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PLANNING BOARD REPORT

Amendments to Chapters 601, 701, 702, and 703 to Implement LD 2003
Town of Yarmouth, Applicant

Prepared by: Erin Zwirko, Director of Planning & Development

Report Date: June 8, 2023; Meeting Date: June 14, 2023

Introduction

LD 2003, officially *An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions*, was signed into law last year with an effective date of July 1, 2023, for implementation of the new required zoning provisions. This law is designed to remove unnecessary regulatory barriers to housing production in Maine, while preserving local ability to create land use plans and protect sensitive environmental resources. The legislation creates four new elements:

- Creation of statewide housing production goals and regional housing production goals;
- Provisions for affordable housing density;
- Provisions for dwelling unit allowances; and
- Provisions for accessory dwelling units (ADUs).

Of the four items, the Town will be responsible for implementing all the provisions except for the creation of statewide and regional housing production goals, which will be the responsibility of the state and the regional planning agencies.

On April 19, 2023, the Department of Economic and Community Development (DECD) issued the final rule for the implementation of LD 2003 earlier than anticipated. [While the scope of the rulemaking authority is very limited, the final rule makes some welcome clarifications \(note this link downloads a Word Document\)](#). In addition, the DECD provides a “response to comments” document, outlining the Department’s response to all of the comments received on the draft rule. [In many cases, the responses provide even further clarifications \(note this link also downloads a Word Document\)](#).

[DECD previously released a guidance document that is very helpful in explaining the provisions that need to be locally implemented](#). We understand that this guidance document will be updated to reflect the final rule approved by the state.

A detailed overview of all of the provisions was provided [at the April 12th Planning Board meeting](#) and [in the staff report](#) for that meeting. This staff report outlines recommendations for the ADU provisions and the Affordable Housing Development provisions and provides additional information on Dwelling Unit Allowances.

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Review Schedule

The Department of Planning & Development plans at least four workshops with the Planning Board:

- **Planning Board Meeting 1:** The first workshop with the Planning Board was held on April 12, 2023, where the Department presented an overview of LD 2003 and the ADU provisions. [The staff report and presentation are available on the Planning Board's website for review. The meeting was recorded and is available to watch on demand.](#)
- **Planning Board Meeting 2:** The second workshop with the Planning Board was held on April 26, 2023, where the Department presented the affordable housing development provisions. [The staff report and presentation are available on the Planning Board's website for review. The meeting was recorded and is available to watch on demand.](#)
- **Planning Board Meeting 3:** The third workshop with the Planning Board was held on May 10, 2023, where the Department presented the dwelling unit allowances. The Town's legal counsel was also in attendance to provide support for the Planning Board. [The staff report and presentation are available on the Planning Board's website for review. The meeting was recorded and is available to watch on demand.](#)
- **Planning Board Meeting 4:** May 24, 2023, 7 PM at the Log Cabin, 196 Main Street. The Planning Board reviewed the proposed amendments and the additional analysis relative to the dwelling unit allowances. The Board ultimately recommended amendments for ADUs and affordable housing developments. [The staff report and presentation are available on the Planning Board's website for review.](#) The meeting was recorded but is not yet available to watch on demand. [Once available, it will be posted.](#)
- **Planning Board Meeting 5:** June 14, 2023, 7 PM at the Log Cabin, 196 Main Street. We will continue the conversation on Dwelling Unit Allowances at this meeting, with the goal of making a recommendation on this element of LD 2003. Public comment will be received.

The Department of Planning & Development provided two public engagement opportunities:

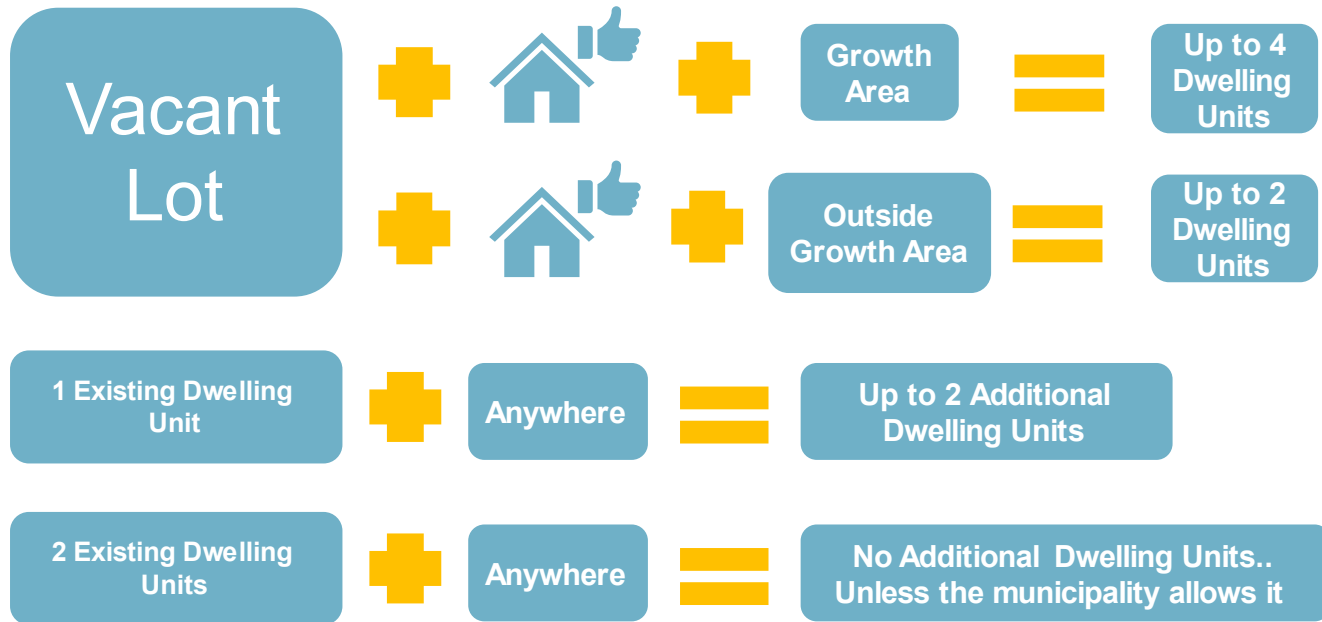
- **Informational Session:** The first information session was held on March 29, 2023, and was attended by twelve individuals. [The presentation and discussion were recorded and is available to view.](#) Notes from the information session are attached to this staff report.
- **Listening Session:** A listening session was held on May 15, 2023, and was attended by ten individuals joining in person and online. [The session was recorded and will be available to review in a few days.](#) Notes from the listening session are attached to this staff report and summarized below.

Following completion of this process, the recommendation will be forwarded to the Town Council for action. We recognize that the timeline is tight leading up to July 1, 2023. It appears that there is no penalty in the law or the rule, and by making strides in implementation, the Town may be able to insulate itself from any challenges. It is noted that many cities and towns are in the same position, especially as pending legislation may alter the law.

Proposed Dwelling Unit Allowances Provisions

Similar to how the Affordable Housing Development provisions are framed, the law and the rule create a series of performance standards that must be met in order to be eligible for the dwelling unit allowances that are outlined in the law. To capture these standards in a single location, a new section is added to Chapter 701, Article II.EE, titled "Dwelling Unit Allowances".

This new section outlines the applicability of the Dwelling Unit Allowances. The main information that needs to be conveyed to readers of the Zoning Ordinance is the various mandated allowances depending on the location and how many units exist on the lot already:



In addition, this section covers what is allowed on nonconforming lots and on lots where a dwelling unit is demolished after July 1, 2023. The law and the rule give municipalities discretion to address these conditions.

