and unequal housing opportunities.⁶

Today, historical segregation in Portland and Cumberland County is reinforced by:

- **Limited housing production** and slow growth regulations;
- **Lack of affordable housing**, particularly for families outside of Portland, South Portland, Scarborough, and Westbrook;
- Denial of rental housing, especially for Housing Choice Voucher holders;
- Limited opportunities to attain homeownership;
- Disparities in educational attainment, which have long term effects on economic equality; and
- **Land use regulations in some jurisdictions that favor more expensive, ownership housing and limit multifamily housing for all but seniors.**

Primary Findings

This section summarizes the salient findings from the AI research, which was used to determine the primary issues, or challenges, to fair housing choice.

⁵ Ibid.

⁶ Maine Historical Society. *Real Estate Map of Portland and South Portland, 1935*. <https://www.mahsociety.net/artifact/10592>

⁷ Freidenreich, David. *Residential Segregation in Maine*. <https://www.mahsociety.net/artifact/10592page-4557>

Housing Choice

Housing production in Cumberland County lagged population growth between 2010 and 2020, leading to increases in prices and very low vacancies—conditions that negatively impact housing choice. Population in Cumberland County rose by 7.6% between 2010 and 2020, while occupied and vacant housing units rose by 6%, according to the ACS data. Local permit data shows that Portland (District 5) produced the most housing units of any singular jurisdiction in the county between 2010 and 2022, with nearly 5,000 units approved and over 2,000 certificates of occupancy issued over that time period.⁶ A quarter of all units approved since 2010 are designated to be affordable. District 1 (made up of six jurisdictions) and District 2 (made up of eight jurisdictions) added an estimated 3,600 and 3,400 housing units between 2010 and 2020. The suburban communities of Scarborough and Westbrook each added a little more than 1,100 units over the same time period.

Mainers who are more likely to be disparately impacted by policies that limit development of housing, especially affordable housing, include:

- African American/Black households, Asian households, Hispanic households, Other Race household, and single parents (resident survey). These households report housing challenges—living in overcrowded conditions, living in housing in poor condition, being unable to maintain rent or utility payments—at higher rates than other resident groups.
- African/American/Black households also have the highest levels of segregation and experienced a large increase in segregation since 2010 (Figure IV-17).

Portland provides more housing to low income households than its proportionate share of county households overall. Specifically, the City of Portland houses 35% of households with incomes less than \$25,000, compared to 25% of all households in the county. Westbrook also houses a higher share of households with incomes below \$25,000 than households overall. In contrast, Falmouth, Gray, and Scarborough have the largest differences in the share of households with incomes of less than \$25,000 and households overall (Figure IV-23 series).

This difference is partially, although not entirely, related to the provision of affordable housing. A comparison of rental units priced at less than \$650/month (affordable to households with incomes of \$25,000 and less) showed modest differences in the share of affordable rentals compared to all rentals, with Bridgton, Brunswick, Portland, and mostly Westbrook providing a slightly higher share of affordable rentals than rental units overall. A

⁶ ACS data estimates for the city of Portland reported local unit growth between 2010-2020, which did not take into account recent permitting and approval activity.

- Hispanic, Other Race, and Asian respondents, as well as households making less than \$25,000, precariously housed respondents, and Brunswick respondents reported the highest rates of discrimination

Of respondents reporting a disability, about 25% report that their current housing situation does not meet their accessibility needs (resident survey).

Homeownership

Homeownership opportunities for younger Mainers are increasingly limited by rapidly increasing housing prices. In Portland, Cumberland County, and the State of Maine, 85-year-olds are more likely to be homeowners than those under 35 years old.

African American/Black households have extremely low homeownership rates—11% in Portland and 19% in Cumberland County, compared to 25% in Maine (Figure VI-34). To close other racial gaps in ownership, an estimated 164 Asian renters, 51 Native American renters, and 141 Hispanic renters would need to become owners. A much larger number—1,169 African American/Black renters—would need to become owners to close the White/Black homeownership gap (Figure VI-32s).

Home loan denial rates were lowest among African American/Black and White Cumberland County applicants, at 10% and 11% respectively (Figure VI-38a).

For African Americans, barriers to ownership are likely driven by several factors other than mortgage loan denials. Portland, which has the largest concentration of Cumberland County's African American/Black population, has a younger population and lower overall income relative to the county. Another factor is that the majority of Portland's African American/Black population are foreign-born. The foreign-born population faces distinct challenges to homeownership, including unfamiliarity with the banking system, language barriers, and credit history length. Moreover, for Portland residents who practice Islam, Islamic law does not allow taking on interest-bearing loans, which makes buying a home with a traditional mortgage infeasible. White applicants appear less likely to be denied in many of the neighborhoods where applicants of color are focusing their homebuying efforts—mostly in suburban Portland.

Access to Opportunity

On average, residents are fairly satisfied with their transportation situation. Stakeholders raised more barriers, noting that the lack of an effective regional public transportation system limits where residents can access jobs and pushes people to stay in Portland where costs are higher. Residents who report that they can't get to public transit or buses easily live in Scarborough and Windham, are Hispanic and Other, and households that make less than \$25,000 (resident survey).

Economically disadvantaged students make up more than half of school enrollment in the Westbrook School District, Harpswell Coastal Academy, RSU 17 (serving Harrison), and RSU 61 (serving Bridgton and Naples). These school districts also

similar analysis of owned homes found only modest variances in shares with only resort oriented counties providing a lower share of affordable homes for purchase. In sum, the region is not significantly unbalanced, and differences are due both to where low wage jobs are located and where older residents living on fixed incomes are located, in addition to the location of affordable housing.

Deeply affordable housing—especially that accommodating families—is concentrated in Portland. The neighborhoods with the highest concentrations of affordable housing are also those with relatively high rates of poverty and schools with average educational proficiency. This is countered with strong access to employment. Outside of the Portland-South Portland area, most affordable units are targeted for elderly residents (Figure VI-46). **Policies that favor affordable elderly housing over affordable family housing work to limit access to quality education for low income families.**

In Greater Portland (Figure VI-26), Multiple Race and Other households face very high rates of burden while earning moderate incomes. This could suggest that discrimination in the housing market is limiting their housing choices, forcing them into disproportionately over-priced units.

Denial of rental housing is common, especially for voucher holders. Nearly 30% of respondents who looked for housing experienced denial of housing and 90% of voucher holders said finding a landlord that accepts vouchers is difficult to very difficult (resident survey).

- Mainers most likely to be denied housing include: Other Race, Asian, Hispanic, and African American households, households making less than \$25,000, single parents, and households with a member experiencing a disability.
- Landlord refusal to accept vouchers disparately impacts African American/Black households who are disproportionately represented among voucher holders (Figure VI-42).

Nearly 20% of survey respondents have been displaced from their home in the past five years, mostly because they could not keep up with rent (resident survey).

- Single parents, precariously housed respondents, Other Race and African American/Black respondents, households that make less than \$50,000, and households with a member experiencing a disability reported the highest rates of displacement.

About 16% of survey respondents reported they have experienced discrimination in the past five years (resident survey).

experienced some of the lowest rates of student testing success among all county school districts (Figures V-15 and V-17)—suggesting that these districts need more support to address the needs of economically disadvantaged students.

Low educational attainment has long term effects on earnings and wealth building, and disparities in educational attainment can reinforce long term economic inequality. County residents with a bachelor's degree earn 56% more than those with a high school diploma, while Portland residents with a bachelor's degree earn 48% more than their counterparts with a high school diploma—higher than the state overall (Figure V-27). Educational attainment also affects the ability to attain homeownership: 52% of county residents with a high school diploma own their home, compared to 76% for those with a college degree (Figure V-29). Compared to the state, it is more difficult for city and county households with lower levels of educational attainment to become homeowners.

Zoning and Land Use

In recent years, common zoning ordinances and land use regulations are being reconsidered due to their historical effect of restricting housing production and choice. While laws in the State of Maine address many possible regulatory barriers to housing choice, local policies in some jurisdictions may impact housing choice and availability.¹⁰ These include:

- Growth ordinances that exempt affordable senior but not affordable family housing;
- Limited land available for multifamily development and/or use regulations which restrict housing density and unit types;
- Residential growth caps and other dimensional standards, such as large lot sizes;
- Limited public infrastructure, particularly water and sewer systems, and/or capital funding to build the public infrastructure systems needed to support a wider variety of housing and a range of densities; and
- Very large and restrictive dimensional standards that discourage or disallow all but high-cost single family homes.

¹⁰ Refer to section III of this report for more information and recommendations related to removing zoning and land use barriers to housing production.

Progress Addressing Fair Housing Issues Identified in Past AIs

The City of Portland last reviewed fair housing issues as part of the Greater Portland Council of Governments Sustainable Communities Initiative—*Sustain Southern Maine*—and in a 2013 AI. Both were adopted by the City Council.