The key item here is determining what reasonable standard for lot area per unit is allowed, if any, which the municipality has the discretion to set. For each subsequent unit, the lot area required cannot be greater than what is required for the first unit (as shown in the graphic below). The Planning Board has discussed this aspect at length during the previous workshops.



Source: LD 2003 Guidance Document (updated February 2023). Retrieved from: <https://www.maine.gov/decd/housingopportunityprogram>

Summary of May 24th Workshop

As discussed at the previous workshops, the Planning Board expressed interest in how additional lot area is applied, if at all. The discussion focused on the differences between development in the Growth Area and development outside of the Growth Area. As a reminder, the following table (Table 1) provides the listing of zoning and character districts within the Growth Area and outside of the Growth Area:

Table 1. Zoning Districts inside the Growth Area and outside the Growth Area

Growth Area	Outside Growth Area
Medium Density Residential (MDR) Village II and Village III CD4 and CD4-C North Yarmouth Academy's SD1 Commercial, Commercial II, and Commercial III Water Oriented Commercial Portion of General Development (within Village) Industrial	Low Density Residential (LDR) Rural Residential (RR) Water Oriented Commercial II and III Resource Protection Portion of General Development (along Cousins River)

At the most recent workshop, it appeared that the Planning Board was gaining consensus around the proposed amendments that implement the dwelling unit allowances. The following sections summarize the outcome of the Planning Board's deliberations.

Constraints

While we looked at numbers of lots that *may* be developable, it is important to note that there are site-specific constraints that moderate development. The Shoreland standards also prevail, so residential lots within the Shoreland Overlay District and in the Resource Protection District are likely further limited by the Shoreland standards. Many existing subdivisions have Homeowner Association restrictions that limit the number of dwelling units on any given lot. The large recent subdivisions, including McKearney I and II, Village Run, and Boston Post Road (Lone Pine) have this limitation in their associated covenants. Within the Village, the provisions of Chapter 701 Article IX, Historic Building Alterations and Demolitions, and Article X, Historic Preservation Advisory Ordinance, and lot coverage requirements of the CBDC are applicable. Finally, construction is expensive, and for the average property owner, taking advantage of these allowances may not be financially or logistically feasible.

Outside the Growth Area

The LDR and RR Districts are outside of the Growth Area and housing is allowed, so our analysis focused on these districts. We did not analyze WOC II, WOC III, or RP as the Zoning and the Shoreland standards would likely significantly limit new buildings. Being located outside of the Growth Area, up to 2 dwelling units are allowed on vacant lots and up to 2 additional dwelling units are allowed on lots where there is 1 existing dwelling unit.

The 2010 Comprehensive Plan indicates that *"the goal of the community is to preserve the rural character within this portion of Yarmouth while protecting the property rights and development potential for landowners... From a policy perspective, these are areas in which intensive development is discouraged."* The Comprehensive Plan goes on to say that Open Space Residential Development should be used to encourage the preservation of the character of rural road corridors when development occurs. Open Space Residential Development has been used successfully throughout Yarmouth to protect important natural resources, as well as scenic vistas. It is also noted that although public water and public sewer extend beyond the Growth Area (see attached graphic) into the LDR and the RR, most of these areas are not served by public infrastructure.

Vacant Lots

The staff recommended that each dwelling unit allowed (up to 2) have the minimum lot area consistent with the existing conditions and consistent with the policy direction identified in the 2010 Comprehensive Plan. Further staff recommended that nonconforming vacant lots not be given any allowances under LD 2003.

The following table notes the number of vacant lots that have at least the minimum lot size for one dwelling unit in the RR and LDR, and those that have twice the minimum lot size for two dwelling units (Table 2). The highlighted rows illustrate the potential number of lots that would be affected. The other rows are provided for comparison purposes.

Table 2. Analysis of Lot Size of Vacant Lots in the RR and LDR

	RR	LDR
Required Lot Size Per Zoning Ordinance (acres)	3	2
Total Number of Vacant Lots with at least the Minimum Lot Size Required	32	41
Average Size (acres)	12.3	6.86
Median Size (acres)	6.28	3.2
Total Number of Vacant Lots with at least Twice Minimum Lot Size Required	17	17
Average Size (acres)	19.65	12.94
Median Size (acres)	14.8	7.43

The Planning Board acknowledged that the rural context of the RR and LDR districts is important to the community and did not want to promote more intensive development than what is currently allowed by the Zoning Ordinance. The Planning Board appeared to be in agreement with the staff recommendation.

Lots with 1 Existing Dwelling Unit

LD 2003 allows up to 2 additional units on a lot with 1 existing dwelling unit. As opposed to the recommendation for vacant lots outside of the Growth Area, the staff recommended that no additional lot size is needed outside of the Growth Area for the additional allowed units. The staff advanced this recommendation due to the average and median lot sizes for conforming lots are larger than the required size. This recommendation would allow the additional units to infill on these large lots while preserving the rural context that is the goal of the 2010 Comprehensive Plan. As a reminder, these additional dwelling units can be attached to or created within the existing dwelling unit, or detached from the existing dwelling unit, or one of each.

The following table (Table 3) provides the analysis of lots with 1 dwelling unit outside of the Growth Area. The highlighted rows illustrate the potential number of lots that would be affected. The other rows are provided for comparison purposes.

Table 3. Analysis of Lot Size of Lots with 1 Dwelling Unit in the RR and LDR

	RR	LDR
Required Lot Size Per Zoning Ordinance (acres)	3	2
Total Number of Lots with 1 Dwelling Unit	160	233
Average Size (acres)	7.37	3.88
Median Size (acres)	4.2	2.69
Total Number of Lots with 1 Dwelling Unit and at least Twice Minimum Lot Size Required for 2 Total Dwelling Units	60	88
Average Size (acres)	16.67	7.1
Median Size (acres)	8.99	5.5
Total Number of Lots with 1 Dwelling Unit and at least 3x Minimum Lot Size Required for 3 Total Dwelling Units	30	41
Average Size (acres)	26.44	9.86
Median Size (acres)	17.57	8.15

It appeared that the Planning Board supported the staff recommendation for lots with 1 dwelling unit outside of the Growth Area.

Proposed Amendments

The proposed amendments are attached to this staff report. The relevant language is found in the proposed Section EE.3.a:

- c. The following density standards apply for lots located outside the Growth Area:
- i. For a lot that does not contain a dwelling unit, each allowed dwelling unit must have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located.
 - ii. For a lot that contains one dwelling unit, so long as the lot has at least the minimum lot size for a single-family dwelling in the zoning district in which the lot is located, the additional dwelling units are allowed without any additional lot area per unit.

Due to the Planning Board's agreement with the staff recommendation at the previous workshop, alternative language is not presented.

Inside the Growth Area

The Growth Area is made up of the MDR, the Village districts, the Commercial districts, the Industrial districts, WOC I, a portion of the General Development District, and the CBDC's character districts. Being located within the Growth Area, up to 4 dwelling units are allowed on vacant lots and up to 2 additional dwelling units are allowed on lots where there is 1 existing dwelling unit.

For vacant lots, housing must also be a "permitted use" in the district, so this eliminates Industrial, Commercial II, and Commercial III districts. Further, note that DECD has provided guidance that a commercially-zoned property (where housing is also allowed) without a dwelling unit on the property would be considered a vacant lot for these purposes and that is reflected in the table below. In the Commercial District, that means that the units must be part of a mixed-use building.

The 2010 Comprehensive Plan indicates that the Growth Area includes *"those areas that are or can be conveniently served by public facilities and services, are physically suited for development, and promote a compact rather than sprawling pattern of development. From a policy standpoint, these are the areas in which much of the anticipated nonresidential and residential growth will be accommodated."* Further, three of the core concepts of the Future Land Use Plan include:

- *Yarmouth has a well-defined, historic pattern of development with a compact, walkable village center surrounded by relatively dense older residential neighborhoods and a rural/coastal hinterland. While development on the fringe of the Village over the past thirty years has somewhat compromised this historic development pattern, future development must be guided and encouraged to emulate the historic pattern.*
- *Yarmouth has traditionally offered a diversity of housing opportunities that resulted in a somewhat diverse population in terms of age and income. That diversity has been threatened by escalating real estate values and the recent pattern of residential development. Creating the opportunity for the development of a wide range of housing types and sizes is essential if Yarmouth is going to remain a community with a somewhat diverse population.*
- *Returning to the historic pattern of development and providing a diversity of housing opportunities will require that the Town allow higher density/intensity of use in some areas especially within the Village area and area currently zoned MDR...*

The staff recommendations for the lot size requirements in areas within the Growth Area are grounded in these core land use concepts, which are similar to the original intent of LD 2003. However, the Planning Board's discussion at the previous workshop suggested a divergence from the staff recommendation as discussed in the following sections.

Vacant Lots

Considering the small number of nonconforming lots, the staff recommended that within the Growth Area, all vacant lots be able to utilize the dwelling unit allowances for up to 4 dwelling units without requiring any additional land area. Focusing on the MDR, which comprises the bulk of the land area in the Growth Area, the median sizes of all vacant lots trend closer to the minimum lot size for 1 dwelling unit in the district, versus those lots that are already conforming (i.e., have at least 1 acre). Vacant lots in the MDR range from 0.17 acres to 5.1 acres in size. If the Planning Board were to require that 1 acre be required for each dwelling unit allowed, only 2 lots could be built upon, both being approximately 5.1 acres. This does not help to further the goals of LD2003 or the 2010 Comprehensive Plan.

The following table (Table 4) provides the analysis of vacant lots within the Growth Area. The highlighted rows illustrate the potential number of lots that would be affected. The other rows are provided for comparison purposes.

Table 4. Analysis of Lot Size of Vacant Lots in the Growth Area

	MDR	Commercial	Village II	Village III	WOC I	General Development
Required Lot Size Per Zoning Ordinance (acres)	1	0.34	1	0.48	2	0.23
Total Number of Vacant Lots	15	11	1	1	1	2
Average Size (acres)	1.73	4.13	0.52	0.48	0.42	1.62
Median Size (acres)	1.16	3.43	0.52	0.48	0.42	1.62
Total Number of Vacant Lots with at least the Minimum Lot Size Required	9	11	0	1	0	2
Average Size (acres)	2.54	4.13	-	0.48	-	1.62
Median Size (acres)	2.2	3.43	-	0.48	-	1.62
Total Number of Vacant Lots with at least Twice the Minimum Lot Size Required	5	11	0	1	0	2
Average Size (acres)	3.58	4.13	-	0.48	-	1.62
Median Size (acres)	3.3	3.43	-	0.48	-	1.62
Total Number of Vacant Lots with at least 3x the Minimum Lot Size Required	3	11	0	0	0	2
Average Size (acres)	4.5	4.13	-	-	-	1.62
Median Size (acres)	5.08	3.43	-	-	-	1.62
Total Number of Vacant Lots with at least 4x the Minimum Lot Size Required	2	8	0	0	0	2
Average Size (acres)	5.09	5.2	-	-	-	1.62
Median Size (acres)	5.09	3.5	-	-	-	1.62

For the 6 vacant lots that are nonconforming in the MDR, any development on that lot would have to comply with Chapter 701, Article III.B.1, which lays out the rules for building on nonconforming lots. Assuming all these lots are legal lots of record and are not owned in common ownership with a contiguous parcel, a structure may be built so long as it meets all of the standards of the district, except for Lot Area, Lot Width, and Road and Shore Frontage (the last two specifically for lots within the Shoreland District). It is very likely that these nonconforming vacant lots are owned in common ownership, based on an assessment of those property records.

The Planning Board appeared to agree with the staff recommendation for vacant lots within the Growth Area. The Planning Board noted that there is little risk to allow any vacant lot to develop up to four allowed units. This is consistent with the policy direction outlined in the Comprehensive Plan, which prioritizes infill development to create compact and walkable neighborhoods that offer a diversity of housing choices within the Growth Area, rather than sprawling development.

Lots with 1 Existing Dwelling Unit

As the Planning Board has discussed in detail in the past, the majority of the lots within the MDR are nonconforming (Table 5). Only 18% of the lots with 1 existing dwelling unit in the MDR are conforming. The staff did not consider the age of the structure on the lot; newly built homes in subdivisions which were developed through Open Space Residential Development have resulted in lots that are less than 1 acre. These subdivisions also have covenants that prevent the development of additional dwellings on any lot.

Table 5. Lot Size of Lots with 1 Dwelling Unit and Lot Size of Conforming Lots with 1 Dwelling Unit in the Growth Area

	MDR	Commercial	Village II	Village III	WOC I	General Development
Number of Lots with 1 Dwelling Unit	1384	0	14	9	5	1
Average Size (acres)	0.67	-	0.49	0.37	2.6	0.36
Median Size (acres)	0.51	-	0.25	0.34	2	0.36
Number of Conforming Lots with 1 Dwelling Unit	251	0	2	7	3	1
Average Size (acres)	1.66	-	1.9	0.43	3.48	0.36
Median Size (acres)	1.25	-	1.9	0.36	2.3	0.36

The Planning Board discussed a variety of approaches based on the additional analysis provided by the staff for the previous meeting. The Planning Board acknowledged that there are a number of zoning districts and character districts within the Growth Area, but the discussion focused on the MDR because that is where the potential is. Note that the character districts have no minimum lot size or minimum lot area per unit requirements, and as such, were not included in the analysis.

The Board first discussed whether any lot with 1 existing dwelling unit could take advantage of the allowances or if it should be only those conforming lots. The Board then discussed whether there should be any additional lot area required. The Board discussed how these two elements create two accelerators in new development within the Village. Nonconforming lots add a third accelerator. The Board acknowledged that the 2010 Comprehensive Plan recommends infill development, but also acknowledged that there has been limited engagement beyond the core group of people attending the meetings on LD 2003 and that an update to the Comprehensive Plan is underway.

Based on the discussion, it appeared that the Planning Board prefers to stay within the existing limits of the Zoning Ordinance where each additional allowed dwelling unit requires the minimum lot area for the unit, which is illustrated in Table 6.