The major housing issues in Portland that emerged from the 2013 AI included:

- Concentrations of poverty, African American/Black residents, foreign born residents, single parent households, and publicly assisted housing;
- Limits on the effectiveness of the Section 8 program due to lack of housing in the broader region;
- Housing choice issues for new immigrants cause by landlords' unfamiliarity of cultural customs and norms;
- Landlord skepticism around state funding of General Assistance and subsidy payments that are lower than market rents;
- Lack of awareness by landlords related to reasonable accommodations' laws and a belief that housing tenants with disabilities is costly;
- Bias against renting to single parent, female headed, households with children; and
- High and increasing rents.

Cumberland County conducted its AI in 2010. The issues identified in that study included:

- Fair housing violations occur in reasonable accommodations for persons with disabilities and discrimination based on familial status and sex;
- Refugee and immigrant housing needs are unaddressed;
- Discrimination based on source of income occurs; and
- **There are limited options for affordable rental and ownership housing within entitlement and suburban communities. Zoning restrictions and limited water and sewer and utilities connections contribute to the lack of housing options.**

The following fair housing issues were identified in the broader region in *Sustain Southern Maine*:

- Lack of knowledge about landlord/tenant and Fair Housing laws;
- Constraints on refugee choices of where to live;
- Shortage of barrier-free housing;
- Lack of awareness of reasonable accommodations;

- Setback requirements that prevent people with disabilities from getting ramps built;
- Need for homebuyer education and financial literacy for those underrepresented in single family lending; and
- Vulnerability to lead hazards in housing for children.

To address these issues, the City of Portland:

- Actively pursued regional partnerships that work to widen the public transportation network and provide housing opportunities for a diversity of people throughout the region;
- Reformed land use regulations to increase allowable densities, reduce minimum lot sizes, incentivize affordable housing construction, and require affordable housing in certain contexts (more details on these efforts can be found in Section VIII);
- Works to encourage other communities in the region to develop affordable housing;
- Created a partnership with the Cumberland County Community Development Office and local landlord associations to provide landlord awareness workshops;
- Launched initial efforts to set up a housing liaison system to resolve landlord/tenant issues, resulting in the formation of the Rental Housing Advisory Committee; and
- Administers a Rent Control Board created by a citizen-approved initiative.

To address these issues, Cumberland County:

- Funded landlord education and training;
- Funded tenant education to increase awareness of fair housing laws and rights;
- Educated local policymakers and leaders on fair housing issues, including the Cumberland County Municipal Oversight Committee; and
- Worked with municipalities to encourage development of affordable housing in every community and ensure that local ordinances are consistent with state and federal law concerning group homes and special needs housing.

These efforts have been an important part of mitigating fair housing violations, raising awareness about affordable housing needs, and increasing fair housing knowledge and awareness.

As this AI update demonstrates, many of the county's and jurisdictions' housing challenges have increased since these studies were conducted, as a result of growing demand for housing, rising costs of housing, and intensifying economic inequality. These forces have made housing challenges worse due to a historical lack of investment in affordable housing to facilitate housing choice. In sum, housing challenges have become more

complex—requiring ambitious and collective efforts to expand housing choice.

Fair Housing Issues and Fair Housing Action Plan

This section outlines the fair housing issues identified in this AI with recommendations for how the participating jurisdictions should address the identified issues and further fair housing choice.

Primary Fair Housing Issues Negatively Affecting Housing Choice

Residents most affected by housing choice issues include African American/Black households, Asian households, Hispanic households, Other Race households, and single parents. Issues negatively affecting housing choice include:

- **Limited housing, especially affordable housing production, contributing to rising rents and a loss of overall affordability.**
- **Lack of a local commitment of many jurisdictions to address regional housing needs.**
- Concentrations of deeply subsidized rental housing in the city of Portland;
- Land use policies in many small jurisdictions that favor affordable elderly housing over affordable family housing, restricting access to high equality educational environments;
- Denial of rental housing to Housing Choice Voucher holders;
- Housing discrimination, especially for people of color, very low income households, and those who are precariously housed; and
- **Zoning ordinances and land use regulations that restrict the type of housing needed, including affordable family housing and multifamily housing, from being developed.**

Recommendations for addressing fair housing issues. To address production and affordability issues, Cumberland County should:

1. **Activate the power of Maine's new legislation (L.D. 2003) to increase the supply of housing.**
 - a. Provide guidance and technical assistance to Cumberland County communities on how to **rewrite land use codes to allow increased density for affordable housing developments.** This should include developing model code language that jurisdictions can enact or model to **ensure that duplexes/triplexes/ fourplexes (and similar types of low density, multi-unit housing) are feasible to develop.** Stakeholders interviewed for this AI noted that some jurisdictions require unreasonably large lots for duplexes (e.g., four acres);

for a duplex, Yarmouth requires 2 acres in MDR, 4 acres in LDR, 6 acres in RR

SECTION VIII. Zoning and Land Use Analysis

This section builds upon the Disproportionate Housing Needs section by examining the [link between housing choice and zoning and land use regulations](#). It begins with background on how zoning and land use decisions influence housing choice; summarizes the zoning and land use findings from previous AIs; examines how the participating jurisdictions' current zoning and land use regulations and decisions affect housing choice; and concludes with findings.

This section does not prescribe a "right way" to zone. Instead, it reviews the jurisdictions' zoning regulations against best practices, and assesses if the jurisdictions' regulations could restrict housing choice. It also acknowledges that jurisdictions have varying contexts and different opportunities and constraints related to building a variety of housing types.

Why Zoning Matters

As housing affordability challenges have grown into what many are calling a national housing crisis, zoning and land use regulations have received more attention for their role in creating barriers to housing choice and failing to respond to housing market needs.

Discriminatory aspects of early zoning. Zoning, in its very early form, was inherently, and often blatantly, discriminatory—the most direct example being race-based zoning codes. In 1917, the U.S. Supreme Court made racial zoning illegal by overturning a racial zoning ordinance in Louisville, Kentucky (*Buchanan v. Warley*) on the grounds that it violated "freedom of contract" protections in the U.S. constitution. Many cities ignored the Supreme Court's decision and continued racial zoning practices or found other legally permissible ways to regulate neighborhood composition.

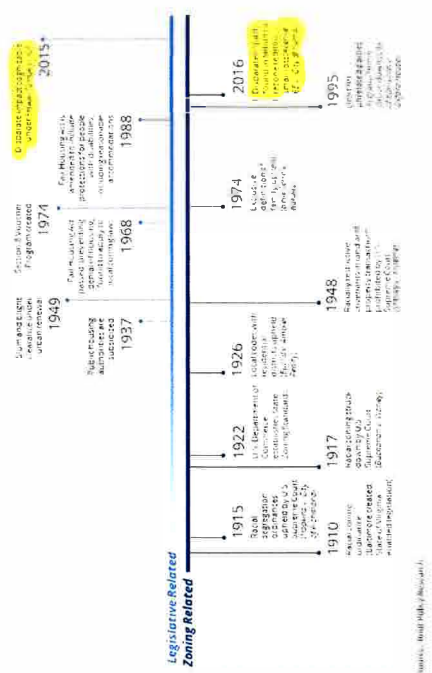
Another early practice that facilitated segregated communities was zoning based on use. This was called "Euclidean" zoning, named for Euclid, Ohio, the community that introduced this zoning. Euclidean zoning, which remains common today, divides land into "zones" differentiated by use and form with, among other goals, the objective of protecting occupants of some zones, historically lower-density single-family zones, from uses believed to compromise health and safety. In 1926, the U.S. Supreme Court found that Euclid's zoning ordinance was allowed as part of the jurisdiction's police power—and, through the decision, promulgated the belief that segregating single family detached homes was necessary to "increase the safety and security of home life...prevent street accidents,

especially to children...preserve a more favorable environment in which to rear children, etc."¹

The above exclusionary zoning practices are just some examples of the many zoning codes and practices that facilitated segregation. They also drove excluded residents—largely people of color—into neighborhoods with higher levels of pollutants, poor quality housing, and limited ownership opportunities. As outlined in Section IV of the report, the State of Maine lacked a history of legalized segregation but still took other avenues to establish segregatory housing patterns and discriminate against non-White and other ethnic groups.

Figure VIII-1 below provides a timeline of significant zoning decisions related to housing choice. It also includes legislative responses to expand housing choice. The figure reveals the piecemeal, often discriminatory, and reactionary responses that have characterized the housing landscape over the past 100 years.

Figure VIII-1.
Zoning Timeline



Exclusionary zoning today: Zoning regulations no longer dictate where certain types of people may live other than in special circumstances like senior living communities, which are allowed under the Federal Fair Housing Act (FFHA). Zoning today regulates the structural environment, which typically means where residential development is allowed, the types of residential development allowed (single family, multifamily), the density of development, and the form or design of development.

Even if they do not contain direct discriminatory language, zoning codes and land use decisions can have a discriminatory effect on protected classes when they rely more heavily on certain types of housing than others. This most commonly occurs for multifamily rental housing, excluding multifamily housing from zoning districts can have a disparate impact on the protected classes who are mostly likely to be renters and have lower incomes. As such, residential zoning that limits the placement of housing can mimic past discriminatory zoning practices.

Exclusionary zoning generally employs land use regulations that restrict the types of housing that can be built in a particular area. This type of zoning is employed to constrain housing diversity and supply and ensure the area is inhabited by an idealized segment of the population—typically a married couple with children living in a suburban single family detached home. In many cases a version of this definition of the idealized family is still present in zoning ordinance definitions.