Table 6. Potential of Applicable Lots Using the Minimum Lot Size Requirement

	MDR	Commercial	Village II	Village III	WOC I	General Development
Required Lot Size Per Zoning Ordinance (acres)	1	0.34	1	0.48	2	0.23
Total Number of Lots with 1 Dwelling Unit and at least the Minimum Lot Size Required	251	0	2	7	3	1
Average Size (acres)	1.66	-	1.9	0.43	3.48	0.36
Median Size (acres)	1.25	-	1.9	0.36	2.3	0.36
Total Number of Lots with 1 Dwelling Unit and at least Twice the Minimum Lot Size Required	43	0	0	1	1	0
Average Size (acres)	3.72	-	-	0.97	6.1	-
Median Size (acres)	2.57	-	-	0.97	6.1	-
Total Number of Lots with 1 Dwelling Unit and at least 3x the Minimum Lot Size Required	18	0	0	1	1	0
Average Size (acres)	5.75	-	-	0.97	6.1	-
Median Size (acres)	4.22	-	-	0.97	6.1	-

While any property owner is allowed *up to* 2 additional dwelling units, a property owner does not need to max out the allowances as can be seen in the rows in the table above. Even if the Planning Board does not require any additional land area for each allowed unit, there are constraints that may limit the development potential.

As a reminder, the proposed amendments suggest that any additional dwelling units would need to be reviewed through Minor Site Plan.

Proposed Amendments

The proposed amendments are attached to this staff report. The relevant language is found in the proposed Section EE.3.b:

- b. The following density standards apply for lots located within the Growth Area:
- i. For a lot that does not contain a dwelling unit, there is no minimum lot size. No additional lot area per unit is required.
 - ii. For a lot that contains one dwelling unit, the existing dwelling unit must have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located. Each additional allowed dwelling unit must also have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located.

Alternatively, if the Planning Board determines that for lots with 1 existing dwelling unit, no additional lot area is needed, the ii. Paragraph above could be altered to read:

- ii. For a lot that contains one dwelling unit, so long as the lot has at least the minimum lot size for a single-family dwelling in the zoning district in which the lot is located, the additional dwelling units are allowed without any additional lot area per unit.

Reflecting on the Planning Board's discussions, the 2010 Comprehensive Plan, and the goals of LD 2003, the staff recommend the Planning Board revisit our initial recommendation where only the first two units must meet the

minimum lot size for a single-family home in the relevant district, but the third allowed unit would not require any additional lot area. If this is of interest to the Planning Board, the ii. Paragraph above could be altered to read:

- ii. For a lot that contains one dwelling unit, the first two allowed dwelling units allowed must each have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located. For the third dwelling unit allowed, no further lot area or minimum lot area per unit is required.

Nonconforming Lots

The staff did not recommend considering nonconforming lots as a separate group, rather, they should be considered as part of the whole equation. As noted elsewhere in this staff report, nonconforming lots will be treated as currently required by the Zoning Ordinance.

The proposed amendments simply refer to Chapter 701, Article III, in cases where a lot that is nonconforming to lot size or lot area per unit.

Tear Downs after July 1, 2023

Based on the Planning Board's discussion at the last workshop, it appeared that there was consensus that tear downs that occur after July 1, 2023, would be considered a vacant lot for purposes of the dwelling unit allowances, but would need to have the minimum lot area for a single-family dwelling for the zoning district in which the lot is located. The proposed amendment reads (Section EE.3.c):

- c. If a dwelling unit in existence after July 1, 2023, is demolished resulting in a lot without a dwelling unit, each allowed dwelling unit must have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located.

Alternatively, the staff had previously recommended language that if a vacant lot results, it would default the provisions for vacant lots as discussed in this staff report and previous ones. That language could be:

- c. If a dwelling unit in existence after July 1, 2023, is demolished resulting in a lot without a dwelling unit, the allowances of this section applicable to vacant lots apply.

Additional Research

At the end of the previous workshop a question came up about whether the additional dwelling units would be rental or ownership. The Town does not regulate tenure through the Zoning Ordinance, except for ADUs as discussed over the last two months. However, I think the question stems from the Planning Board being concerned with the creation of lots that may be nonconforming to lot size, frontage, etc, as a result of the dwelling unit allowances.

I spoke with Town Counsel regarding this topic. Subdivision applies to the division of land and to the creation of additional units in a new or existing building when there are three or more lots or units created. (There are also a variety of exceptions.) The Planning Board could not approve a subdivision of land where the resulting lots do not need all of the zoning requirements, unless the Zoning Ordinance gives the Board some authority to do so. Open Space Residential Development is an example where the Planning Board has authority.

Depending on the Planning Board's deliberations at the upcoming meeting, as proposed, in most cases each allowed unit needs the minimum lot size. The reality is that if a property owner takes advantage of the dwelling unit allowances that does not have the lot area, frontage, or any of the other zoning requirements, the property would likely be put into a condominium association if the intention is to sell the additional units. From a zoning perspective, the Planning Board should not be concerned with the ownership model.

Legislative Update

As I have mentioned over the last two months, the Maine Legislature received a number of bills related to LD 2003 for the session that alter the various provisions from the effective date and applicability to wordsmithing the language. The Joint Select Committee on Housing ultimately combined the amendments that were seen favorably into LD 1706. The Committee issued a divided report on LD 1706, which included a majority “ought to pass as amended” report and two minority “ought to pass as amended” reports:

- Report A (majority report) extends the implementation date to January 1, 2024, for municipalities that enact ordinances by municipal officer without approval of voters during town meeting. For all other municipalities, the implementation date is July 1, 2024.
- Report B (minority report) extends the implementation date to July 1, 2025, for all municipalities
- Report C (minority report) keeps the implementation date of July 1, 2023, for municipalities that enact ordinances by municipal officer without approval of voters during town meeting. For all other municipalities, the implementation date is extended to July 1, 2024.

In addition, all three reports further revise LD 2003 by:

- Changing the definition of “affordable housing development” to provide that an affordable housing development is a development in which a household whose income does not exceed certain level can afford 51% or more of the units in the development without spending more than 30% of the household’s monthly income on housing costs; and
- Clarifying that an accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection (DEP) and municipal shoreland zoning ordinances, except that a municipality may not categorically prohibit accessory dwelling units in the shoreland zone that would otherwise meet shoreland zoning requirements established by DEP and municipal shoreland zoning ordinances.

LD 1706 is tagged as an emergency bill meaning that the bill requires a two-thirds majority vote of the entire elected membership of each body (House and Senate). If a two-thirds majority is not reached, LD 2003 will go into effect on July 1, 2023, for all municipalities.

As we all know, the Town Council won’t be able to act on the Planning Board’s recommendations before July 1, so the extension would be welcome. The revisions are minor enough that they do not change the basis of the Planning Board’s recommendations and could be provided to the Town Council for inclusion in the final language to be adopted. Staff already included language in the ADU amendments relative to Shoreland zoning.

As of the issuance of this report, the House voted to adopt the majority report (Report A above). The Senate may vote on June 8. I will report back at the Planning Board meeting.

Summary and Motion

The Planning staff recommend that the Planning Board consider the following motion for the dwelling unit allowances. Based on the discussion, the Planning Board may want to direct the staff to make amendments prior to submittal to the Town Council:

On the basis of the application, plans, reports and other information submitted, and the findings and recommendations contained in Planning Board Report dated June 8, 2023, for various amendments to implement the Dwelling Unit Allowance provisions of LD 2003 applicable to Chapter 701, Zoning, Chapter 702, Site Plan Review, and Chapter 703, Character Based Development Code, Town of Yarmouth, Applicant, the Planning Board finds that the amendment **[is/is not]** in conformance with the Yarmouth Comprehensive Plan, and therefore **[recommends/does not recommend]** that the Town Council adopt the proposed zoning text amendment.

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Such motion moved by _____, seconded by _____, and voted ____ in favor, ____ opposed, _____.
(note members voting in opposition, abstained, recused, or absent, if any).

Attachments:

1. Amendments to Chapters 701, 702, and 703 to Implement the Residential Dwelling Allowances, Revised June 8, 2023
2. Notes from March 29th Listening Session
3. Notes from May 15th Listening Session
4. 2010 Comprehensive Plan Growth Area
5. Comparison of Growth Area to Public Water and Sewer
6. Summary of Infrastructure Capacity relative to LD 2003
7. Housing Typologies in Yarmouth

Chapter 701, Zoning

Amend Article II by adding the following section:

EE. DWELLING UNIT ALLOWANCES

1. Purpose: Additional dwelling units may be allowed on lots where housing is allowed beginning on July 1, 2023, subject to the following standards.
2. Applicability
 - a. If a lot does not contain an existing dwelling unit, up to four dwelling units per lot are allowed if the lot is located in an area in which housing is permitted and is located in the designated growth area of the most recently adopted Town of Yarmouth Comprehensive Plan.
 - b. If a lot does not contain an existing dwelling unit, up to two dwelling units per lot are allowed if the lot is located in an area in which housing is permitted and is located outside the designated growth area of the most recently adopted Town of Yarmouth Comprehensive Plan. The two dwelling units may be in one structure or two separate structures.
 - c. If a lot contains one existing dwelling unit, up to two additional dwelling units per lot are allowed, subject to the following:
 - i. One within the existing structure or attached to the existing structure;
 - ii. One detached from the existing structure; or
 - iii. One of each.
 - d. If a lot contains two existing dwelling units, no further allowances are granted. This includes any lot where an accessory dwelling unit exists on the lot as of or is added after July 1, 2023.
3. Density and Dimensional Standards
 - a. The following density standards apply for lots located outside the Growth Area:
 - i. For a lot that does not contain a dwelling unit, each allowed dwelling unit must have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located.
 - ii. For a lot that contains one dwelling unit, so long as the lot has at least the minimum lot size for a single-family dwelling in the zoning district in which the lot is located, the additional dwelling units are allowed without any additional lot area per unit.
 - b. The following density standards apply for lots located within the Growth Area:
 - i. For a lot that does not contain a dwelling unit, there is no minimum lot size. No additional lot area per unit is required.
 - ii. For a lot that contains one dwelling unit, the existing dwelling unit must have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located. Each additional allowed dwelling unit must also have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located.
 - c. If a dwelling unit in existence after July 1, 2023, is demolished resulting in a lot without a dwelling unit, each allowed dwelling unit must have at least the minimum lot size for a single-family dwelling for the zoning district in which the lot is located.

Deleted: <#>If a dwelling unit in existence after July 1, 2023, is demolished resulting in a vacant lot, the allowances of this section are not applicable.¶
If a lot is nonconforming as to lot area or lot area per unit for the number of dwelling units on the lot after July 1, 2023, the allowances of this section are not applicable.¶
Standards

Deleted: For the first two dwelling units allowed, the minimum lot area and minimum lot area per unit, if applicable, of the zoning district in which the lot is located apply per unit. For the third and fourth dwelling unit allowed, no further lot area or minimum lot area per unit is required.

LD 2003 – Amendments to Chapter 701, 702, and 703 to Implement Dwelling Unit Allowances

- d. The provisions of ARTICLE III of this Ordinance apply in cases where a lot that is nonconforming to lot area or lot area per unit are permitted any dwelling unit allowances.
- e. For each dwelling unit allowed by this section, the setback requirements of the zoning district in which the lot is located apply.
- f. If applicable, the minimum lot size requirements in accordance with Title 12, Chapter 423-A, are required for any dwelling units allowed under this section.
- 4. Water and Wastewater Standards
 - a. Prior to the issuance of a Certificate of Occupancy, written verification that each unit of the affordable housing development is connected to adequate water and wastewater services shall include the following:
 - i. If a unit is connected to a public, special district, or other comparable sewer system, proof of adequate service to support any additional flow created by the unit and proof of payment for the connection to the sewer system.
 - ii. If a unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector pursuant to 30-A M.R.S. §4221. Plans for a subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.
 - iii. If a unit is connected to a public, special district, or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit.
 - iv. If a unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. Ch. 10 section 10.25(J), *Land Use Districts and Standards*. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.
- 5. Nothing in this section exempts compliance with the requirements of Chapter 601, Subdivision, the applicable provisions of this ordinance, including Chapter 701, Article IV.V, and Chapter 702, Site Plan Review.

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Chapter 702, Site Plan Review

Amend Article I.B.1.a, Major Development

- 1. Major Development:
 - a. The construction of any new structure(s) except as provided in Section 1.B.1.a and Section I.C;

Amend Article I.B.1.b, Minor Development

- o. Any development utilizing the Dwelling Unit Allowances of Chapter 701, Article II.EE.

Chapter 703, Character Based Development Code

Amend Article 1.C.3.d to add:

- xv. Chapter 701, Article II.EE. Dwelling Unit Allowances

May 4, 2023, revised June 8, 2023

Additions shown in underline format. Deletions shown in ~~strikeout format~~.

LD 2003 – Amendments to Chapter 701, 702, and 703 to Implement Dwelling Unit Allowances

Amend Article 5.6 to add:

7. If the dwelling unit allowances of **Chapter 701, Article II.EE** are applied, any allowed dwelling unit that is in an additional Principal Building shall be placed on its own lot conforming to Article 5.F and the other standards of this chapter. This does not apply to allowed dwelling units created within or attached to the Principal Building such as in an attached Backbuilding and Outbuilding as illustrated generally in **Illustration 5.G.2 (Principal Building/Backbuilding/Outbuilding)**. Allowed detached dwelling units must be in an Outbuilding or a Principal Building.

LD 2003 Implementation
3/29/2023 Listening Session
Yarmouth History Center, 7 PM

Video of listening session is available: <https://www.youtube.com/watch?v=NRdOKn42cA0>

1. Lot analysis of MDR to help guide making a conforming lot size that's less than 1 acre? Identify the average and median lot size in MDR, find the number of parcels above and below those points, and map them out.
2. How will tax assessors calculate residential lots moving forward? What will instruct them not to base on the potential of 4 units? Property owners need incentives, not sticks.
3. How will vacant lots be assessed? Likely same as currently (i.e. not for potential of development) but need to confirm they understand.
4. Any thoughts to taking some of the LDR (maybe that's publicly connected) and making MDR?
5. Clarify that if we do nothing to the minimum lot size requirements right now, we would need a parcel to have 4 acres for 4 units (in MDR)?
6. Clarify the distinction between the minimum lot size and density requirements?
7. Town's ADU rule on ADU and owner occupancy is viewed as more restrictive. Is there potential to remove that? Follow up comments about the concern for absentee landlords, out-of-town/corporate purchases of property for STRs as documented in other communities that are/are not regulating STRs and ADUs.
8. Re. non-conforming lots in the MDR, show non-conforming as a percentage of total residential parcels and show on a map.
9. Re. ADUs, explained by Backyard ADUs event (at Bunker Brewing in Portland) that night as "by right" and would not need Minor Site Plan Review? Erin confirmed that would still be reviewed under MSP.
10. Consider public infrastructure access and capacity with adopting more than the minimum requirements for the Residential Density Allowance. EZ will get data from Town Engineer and Water District.
11. Would like to see Affordable Housing in Yarmouth come from this legislation.
12. Re. stacked multi-family housing - definitely should be allowed as a use and should enable single-family homes to be converted to multi-family while preserving community character.
13. Re. ADUs, if not owner-occupied in one unit, make a requirement that the ADU be for year-round resident and not STR.
14. Need to see short-term and long-term goals and metrics come out of this legislation, so that the Town can best evaluate capacity (infrastructure, systems, etc) and feasibility of actually creating more housing.