Public costs associated with exclusionary zoning include increased traffic congestion, persistent inter-generational poverty, and stunted economic growth. Exclusionary zoning increases the cost of entry into service-rich neighborhoods which often contain the highest-performing school districts, the best access to high-paying jobs, access to healthy food, and transportation alternatives. In this way, segregation is reinforced by limiting opportunities for low- and moderate-income residents to live in areas of opportunity.

Land use planning that embraces housing inclusivity is becoming more popular as communities recognize—and internalize—the public costs associated with exclusionary zoning. Inclusive planning is also being embraced to respond to market demand, recognizing that how people choose to live—e.g., renting longer, living in low maintenance homes—is changing.

Notable exclusionary zoning legal cases include:

Berenson v. Town of New Castle (1975) was an early case, stemming from a developer who wanted to build a condominium community and was denied due to lack of

¹ This is one of a long line of court cases that have struck down exclusionary zoning laws as there is no magic set of zoning regulations that produce perfect inclusivity of housing choice and access to opportunity. Whereas access is better than others and some practices are so exclusionary they have been found to be illegal. The courts have effectively determined that constitutes exclusionary behavior in zoning and land use regulations and decisions.

zoning for multifamily housing. This case introduced the idea that housing choice should be considered in zoning decisions. The court's decision was based on the premise that the "primary goal of a zoning ordinance must be to provide for the development of a balanced, cohesive community which will make efficient use of the town's land.... [I]n enacting a zoning ordinance, consideration must be given to regional [housing] needs and requirements. ... There must be a balancing of the local desire to maintain the status quo within the community and the greater public interest that regional needs be met."³

NAACP v. Town of Huntington (1988) resulted in a court-ordered rezoning of a parcel of land to accommodate multifamily development and a change in the town's zoning ordinance which only allowed multifamily development in an urban renewal area. The court concluded that the failure of the town to rezone a parcel to accommodate multifamily development has a "substantial adverse impact on minorities." This was based on an analysis of housing needs data that found a disproportionate proportion of African American/Black families had housing needs.

Under *Huntington*, a zoning code is presumptively exclusionary if it: (1) restricts multifamily or two-family housing to districts/neighborhoods with disproportionately large minority populations; or (2) disparately impacts minorities by restricting the development of housing types disproportionately used by minority residents.⁴

Avenue 6E Investments LLC v. the City of Yuma (2015). In this case, the court found that a denied rezoning request to allow smaller lots for construction of more affordable single family homes had a disparate impact on Hispanic families. This case was based on an analysis of Home Mortgage Disclosure Act and homes sales data, which showed that smaller lots produced single family homes at price points that were attainable to lower to moderate income Hispanic households.

In the end, it is in the best interest of communities to examine their zoning code and land use regulations frequently to ensure they do not create barriers to housing choice. This is appropriate not only to avoid legal challenges, but also to ensure economic and workforce diversity, and to keep current in a national market that is increasingly demanding creative solutions to housing pressures and expansion of housing choice.

Yarmouth does not require owner occupancy for any other housing type other than in its ADU Ordinance. That policy is inconsistent with LD-2003, which requires ordinances be designed to affirmatively further the purposes of the Federal Fair Housing Act and the 1980s Human Rights Act. Requiring owner occupancy has a disparate impact on people who are more likely to rent, known to be minorities and lower income.

³ N.J. Stat. Ann. Sections 52-27D-301 et seq. (2007).

⁴ *Huntington Branch, NAACP v. Town of Huntington*, 844 F.2d 926 (2d Cir. 1988).

Common zoning-related barriers to housing choice. Some of the key factors in land development codes that most commonly result in barriers to fair housing choice and reasonable accommodation for persons with disabilities include:

- **Dimensional standards.** Large minimum lots, minimum unit sizes, or excessive setbacks between structures or from streets that can increase development costs;
- **Limits on density.** Restriction on or prohibition of multifamily housing; low floor area ratios (FAR) for multifamily or mixed-use development; or low density requirements;
- **Use-specific standards.** Special site or operational requirements for group homes for persons with disabilities that are not required for other residences or groups;
- **Differences in quality and access to public services.** Additional requirements for specific developments (e.g., group homes or multifamily) to provide infrastructure or essential municipal services not required for other residences or dwelling units;
- **Definition of family and occupancy restrictions.** Definitions of family or occupancy limits that prohibit or limit the number of unrelated or unmarried persons in a household;
- **Procedures for development or zone change reviews.** Excessive or disparate review procedures, public hearing requirements, or noticing requirements for different housing types, housing for protected classes, or low-income housing;
- **Housing types.** Limits or prohibitions on alternative affordable housing options such as accessory dwelling units (ADUs), modular or manufactured homes, and mixed-use developments; such as requiring owner occupancy for ADU
- **Growth restrictions.** Limits on residential growth. Some communities have instituted annual growth caps that limit how much housing can be built, including market rate units. Other communities allow some types of uses but constrain others—for example, allowing an exemption from a residential growth restriction for affordable senior housing but not affordable family housing. The collective limit on how much housing can be built throughout the county restricts overall supply and negatively impacts housing choice.
- **Spacing.** Minimum distance between group homes that are not required for other residences or groups and make development of group homes difficult;
- **Reasonable accommodations.** Regulations inhibiting modifications to housing for persons with disabilities or their ability to locate in certain neighborhoods; and
- **Code language.** Local land development codes and standards that are not aligned with federal and state regulations governing fair housing and reasonable accommodation.

Zoning best practices. Recognizing the exclusionary nature of many zoning ordinances, and to respond to the housing crisis, cities and counties are increasingly modifying land use codes to allow "gentle infill"—duplexes/triplexes, rowhomes, and Accessory Dwelling Units (ADUs)—in single family zones. Some jurisdictions are adopting "lifestyle neutral" approaches to zoning and land use to better align with changes in household preferences, life cycles, and aging residents.

Lawyer and planner Don Elliott published *A Better Way to Zone*, which contains ten principles for zoning that can apply to both urban and rural communities. The book focuses less on how cities should look but how they should operate. Several relate to expanding housing choice and are relevant for Cumberland County:

- 1) **Zone for middle income households**—include a broad range of mixed use zoning districts and allow multifamily development across a wide variety of zoning districts. This practice also more effectively produces communities that support neighborhood-serving retail and commercial operations and small businesses by allowing the market to supply services near households
- 2) **Revise zoning ordinances to better promote attainable housing**—step away or revisit minimum lot sizes, minimum dwelling unit sizes, and maximum residential densities. Allow more flexibility in zone districts to accommodate the wide range of housing products that accommodate the "missing middle" — housing types such as duplexes, triplexes, fourplexes, cottage courts, and multiplexes.
- 3) **Implement dynamic development standards**—recognize that communities change over time and development codes need to allow communities to adopt and experiment with market innovations and accommodate changing housing preferences. Parking standards, for example, can vary based on use rates and existence of public parking lots in the area. In more traditionally zoned communities, it is most appropriate to "experiment" with dynamic zoning—which allows for more flexible development while still ensuring that resulting projects are not significantly out of scale or character with those around them—in mixed-use districts. As discussed above, these standards should be generous in application and allow multifamily residential housing contract zoning!
- 4) **Revise group home definitions and ensure placement.** A best practice in the definition of group homes is to set the unrelated persons limit to what has been legally defensible, generally 12 unrelated persons, including staff. Group home residency must be broad enough to include the homeless, those with social, behavioral, or disciplinary problems, the elderly, those in hospice care, those avoiding domestic abuse, and/or disabled (which includes the frail, physically disabled, developmentally disabled, mentally ill, persons with HIV/AIDS, and recovering from alcohol or drug addiction). Group homes should be allowed in at least one, and preferably more, residential zoning districts. The unrelated persons

limit could be increased if the group home is to be located in a multifamily, commercial, mixed use or other district.

- 5) **Include clarifying definitions.** The definition of disability must include what the courts have qualified as disability; those in recovery and with HIV/AIDS are often left out of the definition. A best practice is to have as broad a definition as possible to avoid multiplying the list of group facilities in ways that confuse the public and policymakers.

Definitions of household and family, if included in the code, should be flexible enough to allow a range of household and family configurations, especially those needed to accommodate caregivers. Language should avoid prescribing the makeup of a family unit ("husband and wife"). A more progressive approach is to exclude definitions of household or family composition and focus on public health and safety factors.

Land Use Planning in Maine

The State Constitution of Maine, specifically Article VIII, Part Second, establishes municipal home rule and grants power to local municipalities “...to alter and amend their charters on all matters, not prohibited by Constitution or general law, which are local and municipal in character.”¹ More plainly, land use regulations at the state level largely control local land use planning tools available to municipalities throughout the state.² As such, this section highlights several state-level land use policies that impact zoning ordinances, code enforcement practices, impact fees, regulation of manufactured and group homes, and protected classes.

¹Yarmouth's has failed to adjust zoning in MDR as called for in the past 2 Comp Plans exposing it to legal challenge
Zoning ordinances. Maine Revised Statutes require that a local zoning ordinance be consistent with a comprehensive plan adopted by the municipal legislative body.

Additionally, a zoning map articulating each zone must be adopted as part of the zoning ordinance. Public hearings are required before the adoption of any new zoning ordinance or map, as well as amending an existing zoning ordinance or map. The public must be notified of the public hearing at least 13 days prior to the scheduled date of the hearing.

The State also requires that any municipality that adopts a zoning ordinance must also establish a board of appeals. The board of appeals is allowed to grant variances to an applicant if the ordinance is found to cause an undue hardship to the applicant's property. The statutes also permit municipalities to grant disability variances, which allow an owner of a dwelling to install equipment or construct structures necessary for the access to or egress from the dwelling by a person with a disability. Additionally, the statutes also permit municipalities to grant a disability variance to construct a place of storage for a noncommercial vehicle for a person with a permanent disability. Variances for setbacks for single family dwellings and dimensional standards are also allowed for municipalities to include in their zoning ordinances.

Code enforcement practices. Code enforcement is vital to minimizing health issues related to outdated rental inventory including asthma and lead poisoning. While code enforcement is a valuable tool to maintain health and safety, code enforcement programs that become targeted or discriminatory can become an issue under FHAA.³ For example, in the early 2000s, 16 current and former landlords who owned more than 100

¹ <https://www.maine.gov/legis/const/#as>

² Regulations specific to planning and land use can be found in the [Maine Revised Statutes, Title 30-A, Chapter 192: Planning and Land Use Regulation](#).

³Uggenwirth Gallagher stated, “Whether owners of rental properties may claim St. Paul city officials violated state fair housing Act by address only offering the City's housing codes, who interested rental costs, and reduced the supply of low-income housing whose repairs was disrupted notably African-American.”
<https://www.wllaw.com/elliott/housing/civil-1002/>

(which includes sexual orientation and gender identity), familial status, and disability. Maine's protected classes are more extensive than federal protected classes due to the addition of ancestry and public assistance income.

Current zoning and land use issues in Maine. Spurred by its increasing need for housing, the State of Maine recently underwent a significant effort to explore how current land use and zoning regulations affect housing development. In June 2021, Governor Janet Mills signed a bill establishing the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions to better understand how current zoning and land use restrictions impact increasing housing opportunities throughout the state. The commission met throughout the rest of the year and delivered a report of its findings and recommendations in December 2021. These recommendations evolved into 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 bill was signed into law by Governor Mills in April 2022. Highlights⁴ of the bill include:

- Allowing at least one accessory dwelling unit (ADU) — attached or detached — by right on all single-family home lots. Also specifies that ADUs do not count towards a municipality's rate of growth ordinance;
- Allows up to two dwelling units per lot in all residential zones across the State. Municipalities need to allow up to four dwelling units per lot if the lot is in a designated growth area;
- Requires jurisdictions to allow more affordable housing at deeper and longer affordability. Creates density bonuses in some zoning districts for affordable housing developments; and
- Caps parking mandates to two spaces for every three units.

The bill also requires municipalities to “...ensure that ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act...and the Maine Human Rights Act to achieve the statewide or regional housing production goal.”⁵

In essence, through this bill, the Maine Legislature puts into place the ability for local units of government to implement zoning best practices by allowing a diversity of housing types and densities, promoting flexible site standards, and limiting parking requirements

⁴ <http://www.mainelegislature.org/legis/corfil/pdf.asp?paper=HP1459&item=5&num=130>

⁵ <https://legislature.maine.gov/bills/pdf.asp?paper=HP1459&item=5&num=130>

rental units in St. Paul Minnesota filed against the city claiming code enforcement practices on problem properties had a disparate impact on minorities.⁶

Related to the general enforcement of land use laws and ordinances, the Maine Revised Statutes require code enforcement officers to be certified by one of the following entities: the former State Planning Office, the Department of Economic and Community Development, Office of Community Development, or the Department of Public Safety. Additionally, code enforcement officers are authorized to enforce all applicable laws and ordinances related to Shoreland zoning, comprehensive planning and land use, internal plumbing, subsurface wastewater disposal, and building standards as specified in the respective state statutes. The State also allows for municipalities to authorize code enforcement officers to issue disability structures permits.

Impact fees. Maine Revised Statutes permit local municipalities to enact ordinances that require developers to construct capital improvements of site or pay impact fees in lieu of the construction. The impact fee must be reasonably related to the development's share of the cost of infrastructure improvements.

Manufactured housing. Maine Revised Statutes require that municipalities permit manufactured housing to be erected “...on individual house lots in a number of locations on undeveloped lots where single-family dwellings are allowed.”⁷ The statutes also articulate that manufactured housing is subject to the same requirements as single-family dwellings. The code also specifies a number of requirements municipalities must address around dimensional standards, setbacks, road frontage, municipal road standards, buffering, and location of utilities related to mobile home parks.

Group homes. The Maine Revised Statutes require that municipal zoning ordinances consider all community living arrangements⁸, which include group homes, foster home, or intermediate care facility, of eight or fewer residents a single-family use of property for zoning purposes. As such, these residential facilities are not subject to conditions more restrictive than those imposed on residences occupied by related persons.

Protected classes. Maine's Human Rights Act makes it illegal to discriminate in residential housing on the basis of race, color, religion, national origin, ancestry, sex, sexual orientation, physical or mental disability, familial status, and receipt of public assistance. Protected classes under the federal FHAA include race, color, religion, national origin, sex

⁶Uggenwirth Gallagher

⁷ <https://legislature.maine.gov/statutes/30-A/title30-Asec455.html>

⁸Uggenwirth Gallagher stated, “Whether owners of rental properties may claim St. Paul city officials violated state fair housing Act by address only offering the City's housing codes, who interested rental costs, and reduced the supply of low-income housing whose repairs was disrupted notably African-American.”
<https://www.wllaw.com/elliott/housing/civil-1002/>

Outside of the state's push to reform zoning and land use regulations to increase housing development, several Cumberland County jurisdictions are undertaking their own efforts to increase housing development and choice in their communities.

Current zoning and land use efforts in Cumberland County. Several communities in Cumberland County have undertaken recent efforts to update their current zoning and land use regulations to be better equipped to satisfy their community's growing and changing needs. For example, in late 2017, the City of Portland launched [ReCode Portland](#), an effort to create a new and unified development code. With an emphasis on community input and feedback throughout the process, the primary objectives of the ReCode project are to make the land use code more user-friendly align the code with the city's Comprehensive Plan to help advance its goals, and ensure that the city's diversity of needs, including housing, the working waterfront, climate resilience, and transportation, are being sufficiently met. The first phase of ReCode passed broad parking exemptions, and an expansive ADU ordinance that allows up to two ADUs per residential lot, with no parking requirements and a streamlined review process. Phase 2 is underway, evaluating Portland's zoning for ways to increase housing creation city-wide, increase climate resilience, and build complete, walkable, transit-proximate neighborhoods.

More recently, in 2021, the City of South Portland commissioned a Housing Assessment and Strategy Report to identify significant needs to catalyze housing production in the city. The report offers a series of recommendations related to local policy changes, zoning code updates, and more coordination at the regional level. Additionally, the Town of Cape Elizabeth commissioned a Housing Diversity Study in 2022. This study aimed to assess the current housing landscape in the town and provide recommendations to create more affordable housing in the community. The Town has recently formed an ad-hoc committee to review the study, gather public feedback, and offer its recommendations on implementing the study in the fall of 2023.

Council, Commission and Planning Board makeup. To ensure a diverse range of community needs are understood and addressed, it's important that plans, zoning codes, and planning decisions are informed by and reflect the communities they are intended to serve. One way to ensure that this occurs is to engage with and learn from a diversity of residents with different lived experiences and perspectives—both from the public and through elected and appointed leaders. As part of this report, an analysis of the gender, age, and racial/ethnic makeup of both the Portland City Council and Portland Planning Board, as well as the Cumberland County Commission was conducted. The length of service for these positions, which can limit the opportunity for new and diverse leaders to serve, were also examined. Additionally, meeting times and procedures were looked at to assess how accessible meetings are to participate in for working populations.

Among these three bodies, the Portland City Council boasts the greatest gender and racial/ethnic diversity. The mayor, who serves on the city council, serves a four-year term while the eight other councilors serve staggered three-year terms. The council meets the

1st and 3rd of every Monday at 5:00 p.m. While city council meetings have continued to be held virtually since the beginning of the pandemic, a 5:00 p.m. start time might limit a portion of the workforce—those who work night or swing shifts—from participating in city council meetings. However, the City does allow for written public comment on agenda items. The City requires that submissions be received by 12pm the day of the Council meeting to guarantee that it gets included in the agenda packet. Recordings of past meetings and meeting minutes are also made available to the public on the City's website.

Both the City of Portland's Planning Board and County Commission are less diverse than City Council when it comes to gender and racial/ethnic diversity. The City of Portland's Planning Board members serve staggered three-year terms and meet on the 2nd and 4th Tuesday of each month. The Planning Board's workshops begin at 4:30 p.m. and public hearings begin at 7:00 p.m. These later public hearings provide more opportunity for the workforce population to participate after they come home from work, but also might limit participation from households with young children, particularly if childcare is not provided, and swing and night shift workers.