15. Need to see a land inventory. Don't have a lot of land to play with but need to see the data on that. But hope that the Town doesn't let the perfect be the enemy of the good. Have friends who say they're for affordable housing but don't want to see it clustered or an affordable housing development, basically a "trailer park."
16. Affordable housing has been part of past CPs but isn't a Town requirement. LD 2003 is that opportunity.
17. Need to consider the costs of building new vs. costs of ADUs (and adapting/expanding existing buildings)
18. Town (and public) must consider the language around Affordable Housing and reframe it (in regards to the previous trailer park comment and view) as "building housing that is affordable." Reframe the issue + disperse + increase choices + destigmatize. Tie together language of tools and policy.
19. May be private homeowners who wish to advance projects while the municipality is resisting/isn't ready yet. Worry about lawsuits in other places. Town needs to show that working on this.
20. Need clarification on state timeline and what monitoring will occur (if at all).
21. Re. ADUs, what are the current requirements and approval/review process? Are there any numbers or trends on the number of applications and approvals? Types? What are the costs of ADUs and can they be made more affordable to facilitate production? Is there potential for any revisions to the ADU ordinance? (sprinkler ordinance impact on costs)
22. Are any Town Councilors attending the Planning Board workshops or involved in this? If not, should be.

LD 2003 Implementation
5/15/2023 Listening Session 2
Yarmouth Town Hall, 7 PM

When the recording is processed, it will be available:

<https://www.youtube.com/@yarmouthmunicipaltelevisio9833>

1. Regarding proposed ADU changes, are you recommending eliminating the maximum number of bedrooms and the size? And will we still need to go to the Planning Board?
2. What's the lot size data for the MDR? Conforming MDR lots vs. non-conforming > Wouldn't we want to consider all MDR parcels and not just conforming when considering reforming the lot size requirements?
3. Would be helpful in the presentation to highlight what the density (as is) currently allows and could look like and then the "flexibility/additions" could be with LD2003?
4. Existing Owner occupancy requirement for ADUs is inequitable and inconsistent with other housing types. Restrictive.
5. Fear the risk of out of state large real estate investors buying up SFD and turning them into STRs and the potential for that if the owner occupancy is removed
 - a. Counter discussion about how someone could already do that with a SFH and the data shows this isn't an issue here. Perspective of fear vs. creating more housing for those in need, like asylum seekers.
 - b.
6. Lot size requirements for the residential dwelling allowance is restrictive. Housing construction costs already high.
 - a. Counter point "Don't aspire for Yarmouth to become a city. Like the small town/village"
7. Consider original intent to address the housing crisis. ADU change isn't a huge impact, AHD part is really separate and not huge impact, but DWA ac requirements is incremental and fruitless if don't change the zoning to allow more density. Maybe should analyze where and what is really feasible?
8. The village feel is what people love so much, but we won't allow for more of it?! Makes no sense. Let it be a town vs. an "anyplace suburb." the additional lot size requirement of 1ac is a football field. What's the justification for it?
9. 1 ac requirement is insane and there's no need to wait for comp plan. Recommendation for the Residential Dwelling Allowance is that this is the time to be bold and town can't continue to wait. The calculations show that the opportunities with the conservative approach is grim and doesn't move the need and continues inconsistencies across how town regulates different housing types. Recommend sticking with the spirit of LD2003 with a 4 unit/acre as a baby-step to the original intent. If we don't, open town to being contrary to Fair Housing Act and sets up as a town that does nothing
10. The data doesn't show this here, not the market for that. (EL shared data points on STRs)
11. Still confusion as to what I can do w/my property
 - a. Q - helpful to show real examples and potential in future presentations?
12. Street or parcels > visualize it and show local examples already existing to address the fear of the unknown
13. Regarding affordability: requirement to have an entity to oversee the covenants - like the LDC or the Planning Department bc will be challenging for affordable housing projects that are small developers. Must be multi-family as an allowed use in our zoning (vertically stacked units)

LD 2003 Implementation
5/15/2023 Listening Session 2
Yarmouth Town Hall, 7 PM

14. Do an inventory of town-owned lots that could used for Affordable housing developments through a public-private partnership.
15. Any discussion about neighbors coming land to meet the minimum lot size requirements?
16. Regarding the parking requirements: check on the drafted language. Intent was to incentivize reduced parking mandates.

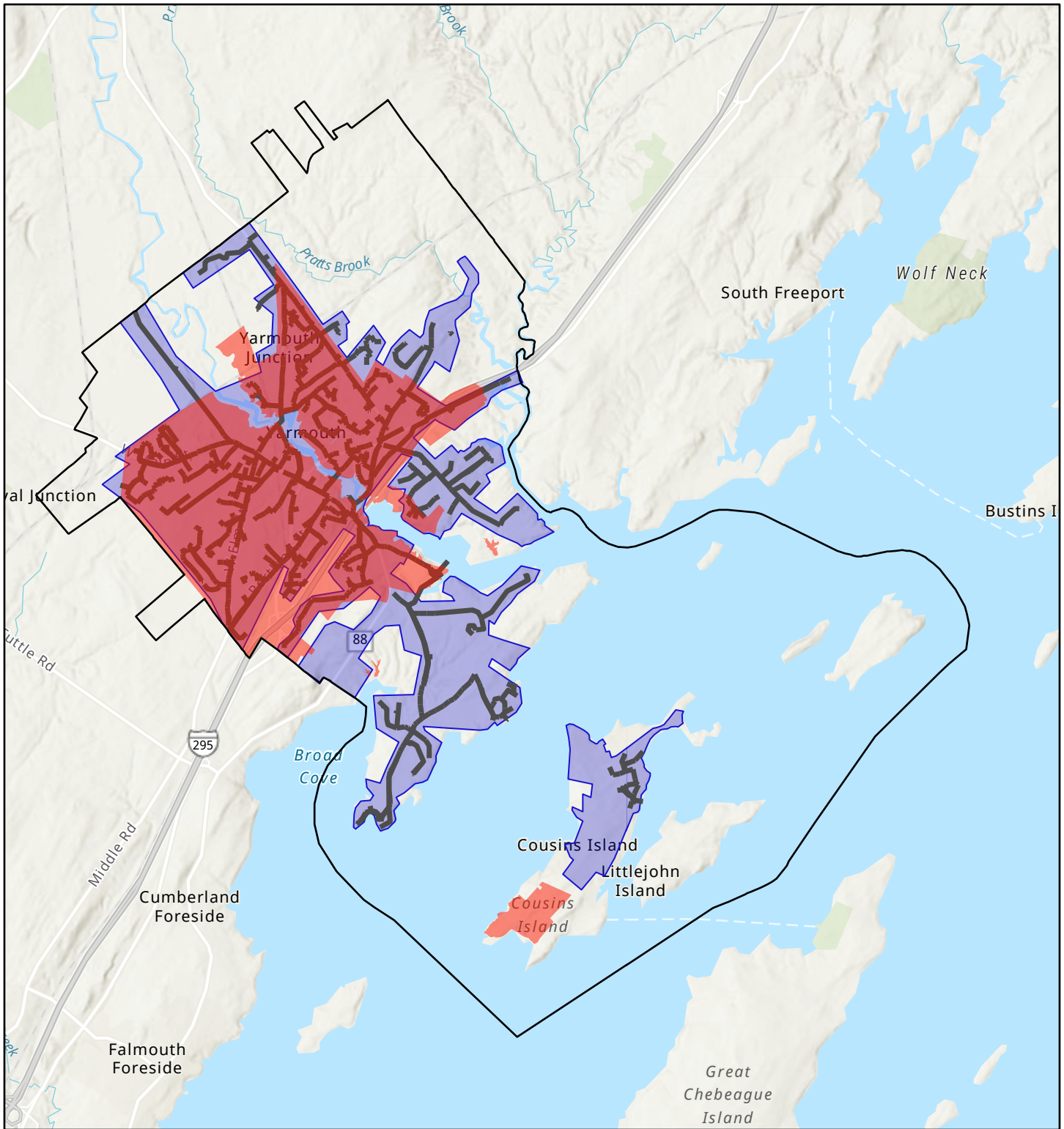
Growth Areas Identified in the 2010 Comprehensive Plan:

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



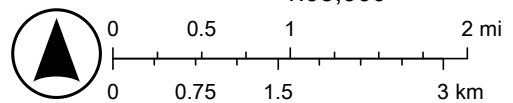
"Our Latchstring Always Out"

Comparison of Growth Area to Public Sewer and Water



4/20/2023

- Town Boundary
- YWD Service Area
- Growth Area
- World Hillshade
- Sewer Availability



Esri, NASA, NGA, USGS, FEMA, Esri, HERE, Garmin, SafeGraph, GeoTechnologies, Inc, METI/NASA, USGS, EPA, NPS, USDA

Main Takeaway: Of the departments dealing with the maintenance of facilities and the provision of services to the community, potential future population and residential growth can be met. Essential existing public infrastructure, such as sewer and roads, need sufficient funding to support necessary system upgrades regardless of LD 2003. Creative solutions are needed to attract and retain new, younger staff to replace the retiring municipal workforce and meet the needs and expectations of the community.

Fire Rescue (interview)

- The department is seeing increasing calls from skilled nursing facilities and overall needs of an aging population.
- Department is transitioning from volunteer to career employment. Recruiting new staff is essential, but the department is competing with neighboring communities that have higher salaries.

Police Department (interview)

- Residential growth from surrounding communities that travel through Yarmouth may require more staff (traffic, crashes, monitoring, etc.). Housing for staff would help with recruitment and other towns are doing this.

Library (interview)

- There are many demands for the library to function as a community center. Creative solutions are needed to provide shared educational and gathering spaces in the community, as well as access to information and technology.

YCS/Parks Department (interview)

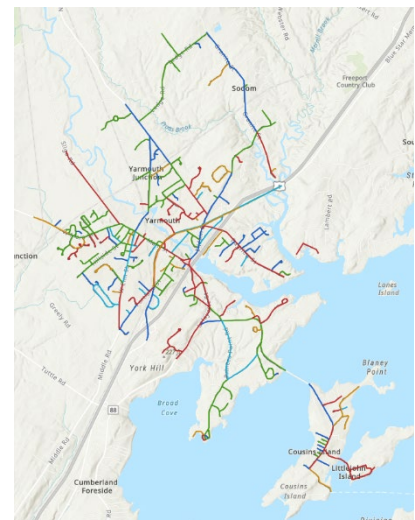
- Recruitment of new staff is a priority to support the extensive (and growing) system of parks, natural lands, and recreational facilities and programs, and meeting increasing maintenance demands due to climate change.

School District (interview, FY 204 Proposed Budget Narrative, 2017 Enrollment Projections)

- School buildings are in a good position for the 10 years following the school renovations and expansions, and already anticipated increases in enrollment to 2026 from the 206-2017 School Enrollment Projection Study.

DPW (interview and presentation)

- Currently have 53.2 miles of local roads and 14.4 miles of state aid roads. The average pavement condition index is 76.
- The map shows the roads in the Pavement Condition Index (PCI) repair range from 0-80, the worst (red) needing the most expensive rebuilding to the best (blue) needing an overlay repair.

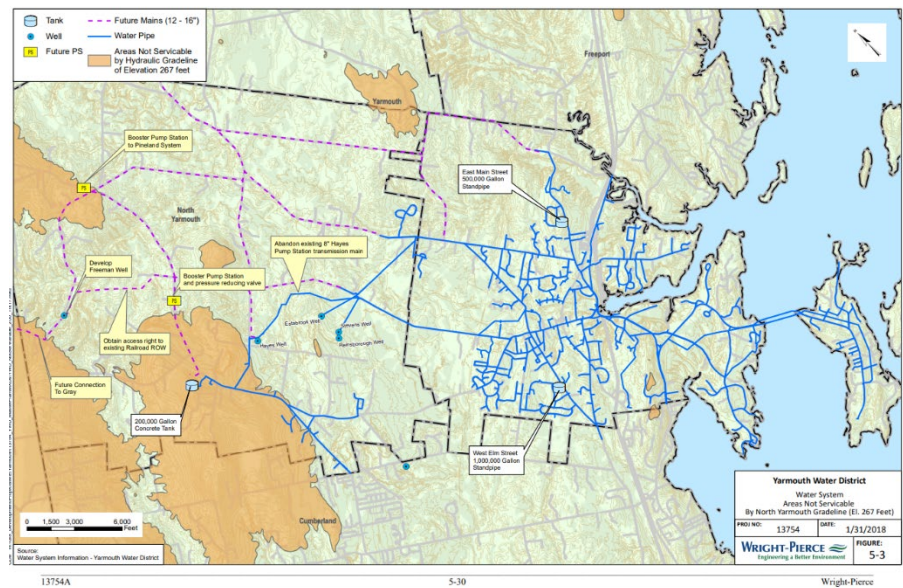


Wastewater Department (interview, memo)

- The last major upgrades to the wastewater plant and the two largest pump stations were completed in 1993 with few significant upgrades since. Given the age of infrastructure and normal wear and tear, large-scale improvements are expected.
- There are approx. 2,337 accounts served by public sewer.
- The separate storm sewer system is adequately maintained. The department anticipates minimal future impact due to federal and state stormwater management requirements and Yarmouth's new ordinance incorporating Low Impact Development (LID) best practices for stormwater treatment and volume control.
- The department is advocating for 100% of sewer fees to go to plant improvements. Increased growth may increase sewer connection fees and help support essential wastewater plant upgrades.

Water District (interview, Water System Master Plan, 2020 Update)

- The YWD has improved its infrastructure to increase hydraulic efficiency and system reliability within the current water system.
- Future growth is expected to be primarily residential and light commercial growth. Any main extensions would need to be funded by a development proponent.
- Although the total number of service connections has increased over the past 10 years, the average water-use per residential service connection over the past 6 years has decreased, possibly reflecting growing education on water conservation, low flow fixture installations and renewal of the housing stock in the service area.
- The YWD expects that it can meet current and growth projections for the next 17-year period.



EXISTING HOUSING TYPOLOGIES

& LD 2003

A photographic review of existing housing typologies
in Yarmouth and consideration of contextual
architecture for new buildings and infill.



PHOTO: MOLLY HALEY



WHAT HAVE WE HEARD

People want to preserve the historic character of the town, especially the “village feel” and historic districts. There is also a recognition that suburban sprawl is a detriment to the environment and the “character” of Yarmouth, and that the town’s historic land use pattern is a model for walkability, diverse housing choices and a counter to “anyplace, anywhere suburbia.”