The Cumberland County Commission meets every Monday at 5:30 p.m., which also might inhibit broad participation from the county workforce. County Commissioners serve four-year terms but cannot serve more than three consecutive terms.

To truly encourage increasing density in towns around the county, the AI suggests approaching the issue at a regional level by tying future transportation funding (e.g., road construction funds) to increased allowances in density.

The County also conducted an analysis of local zoning ordinances pertaining to group homes to determine consistency with State law and the FFHA. The analysis found that "[b]ased on this review, the only towns in Cumberland County with ordinances consistent with state and federal law are the Town of North Yarmouth and the City of Portland." While the AI did concede that group homes do exist in over half of the municipalities in the county, "[u]nless challenged in court, these inconsistencies are likely to stand, since amendments to specifically allow group homes would be likely to stir local controversy."

Portland. The City of Portland's most recent AI was conducted in 2013. No explicit fair housing impediments related to zoning and land use in Portland were articulated; however, the AI did articulate the escalating cost of rental housing is impacting all populations, particularly low-income populations. While the AI did note that Portland's ordinances are among the most progressive in the area, the City will continue to look at how to lower the cost of housing production, specifically calling out policies that allow for higher densities, provide more flexibility with parking requirements, and that require demolished homes be replaced with other housing.

Since the last AI in 2013, the City of Portland has passed several ordinances to help address the rising price of housing. The City's Rental Registration program was established to better regulate renting of short-term and long-term units within the city, limit the impacts of short-term rentals, create more accountability around property maintenance, and ensure the availability of rental units for people who live in the city or want to live in the city. Additionally, the City passed a rent control ordinance in 2020 to establish a base rent for most of the rental inventory in the city and limit the amount by which a landlord can increase rent annually. The Ordinance also provided a variety of tenant protections to renters, including notice of rent increases, source of income protections, and notice of tenants' rights to new tenants. The City created the Housing Safety Office to administer the Rental Registration program and conduct rental inspections.

As previously mentioned, the City of Portland is currently in the process of updating its land use code, which provides the opportunity to respond to recommendations in the past and current AI. The process, named *ReCode Portland*, is focusing on how the code can "...encourage more equitable housing creation, foster climate change resilience, and support transportation choice."¹³ As of the writing of this report, the City released the [Land Use Code Evaluation](#) in December 2021 and plans to translate the findings of the evaluation into draft text and map amendments throughout the fall and winter of 2022/23.

¹³ <https://www.recodeportland.mer>

Findings from Previous Analyses of Impediments

This is the first AI under the umbrella of the Cumberland County HOME Consortium. Individual jurisdictions and counties have conducted AIs separately in the past. This section highlights zoning and land use findings from the most recent AI for each participating jurisdiction that has previously conducted one.

Regional AI (York and Cumberland Counties). Similar to the 2010 Cumberland County AI, the 2013 Analysis of Impediments to Fair Housing completed by York and Cumberland Counties provides a cursory overview of cities' land use and zoning regulations. The primary zoning issue identified by the report is the large lot requirements that many municipalities have adopted, which has precluded construction of low- and moderate-income housing, namely multifamily properties, mobile homes, and small lot subdivisions. The report intimates these requirements have been driven by NIMBYism.

The report stated that "...larger land requirements add substantially to housing cost. While the presence of public water and sewer is certainly required for higher density development, historically towns have required large lot sizes throughout most of their districts in an effort to limit development and preserve rural character." This strategy has contributed to a sprawling development pattern that makes road construction and maintenance, as well as maintaining utility lines, more expensive. It also adds costs to transporting public school students as households are more diffuse throughout the county.

The report also identified passing LD 155, a bill aimed to streamline the approval of accessibility structures to provide greater accommodation for a person's disability in their home, as an action to complete in their fair housing action plan. The bill was signed by the Governor in May 2013.

Cumberland County. Cumberland County's 2010 AI identifies maximum allowable densities, dimensional standards, and parking requirements as regulatory barriers impeding the development of more housing throughout the county, particularly in suburban towns and more rural areas of the county. The AI states that more flexibility allowed related to density, dimensional standards, and parking requirements can help lower the per unit cost of housing projects.

Yarmouth only allows 1 unit per acre in the vast majority of its Designated Growth Area. The AI states that several urban areas allow at least eight units per acre in certain districts while a handful of suburban towns only allow a maximum of four units per acre. In response to pressure about increasing density, some towns have allowed for the development of accessory units. However, the AI implies that development of accessory dwelling units being built is unlikely. The AI states that "...few, if any [towns], have created a separate ordinance with standards for square footage, design, parking, and other considerations [for accessory dwelling units]."

Zoning and Land Use Review: Balance of Cumberland County Jurisdictions

The following section provides a more cursory analysis of the zoning and land use ordinances for the additional 25 jurisdictions in Cumberland County, focusing on common regulations that have the potential to discriminate against protected classes under the Fair Housing Act. As acknowledged at the beginning of this section, each municipality in Cumberland County has its own set of zoning and land use regulations that respond to the specific context, opportunities, and constraints of their community related to housing development. While not every municipality in Cumberland County is ideally equipped to facilitate the development of high-density housing (e.g., lack of access to public water, sewer infrastructure, or other public utilities), each municipality can review, analyze and update its current code to help remove barriers to housing development and increase and diversify its housing stock in a way that best responds to their community's specific needs.

In addition to a brief analysis on growth ordinances throughout the county, this section summarizes six different elements of the land use and zoning ordinances of county jurisdictions, including definitions of family and disability, regulations related to group homes ("community living arrangements"), reasonable accommodation procedures, and allowance of a variety and density of housing types and related site standards. Existing accessory dwelling unit regulations were also analyzed; however, because the passage of LD 2003 mandates that accessory dwelling units be allowed where all single family dwellings are permitted, that analysis has been omitted from the section.

Growth ordinances. Home rule powers, as articulated in the Maine Constitution and 30-A M.R.S.A. § 3001, 30-A M.R.S.A. § 4323, and 30-A M.R.S.A. § 4360, allow local municipalities to develop ordinances to manage growth in their communities. However, growth ordinances have the potential to create barriers to fair housing choice by excluding housing types that are most commonly occupied by some protected classes. Namely, the growth ordinances in Baldwin, Cumberland and Windham allow an exemption from a residential growth restriction for affordable senior housing but not affordable family housing. To ensure that these ordinances are not in violation of the FFHA, it is suggested that all affordable housing be exempt from growth restrictions. The Town of Scarborough has adopted this approach, articulating that "a dwelling unit that qualifies as affordable housing under the Town's Zoning Ordinance"¹⁴ is not required to have a growth permit.

Disability. The zoning and land use review of Cumberland County jurisdictions included whether municipalities included a definition of disability. A best practice is to define disability in alignment with FHAA or to reference FHAA (note that the term "handicapped" is used in FHAA and is interpreted to have the same meaning as "disability"). This is helpful in

¹⁴ <https://resources.finalsite.net/images/v1634831471/scarboroughmaineorg/76ahumaydubxibf2ndso/vs13-Growth-Management-Ordinance.pdf>

- Whether the modification would fundamentally and unreasonably alter the nature or purposes of the zoning ordinance. The burden is on the municipality to prove this would occur.

The International Building Code (IBC) allows appeal of decisions of the building official and decisions can be made based on “alternate equivalency” to meeting the IBC requirement. The building code does not tie the determination of an alternative to the physical characteristics of the property or building, making the standard appeal process available to process requests for reasonable accommodation. Examples may include lower sink heights to accommodate a person in a wheelchair, or special positioning of grab bars to accommodate different types of disabilities.

The Maine Revised Statutes (§4353 4-A) allow a municipality’s board of appeals to grant a variance “...to an owner of a dwelling for the purpose of making that dwelling accessible to a person with a disability who resides in or regularly uses the dwelling. The board shall restrict any variance granted under this paragraph solely to the installation of equipment or the construction of structures necessary for access to or egress from the dwelling by the person with the disability.”

The following municipalities in Cumberland County include a procedure for an owner of a dwelling to request a variance for the purpose of making it more accessible to a resident with a disability in their zoning or land use ordinance. *This is a best practice*

- | | | |
|---------------------|-------------------|-------------------|
| ■ Bridgton; | ■ Harrison; | ■ Sebago; |
| ■ Brunswick; | ■ Long Island; | ■ Standish; |
| ■ Cape Elizabeth; | ■ Naples; | ■ South Portland; |
| ■ Chebeague Island; | ■ New Gloucester; | ■ Westbrook; |
| ■ Falmouth; | ■ North Yarmouth; | ■ Windham; and |
| ■ Freeport; | ■ Portland; | ■ Yarmouth. |
| ■ Gray; | ■ Pownal; | |
| ■ Harpswell; | ■ Scarborough; | |

The following municipalities in Cumberland County do not include a procedure for an owner of a dwelling to request a variance for the purpose of making it more accessible to a resident with a disability in their zoning or land use ordinance. An improvement would be to establish this procedure.

- Baldwin;
- Casco;
- Cumberland;

- Gorham²⁵; and
- Raymond.

Additionally, the City of Portland includes a broader statement in its land use code that refers to reasonable accommodations in the context of fair housing. In its Introductory Provisions section, under 1.6.3. Fair Housing accommodations, it says:

“The City of Portland may make reasonable modifications to the requirements of the Land Use Code to accommodate the needs of persons with disabilities as so defined in Title VII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.”

This is a best practice and other municipalities should consider including similar language in their own zoning and land use codes

Multifamily housing. Allowing for a range of density and dwelling types can help support the placement of new or rehabilitated housing for lower income households in a wide spectrum of neighborhoods. To better understand how land use regulations affect multifamily housing development, the Greater Portland Council of Governments (GPCOG) commissioned a report in 2021 to assess potential impediments in the seven Metro Regional Coalition communities — Cape Elizabeth, Falmouth, Gorham, Portland, Scarborough, South Portland, and Westbrook.

Some key findings²⁶ from the study include:

- Multifamily housing is permitted with few limiting factors on just over 5% of the land area in Metro Regional Coalition communities;
- Multifamily housing is not permitted in just under 40% of the land area in the region;
- While many communities’ land use codes allow for multifamily housing in theory, substantial barriers to multifamily development exists in reality, resulting in little or no production²⁷; and
- Regional planning and coordination would increase multifamily housing production in the region and better coordinate it with other planning goals.

²⁵ The Town of Gorham does not require that ADA accessible ramps meet minimum setback requirements.

²⁶ <https://www.seco.org/DocumentCenter/View/1633/MultifamilyHousingandDeveloperRequirementsReportbyDeLeve>

²⁷ One example highlighted by a smaller municipality in the county was the lack of access to public sewage disposal provisions or public water supply. As a result, they are forced to rely on a sole source aquifer with limited recharge potential, which they noted makes it critical to balance the density of development with the long-term management of the groundwater aquifer.

Additionally, the report used seven categories of impediments to multifamily housing to assess the limits on multifamily housing in each of the seven jurisdictions. In general, “few”, “some” or “more” limits would not be characterized as impediments to housing choice in the fair housing context, unlike areas where multifamily housing is “not allowed.” Overall, many zoning-related challenges exist in seeing multifamily housing built in the metro area. Half of the land in these seven jurisdictions has many limits on multifamily housing development while multifamily housing is not allowed on over a third (35%) of the land.

Figure VIII-2.
Percentage of Land by Limits to Multifamily Development, Metro Regional Coalition Jurisdictions

	Few Limits	Some Limits	More Limits	Many Limits	Not Allowed	N/A
Cape Elizabeth			1%	81%	18%	
Falmouth			4%	30%	66%	
Gorham		0.2%	2%	69%	29%	
Portland	12%	1%	12%	22%	52%	1%
Scarborough		2%	2%	63%	17%	17%
South Portland			20%	2%	74%	3%
Westbrook	3%	20%	22%	36%	17%	2%
Metro Regional Coalition	2%	4%	5%	50%	35%	5%

Source: GPCOG Multifamily Housing and Land Use Regulation Report and Root Policy Research

As noted above, although multifamily housing might be allowed in the land use or zoning ordinance, other regulations might serve as barriers to actually seeing it built. The analysis conducted for this specific element of the zoning code only looked at whether municipalities allowed a variety of housing types to be built in their communities.

The following jurisdictions in Cumberland County allow for a variety of dwelling types in their zoning or land use ordinance. *This is a best practice*

- | | |
|--------------|-------------------|
| ■ Bridgton; | ■ Scarborough; |
| ■ Brunswick; | ■ South Portland; |
| ■ Falmouth; | ■ Westbrook; |
| ■ Gorham; | ■ Windham; and |
| ■ Naples; | ■ Yarmouth; |
| ■ Portland; | |

this is misleading as it reflects allowances in the character code zones only. 98% of our land area is extremely restrictive

The following municipalities in Cumberland County allow for a limited range of density and dwelling types in their zoning or land use ordinance. *This is a best practice*

- | | |
|---------------------|-------------------|
| ■ Baldwin; | ■ Harrison; |
| ■ Cape Elizabeth; | ■ Long Island; |
| ■ Casco; | ■ New Gloucester; |
| ■ Chebeague Island; | ■ North Yarmouth; |
| ■ Cumberland; | ■ Pownal; |
| ■ Freeport; | ■ Raymond; |
| ■ Gray; | ■ Sebago; and |
| ■ Harpswell; | ■ Standish. |

Dimensional standards. While a specific use might be allowed in a zoning or land use ordinance, specific dimensional standards, such as large lot sizes, setbacks or lot widths, might make the permitted use infeasible to develop. Additionally, burdensome site standards can contribute to increased development costs and discourage attached or multifamily housing. As previously acknowledged in this section, some municipalities are not able to accommodate higher density housing due to a variety of factors, such as lack of public utilities in many rural communities. However, for municipalities that want to encourage a range of housing types responsive to their community’s context and needs, this analysis is a starting point to review and update relevant site standards that might be current impediments.

The analysis, focused specifically on multifamily housing, found that the majority of Cumberland County municipalities have minimum lot sizes that discourage the development of this housing type. The findings below are primarily oriented around minimum lot size and minimum lot size per dwelling unit.

The following municipalities in Cumberland County have relatively small minimum lot sizes that encourage the development of a range of density and dwelling types. *This is a best practice*

- Brunswick (no minimum lot area in growth area zoning districts; in other areas, minimum lot area per dwelling unit is between 1.5 to 4 acres);
- Freeport (where multifamily is allowed, most zones have low minimum lot size per dwelling unit requirements and reasonable minimum lot area sizes);
- Portland (where multifamily is allowed, most zones have no or low minimum lot sizes and no or low minimum lot size per dwelling unit regulations);

- South Portland (where multifamily is allowed, minimum lot size ranges from no minimum to 10,000 sq. ft., no minimum lot size per dwelling unit); and
- Westbrook (where multifamily is allowed, minimum lot size ranges from no minimum to 20,000 sq. ft., minimum lot size per dwelling unit ranges from 2,500 to 5,000 sq. ft.)

The following municipalities in Cumberland County have a limited range of minimum lot sizes that encourage the development of a variety of dwelling types.

- Baldwin (min. lot size for residential uses ranges from 2 to 10 acres);
- Bridgton (where multifamily is allowed, minimum lot size ranges from 2,500 sq. ft. to 80,000 sq. ft.);
- Cape Elizabeth (where multifamily is allowed, minimum lot size ranges from 7,500 to 15,000 sq. ft., minimum lot area per dwelling ranges from 3,000 sq. ft. to 7,500 sq. ft.);
- Casco (minimum lot size of 60,000 sq. ft. per unit where duplexes and multiplexes allowed);
- Chebeague Island (minimum lot size of 1.5 acres, 0.94 acres per unit for duplex throughout town; large setback requirements);
- Cumberland (where multifamily is allowed, minimum lot area per dwelling ranges from 2,500 sq. ft. to 2.5 acres);
- Falmouth (where multifamily is allowed, minimum lot size ranges from 30,000 sq. ft. to 2 acres, minimum lot area per dwelling unit ranges from 15,000 to 25,000 sq. ft.);
- Gorham (where multifamily is allowed, minimum lot size ranges from 10,000 to 60,000 sq. ft., minimum lot area per dwelling unit also range from 10,000 to 60,000 sq. ft.; the Town allows developers to buy up density that can bring down minimum lot size to 5,000 sq. ft. per dwelling);
- Gray (site standards are determined by district, not use — minimum lot size per dwelling unit ranges from 10,000 sq. ft. to 4 acres);
- Harpswell (minimum lot size per dwelling unit outside subdivision is 40,000 sq. ft., within subdivision is 80,000 sq. ft.; the town has a provision for affordable workforce housing that reduce minimum lot size to about 27,500 sq. ft.);
- Harrison (minimum lot size per dwelling unit in town's districts range between 40,000-50,000 sq. ft.);
- Long Island (where multifamily is allowed, minimum lot area is between 30,000 to 60,000 sq. ft., minimum lot area per dwelling unit is 30,000 sq. ft.);
- Naples (minimum lot size for all districts is 40,000 sq. ft.; for multifamily, minimum lot size per dwelling unit is 20,000 sq. ft.);

- New Gloucester (minimum lot size per dwelling unit in town's districts range from 1 acre to 5 acres);
- North Yarmouth (where multifamily is allowed, minimum lot size is 1 acre; no minimum lot size per dwelling unit regulations);
- Pownal (no site or dimensional standards articulated for multiunit dwellings);
- Raymond (where multifamily is allowed, minimum lot size of 40,000 sq. ft. for the first two dwelling units, an additional 15,000 sq. ft. for each dwelling unit after that);
- Scarborough (where multifamily is allowed, minimum lot size ranges from 10,000 to 80,000 sq. ft., minimum lot area per dwelling unit ranges from approximately 8,700 sq. ft. to 2 acres);
- Sebago (where multifamily is allowed, minimum lot size ranges from 40,000 sq. ft. to 3 acres, minimum lot area per dwelling unit ranges from 60,000 to 80,000 sq. ft.);
- Standish (Some zoning districts in the town's form-based code have minimum lot size between 7,000 – 15,000 sq. ft. based on sewage flows while other districts have minimum lot sizes of 20,000 sq. ft. In the town's traditional districts, where multifamily dwellings are allowed, minimum lot size per dwelling unit ranges from 60,000-80,000 sq. ft. depending on access to public water; large setback requirements in some zoning districts);
- Windham (where multifamily is allowed, minimum lot size ranges from no minimum to 80,000 sq. ft., minimum lot size per dwelling unit ranges from no minimum to 60,000 sq. ft.); and
- Yarmouth (The Town's Character Based Development Code has no minimum lot size and no minimum lot area per unit; The Town's zoning ordinance has minimum lot size per dwelling unit range from an acre to 2.5 acres; minimum lot area for multiplex dwellings in LDR and MDR districts is 30 and 10 acres, respectively). **stacked multifamily not allowed in MDR, LDR, RR**

Figure VIII-3 presents the findings articulated above into a matrix for jurisdictions to understand how their current regulations compare to other county towns and cities. The matrix not only serves as a resource to holistically assess the impact of zoning and land use regulations on housing countywide but also aims to **encourage jurisdictions to adopt best practice code language from surrounding communities**.