THE SPECTRUM



“THE TOWN OF YARMOUTH, MAINE IS A WONDERFUL COASTAL COMMUNITY, RICH WITH HISTORICAL ARCHITECTURE, WALKABLE NEIGHBORHOODS, A SCENIC COASTLINE AND RIVER, AND HIGH QUALITY MUNICIPAL AND EDUCATIONAL SERVICES.”

QUOTE FROM THE 2010 COMPREHENSIVE PLAN



MOBILE HOME



MODERN TWO UNIT (1944)

CLEAVES STREET

One street alone has three different housing types, commercial and municipal uses.

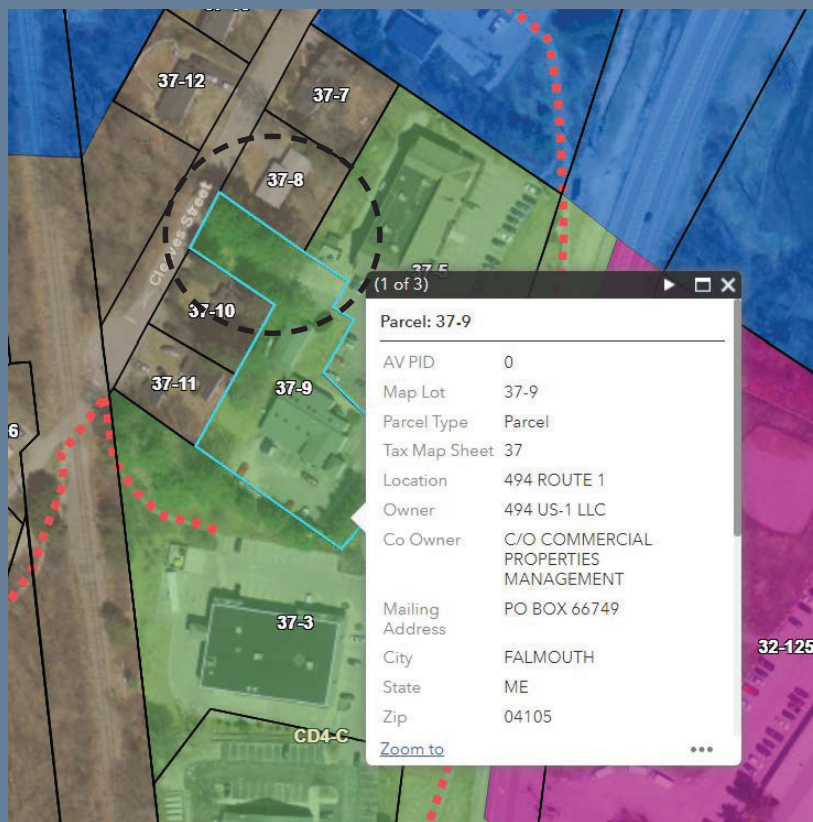
SINGLE FAMILY



HISTORIC HOUSES (circa 1875 and 1890) with 2 - 3 Units

TOWN HALL





SO WHAT COULD WORK HERE?

Cleaves St is contextual with MDR, CD4 and CD4-C

Only one lot (at the end of the street) is +1 acre

HOMES WITH 8+ DWELLING UNITS (10)

Pre-existing homes that became apartments over time, duplexes and stacked multi-family

ROUTE ONE WEST ELM ST
PORTLAND ST VESPA LANE
YARMOUTH WOODS
BAYVIEW ST
BAYWOOD LANE
BARTLETT CIRCLE
EAST MAIN



HOMES WITH 4-7 DWELLING UNITS (13)

Homes in the historic districts, Character District and the Medium Density Residential

MAIN ST HIGH ST
EAST MAIN ST BRIDGE ST
SPRING ST
EAST ELM ST
CHURCH ST
WEST MAIN ST
WEST ELM ST



SUBSIDIZED HOUSING DEVELOPMENTS (2)

Stacked multi-family and single-story duplexes, senior housing

BARTLETT CIRCLE

BARTLETT WOODS



HOMES WITH THREE UNITS (17)

*Historic homes in the historic districts, Character Districts, and the
Medium Density Residential*

LAFAYETTE ST	BAYVIEW ST
MAIN ST	CENTER ST
SOUTH ST	SLIGO RD
BAKER ST	BRIDGE ST
WEST ELM ST	
EAST ELM ST	
WEST MAIN ST	



HOMES WITH TWO UNITS (100)

Homes in the Resource Protection, Rural Residential, Low Density Residential, Medium Density Residential, Character Districts, and historic districts.

SOUTH ST	HILLSIDE ST	WOODS CIRCLE RD	MARINA RD
AUTUMN LN	BAYVIEW ST	COLLINS RD	SUMMER ST
BOWDOIN	WEST ELM ST	MILL ST	LEIGHTON RD
BURNELL DR	WEST MAIN ST	EAST MAIN ST	WHARF RD
BRIDGE ST	INDIAN RIDGE RD	EAST ELM ST	
BATES ST	LAFAYETTE ST	CLEAVES ST	
PORTLAND ST	ROCKY HILL RD	WILLOW ST	
NORTH RD	MAIN ST	WESLEYS WAY	
NEWELL RD	TENNEY ST	GRANITE ST	



HOMES WITH ADUS (51)

*"Known" ADUs in the Medium Density Residential, Low Density Residential, Rural
REsidential, Water Oriented Commercial, and Character Districts*

STONY BROOK LANE

BRIDGE ST

PORTLAND ST

FLINT LANE

SNOWDRIFT LAN

DRINKWATER POINT RD

CENTER ST

WEST MAIN ST

WEST ELM ST

FREE RANGE LN

GROVES RD

NORTH RD

RYDER RD

OAKWOOD DR

RAINBOW FARM RD

EAST ELM ST

EAST MAIN ST

BURNELL DR

MELISSA DR

PRINCES POINT RD



LADY SLIPPER LN

GLOWOOD FARM RD

BAYVIEW ST

WAHARF RD

ABBY LN

OLD FARM LN

WESTCUSTOGO POINT RD





CAN YOU TELL?

Guess
how many units
are in each of these homes...



1 **3 DUs**
30 East Elm



2 **4-7 DUs**
94 Spring St



3 **2 DUs**
8 Farmstead Ln



4 **2 DUs**
309 Main St



5 **1 SF + ADU**
11 Stonybrook Ln



6 **1 DU**
201 Hillside St

CAN YOU TELL?

Guess
how many units
are in each of these homes...

“...THESE POLICIES ARE IN PURSUIT OF A CHARACTER THAT EXPEMPLIFIES THE **HISTORIC QUALITIES OF YARMOUTH**, AND VALUES THE HEALTHY BALANCE OF USES THAT COMPRISE THE VILLAGE CENTER. THIS IS A CHANGING DYNAMIC CONDITION, AND WHILE THERE IS NO PRESCRIBED PROPORTION OR MIX OF USES, THIS CODE **ENABLES THE VILLAGE TO GROW AND CHANGE** WITH TIME AND TRENDS. THROUGH MONITORING AND AWARENESS OF **INCREMENTAL** CHANGES AS THEY OCCUR, THE TOWN CAN PROMOTE A CONTINUED WELL BALANCED PRESENCE OF HOUSING AND COMMERCIAL USES THAT **SERVE ALL CONSTITUENTS** OF YARMOUTH AND **SUSTAIN A VITAL AND VIBRANT** COMMUNITY. ”

- THE CHARACTER BASED DEVELOPMENT CODE, 2018