- **Green shading** suggests a best practice or adequate aspect of the code
- **Orange shading** suggests room for improvement

Figure VIII-3.
Zoning Review Matrix

	Disability definition	Family definition	Reasonable accommodations	Range of density and dwelling types	Dimensional standards
Baldwin					
Bridgton					
Brunswick					
Cape Elizabeth					
Casco					
Chebeague Island					
Cumberland					
Falmouth					
Freeport					
Gorham					
Gray					
Harpswell					
Harrison					
Long Island					
Naples					
New Gloucester					
North Yarmouth					
Portland					
Pownal					
Raymond					
Scarborough					
Sebago					
South Portland					
Standish					
Westbrook					
Windham					
Yarmouth					

Yarmouth definitely needs improvement in allowing a range of density and dwelling types in MDR, LDR, RR

Adequate
 Needs improvement

Source: Zoning and land use ordinances of Cumberland County municipalities and Root Policy Research

Key findings of the analysis include:

- Nearly every Cumberland County jurisdiction provides a definition of disability in alignment with the FHAA or a reference to the state definition of disability, which is in alignment with the FHAA. This is a best practice.
- Nearly half of county jurisdictions do not provide a definition of family or don't limit the number of unrelated individuals that can live together in their land use or zoning ordinance — a best practice. If a jurisdiction does want to provide a definition of family in their ordinance, it's suggested that the definition be flexible enough to allow a range of household and family configurations, especially those needed to accommodate caregivers.
- Over 80% of jurisdictions include a procedure for a homeowner to request a disability variance. Additionally, the City of Portland includes a broader statement in its land use code that refers to reasonable accommodations in the context of fair housing — this is a best practice.
- Close to half of county jurisdictions allow for an adequate range of density and dwelling types. However, the majority of jurisdictions have site standards that make it difficult to build for a range of housing types. The biggest issue identified as an impediment to building a diversity of housing is minimum lot area per unit.
 - Due to a variety of factors (e.g., lack of access to public utilities), some communities in Cumberland County are better positioned to facilitate higher density development. However, each municipality is well positioned to review, analyze, and update its current code to help remove barriers to housing development and increase and diversify its housing stock in a way that best responds to their community's specific needs.

Erin Zwirko

From: Edward F. Libby
Sent: Thursday, April 20, 2023 4:59 PM
To: Erin Zwirko
Subject: RE: Question regarding LD 2003 - ADU requirements and owner occupancy
Attachments: DECD comments .docx

Erin,

Thank you very much. However, I remain steadfast that not allowing an ADU to be constructed on a lot that has a single family residence does not comply with the statutory language of LD2003, and therefore is not something the Town can impose, since it is more restrictive than what LD2003 provides, which is an ADU on *any* lot, not just those with owner occupancy. I have reviewed the DECD's rulemaking responses and have included some here that seem to be inconsistent with Hilary's response to you below. Additionally, I also feel very strongly that a zoning ordinance such as requiring owner occupancy runs afoul with LD2003's re-emphasis on Federal Fair Housing and the Maine Human Rights Act, that Town's ordinances must affirmatively uphold both laws. Continuing owner occupancy in this regard discriminates against protected groups, particularly minorities, who have a demonstrated higher population of renters. Restricting the available rentals by 50% from what is intended would create a disparate impact on those protected classes. Owner occupancy, like short term rentals, should be a separate policy decision across all housing types, not just ADU's, and whatever decision that may be, it must affirmatively support FFHA and MHRA in pursuit of our housing production goals.

DECD just published their final rulemaking and interestingly, they provide for Town's to set a size limit, but there is no mention allowing further restrictions.

These are obviously legal questions that warrant close examination by the Town's counsel and I sincerely appreciate that you have referred them for review.

As I have stated in the past, it is certainly not my intent to complicate the process of adopting LD2003 and I am trying to be super sensitive to the amount of work involved with the scope of work currently before the Planning Department, but I believe the statutory language is plain and not open to interpretation, as well as this being an opportunity for the Town to begin amending its zoning and land use policies from their current extremely exclusionary form.

Best regards,
Ed.

From: Erin Zwirko <EZwirko@yarmouth.me.us>
Sent: Tuesday, April 18, 2023 5:28 PM
To: Ed Libby
Subject: FW: Question regarding LD 2003 - ADU requirements and owner occupancy

Ed,

Please see my correspondence below. I also shared this with the town's legal counsel.

Thank you,
Erin

Erin Zwirko, AICP, LEED AP
Director of Planning & Development
Town of Yarmouth
Office: 207-846-2401
ezwirko@yarmouth.me.us

From: DECD, Housing <Housing.DECD@maine.gov>
Sent: Thursday, February 23, 2023 4:06 PM
To: Erin Zwirko <EZwirko@yarmouth.me.us>
Cc: Averill, Benjamin <Benjamin.Averill@maine.gov>
Subject: RE: Question regarding LD 2003 - ADU requirements and owner occupancy

Hi Erin,

Municipalities must update/create ordinances to meet—at the very least--the minimum requirements listed in LD 2003. Although, to your point, LD 2003 does not cover all topics that could be in a zoning ordinance. Generally speaking, unless otherwise stated in statute, rule, or the guidance document, a municipality has discretion to make some individualized decisions. For instance, you are correct that owner occupancy of the principal unit or ADU is not mentioned in LD 2003. Therefore, that is something you can decide to keep—or remove.

Furthermore, LD 2003 states that “[30-A M.R.S. 4364-B] does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to July 1, 2023.” Based on this language, nothing is intended to be retroactive and the town would not have to take action on the previously approved ADUs. Up until July 1, 2023, your current ADU ordinance/permitting process would remain in effect, unless you approve your new ordinance prior to July 1.

All this being said, we think it is a great idea to run ordinances by your legal counsel! I hope that helps to clarify, but happy to answer anything else.

Best,

Hilary

From: Erin Zwirko <EZwirko@yarmouth.me.us>
Sent: Thursday, February 23, 2023 2:31 PM
To: DECD, Housing <Housing.DECD@maine.gov>
Subject: Question regarding LD 2003 - ADU requirements and owner occupancy

EXTERNAL: This email originated from outside of the State of Maine Mail System. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Good afternoon,

The Town of Yarmouth has allowed ADUs for many years through a minor site plan process outlined in [Town of Yarmouth Ordinances Chapter 702 Article I.J.13](#). Some of our requirements will need to be updated to be consistent with the rules, such as eliminating requiring additional parking per the law and the proposed rules in Section 4.B.3.e. In reviewing our ADU requirements, and using the proposed rule as a guide, we noted that in Section 1.A, “*Municipalities must adopt ordinances that are consistent with and no more restrictive than the requirements of P.L. 20221, ch. 672...*”. We have a variety of aesthetic requirements, size requirements, bedroom requirements, requirements for the Fire Chief to sign off on the application, etc, which other than the size requirement are not discussed in the proposed rule. We also have a requirement, requiring a declaration to be recorded in the Registry, that at least one of the units (either the principal unit or the ADU) must be owner occupied.

The owner occupancy requirement in particular has been identified as something that is “more restrictive” than the law and the proposed rule, although some of other requirements might be seen as more restrictive, such as no more than 2 bedrooms in an ADU. It appears that the goal is to eliminate density requirements (Section 4.B.3.a) and the applicability of rate of growth ordinances (Section 4.D) on ADUs, but occupancy is not discussed in the law or in the proposed rules. We will investigate this question with counsel, but I am curious if DECD has considered occupancy of the principal unit or the ADU when developing the rules.

On this same thought, since the previously approved ADUs are subject to a declaration, is anything in the law and rule intended to be retroactive? Meaning that if occupancy is “more restrictive”, does the law and the rule require the town to take action on those previously approved ADUs? I do not believe that it is retroactive since there is an effective date but would appreciate confirmation either way.

Thank you for your time in considering my questions. I’m not intending these questions to be comments on the proposed rule; rather just trying to gain better understanding as we move forward with implementation. Please do not hesitate to reach out if you need additional clarification regarding my questions.

Thank you,
Erin

Erin Zwirko, AICP, LEED AP
Director of Planning & Development
Town of Yarmouth
200 Main Street
Yarmouth, ME 04096
Office: 207-846-2401
ezwirko@yarmouth.me.us

SUMMARY OF COMMENTS AND RESPONSES AND LIST OF CHANGES TO THE FINAL RULE

19-100 C.M.R. Chapter 5, Housing Opportunity Program: Municipal Land Use and Zoning Ordinance Rule

The Maine Department of Economic and Community Development opened this rule for public comment on February 8, 2023. The Department held a virtual public hearing on March 1, 2023. Written comments were accepted through March 13, 2023. This document summarizes the comments that were received during this time, the Department's responses, and the changes that were made to the final rule as a result of the comments.

Select comments related to allowing an ADU on “any” lot that has a single family home instead of restricting ADU’s to “only” lots that have a single family home with an owner occupancy in one of the units. Obviously, the answers are inconsistent.

- 87. Commenter asked if a town could require ‘primary residency’ in order to build an ADU?

Response: The Department thanks the commenter for this comment. **Municipalities have the discretion to determine residency/owner-occupancy requirements for ADUs.** The Department did not make changes to the final rule as a result of this comment.

- Municipalities may wish to adopt terms and definitions that are **more permissive**, provided that such terms and definitions are equally or more effective in achieving the goal of increasing housing opportunities.

- **Response:** The Department thanks the commenter for this question. **The Department encourages municipalities to consult with legal counsel to determine whether ordinances comply with the Federal Fair Housing Act and the Maine Human Rights Act.** The Department did not make changes to the final rule as a result of this comment.

- Commenter asked the Department the following question: Are municipalities allowed to create additional standards beyond the standard rulemaking that has been presented by the state?

Response: The Department thanks the commenter for this question. Municipalities, assuming they meet the minimum criteria listed in P.L. 2021, ch. 672 and this rule, are allowed to create additional standards. The Department encourages municipalities to consider local planning documents and other special local

considerations, and to modify language into one that meets the needs of a particular community.

Municipalities may wish to adopt ordinances that are more permissive, provided ordinances are equally or more effective in achieving the goal of increasing housing opportunities.

- Commenter asked the Department the following question: Are municipalities allowed to place a restriction/condition of approval on Accessory Dwelling Units/residential units under LD 2003 to prohibit conversion to short-term rentals?

Response: The Department thanks the commenter for this question. A municipality cannot restrict the approval of an ADU, if all criteria of P.L. 2021, ch. 672 and the municipal permitting process are met. The Department's feels that the best practice for a municipality would be to regulate short-term rentals in a separate short-term rental ordinance to reduce confusion and encourage the production of housing. The Department did not make changes to the final rule as a result of this comment.

- Commenter stated that in Section 1(A), the Department establishes a mandate that requires municipalities to create or amend local ordinances to comply with P.L. 2021, ch. 672. This is not clear if municipalities must adopt ordinances or replace ordinances with the law, meaning planning board and code enforcement officers are unable to know whether to apply ordinance requirements or statutory requirements.

Response: The Department thanks the commenter for this comment. Municipalities need not adopt this rule language or the statutory language in P.L. 2021, ch. 672 verbatim. The Department encourages municipalities to consider local planning documents and other special local considerations, and to modify language into one that meets the needs of a particular community and the minimum requirements of this legislation. Municipalities may wish to adopt ordinances that are more permissive, provided that such ordinances are equally or more effective in achieving the goal of this legislation of increasing housing opportunities. If a municipality does not adopt ordinances to comply with P.L. 2021, ch. 672, this legislation will preempt municipal home rule authority. The Department amended Section 1(A) to clarify the minimum expectations for a municipality.

- Commenter stated that the rule conflicts with statute regarding the applicability of the accessory dwelling unit section. The statute states that the legislation only applies to municipalities with zoning and the rule expands to those municipalities without zoning.

Response: The Department thanks the commenter for this comment. 30-A M.R.S. § 4364-B(3)(A) states the following: "With respect to accessory dwelling units, municipal zoning ordinances must comply with the following conditions: At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure." Furthermore, 30-A M.R.S. § 4364-B(1) states that "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 permitted." The Department interprets these two sections-- when read together--to mean that all municipalities must allow at least one ADU on any lot with an existing single-family dwelling unit, regardless of whether or not a municipality has zoning ordinances. But, if a municipality has zoning ordinances, then those zoning ordinances must be amended to comply with this section.

- Response: The Department thanks the commenter for this comment. Without a definition of majority provided in Title 30-A, the Department utilized the common dictionary definition of the term “majority,” which means more than half. The Department does not have rulemaking authority to amend the statutory language to provide exceptions for smaller project. The Department did not make changes to the final rule as a result of this comment.

- Commenter stated that it is not clear which lots the ADU allowance can be applied to.

Response: The Department thanks the commenter for the comment. 30-A M.R.S. § 4364-B(1) states that “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 permitted.” Furthermore, subsection 3 states that “[a]t least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure.” The Department interprets these two provisions to mean that a municipality is required to allow at a minimum one accessory dwelling unit on the same lot as an existing single-family dwelling unit. The Department further notes that a municipality can, but is not required to, be more permissive with this section. The Department will add to its guidance materials to provide examples of how a municipality can be more permissive with this provision. The Department did not make changes to the rule as a result of this comment.

- Commenter asked the Department to clarify in rule the specific scenarios where the ADU allowance may be applied and whether the allowance is intended to apply differently in municipalities with and without zoning.

Response: The Department thanks the commenter for this comment. The Department agrees with this comment and has amended the rule to clarify that provisions of 30-A M.R.S. § 4364-B do not apply differently to municipalities with or without zoning. The Department contends that all municipalities likely will have to allow, at a minimum, one accessory dwelling unit on a lot with a single-family dwelling unit in any area where housing is allowed. The Department suggests that municipalities who feel that this provision does not apply to them speak with legal counsel

Erin Zwirko

From: Carrie Martin
Sent: Thursday, April 27, 2023 3:43 PM
To: Erin Zwirko
Subject: LD 2003 - Affordable Housing Provisions - questions/thoughts

Hi Erin,

Thank you again for all your hard work on dissecting all the information in LD 2003. I have some questions and thoughts after attending last night's Planning Board meeting with respect to the Affordable Housing provisions of LD 2003 and just want to pass them along to you and the Planning Board (please forward to the Planning Board).

Given that Affordable Housing developers will produce affordable housing units with subsidies, grants and state and federal funds, plus buyers and renters of affordable housing units will also get subsidies and state and federal funds (i.e. MaineHousing is currently offering \$10K grants to income qualified first time home buyers), is there inherently an enforcement party/entity tied to the granting of those subsidies/funds which would essentially ensure deed restrictions would be monitored during any sale or renting process?

As the Planning Board discusses the possibility of additional incentives specifically for Affordable Housing developers above the density and parking in LD 2003, it is important to note that there are many proven local-level incentives to producing affordable housing such as: reduced fees for permitting and municipal charges; Affordable Housing Tax Increment Financing; Local Land Banks; Affordable Housing Support Funds; gifts of municipal land; and local housing grants or trust funds. My memory is that Yarmouth has been discussing applying to the State to amend the TIF Charter to include Affordable Housing. Do you think the potential change to the TIF Charter could happen and, if so, how might that incentive or impact Affordable Housing development?

With regards to multifamily use designations and public sewer availability outside the designated Growth Area off locations such as North Road, Princes Point & Cousins Island, it is worth noting that many of those sewer systems include what used be known as quasi-public systems with individual septic holding tanks (which the Town used to pump, but now the homeowner pays to pump) and shared leachfields. I wonder about the current capacity of those systems and any capacity to expand those systems specifically on roads such as Curtis Road, Sea Meadows and Old Field. I am aware of those systems from due diligence in my capacity as a local realtor. Should those areas potentially be omitted from Affordable Housing development based on that specific type of quasi-public wastewater system, even though those areas still allow multifamily uses? I'm not sure if that might be of interest or even possible with the language in LD 2003.

Again, thank you all for your service to our Town.

Carrie Martin, 316 East Main Street, Yarmouth 207-415-2504

Erin Zwirko

From: Edward F. Libby <Ed_Libby@msn.com>
Sent: Monday, May 22, 2023 5:46 PM
To: Erin Zwirko
Subject: great slide show on housing crisis in Cumberland County

Erin,

This slideshow is a work in progress to become part of a new GPCOG website soon to be launched. It was shared with me by Abe Dailey, the Senior Data Analyst in their Planning Department. I found it compelling and easy to understand.

I think this would be a great piece for our Town Council, Planning Board, Affordable Committee, and Comp Plan committee to see and understand to help guide any upcoming housing policy. Those are the intended audiences as Abe says below and I highlighted in yellow.

"One component of this strategy is a website that will be a central clearinghouse for information and data on housing and zoning reforms. The audience is local councils, planning boards, housing advocates, etc."

This website is still under development, but I can share some examples of content that will be on there:

<https://storymaps.arcgis.com/stories/3632d38e3ef147ce8598b9f2b5f5fda7>

Best regards,
Ed.