

Land Use and Development Code Amendment: Affordable Housing and Density Bonus

**Town of Gorham
Planning Board Meeting
March 26, 2024**

ITEM 1 – Public Hearing – Land Use and Development Code Amendment – LD 2003 – proposed amendment to the Land Use and Development Code to allow for unit bonuses for affordable housing in the Town’s growth areas as required by 30-A MRSA §4364, also known as “LD 2003”.

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AMENDMENT TRACKING

DESCRIPTION	COMMENTS	STATUS
Town Council	Order #24-27	2/2024
TC Ordinance Committee		10/2023; 12/2023; 1/2024
Planning Board		3/4/2024
Planning Board Public Hearing		3/26/2024
Planning Board _____ Committee		

**Memo completed by Carol Eyerman, Town Planner, and Damon Yakovleff,
Assistant Planner**

Land Use and Development Code Amendment: Affordable Housing and Density Bonus

1. Overview

The Town has been working to come into compliance with LD2003, “An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”. The new law required sweeping changes to municipal land use regulations to be implemented by January 1, 2024. It should be noted that, while there is no penalty built into the new law for not coming into compliance, the town may be compelled to do so via a court order.

Gorham has one remaining ordinance change to come into full compliance with the new law, adoption of a 2.5 times affordable housing density bonus where at least 51% of units meet affordability criteria. This item was reviewed by the Town Council Ordinance Committee which requested that staff provide additional information about income requirements and subsurface wastewater disposal requirements for parcels in the growth area but not on public sewer. These changes are reflected in the draft ordinance.

The Town Council reviewed the item at its meeting in February 2024 and forwarded its recommendation to the Planning Board. This item has been reviewed by the Town Attorney to confirm that it meets the requirements in the new State Law. Because this is a State preemption of local land use regulations, there is a limited amount of change that is possible to the wording of the ordinance. There is also a limited amount of leeway to change the scope of the geographic scope of the overlay because the State mandate requires the bonus to apply to Comprehensive Plan designated growth areas. A map of the proposed overlay zone is included as “Attachment A”.

The income limits to meet the affordability criteria are included in the table below. The draft ordinance language includes a provision for requiring developers to designate which units are “affordable” and which are “market rate” if not all units are affordable.

Area Medium Income and 2023 Income Limits for Portland HUD Metro Fair Market Rent Area

AMI	1	2	3	4	5
80%	\$66,250	\$75,700	\$85,150	\$94,600	\$102,200
100%	\$82,850	\$94,650	\$106,500	\$118,300	\$127,800
120%	\$99,400	\$113,600	\$127,800	\$141,950	\$153,350

Requirements for subsurface wastewater disposal in developments using the new density bonus have been included in the draft ordinance language. The proposed amendments to implement the overlay zone as well as language creating the Overlay zone are included in Section 2 of this memo, below.

Details about the state requirements for the overlay zone are included at the end of the end of this memo.

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2. Proposed Amendments to Chapter 1 Zoning Regulations Section 1-1

Additions are underlined; deletions are ~~struck out~~.

Chapter 1 Zoning Regulations

Section 1-1 General

B. ESTABLISHMENT OF ZONES

To implement the provisions of this Chapter, the Town of Gorham is hereby divided into the following classes of Districts:

Affordable Housing Overlay District

Proposed Amendments to Chapter 1 Zoning Regulations Section 1-5

Additions are underlined; deletions are ~~struck out~~.

Chapter 1 Zoning Regulations

Section 1-5 Definitions

Affordable housing development. “Affordable housing development” means:

1. For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the households monthly income on housing costs; and

2. For owned housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as amended, can afford 51% or more of the units in the development without spending more than 30% of the households monthly income on housing costs.

3. For purposes of this definition, “housing costs” include, but are not limited to:

a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner’s insurance, condominium fees, and homeowners’ association fees.

Area median income. “Area median income” means the midpoint of a region’s income distribution calculated on an annual basis by the U.S. Department of Housing and Urban Development.

Base density. “Base density” means the maximum number of units allowed on a lot not used for affordable housing based on dimensional requirements contained within this Code.

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Density requirements. “Density requirements” mean the maximum number of dwelling units allowed on a lot, subject to any existing dimensional requirements, such as the minimum amount of lot area required for each dwelling unit, otherwise established in this Code.

Add the following zoning overlay district to the Zoning Ordinance:

Section 1-27: Affordable Housing Overlay District (AHOD)

Applicability

The provisions of the AHOD shall apply in all areas identified in a certain map entitled Affordable Housing Overlay District, as approved by the Town Council and maintained by the Community Development Office.

Performance Standards to be added into Chapter 2 for AHOD:

SECTION 2-19 – AFFORDABLE HOUSING DEVELOPMENTS

a. Density Bonus

Affordable housing developments may have a dwelling unit density of 2.5 times the base density that is otherwise allowed in the base zone, as set forth in Chapter 1 of this Code.

b. Wastewater Disposal

1) Affordable housing developments on a lot with the ability to connect to public sewer shall be served by public sewer unless the Portland Water District (PWD) determines that there is not capacity in the sewer main or treatment facility. The PWD sewer connections shall meet the following requirements.

2) For an affordable housing development without the ability to connect to public sewer, the septic systems on the lot in question shall be functioning properly at the time of application and shall be sufficiently designed to meet the new anticipated capacity required under all State and local regulations for septic systems. Clustered systems are prohibited as set forth in the Town of Gorham Waste Water Ordinance, Article IV – Private Wastewater Disposal Systems, Section 7 – Cluster Systems Prohibited.

c. Drinking Water Supply

1) Affordable housing developments on a lot with the ability to connect to a public water main shall be connected into the public water main unless the Portland Water District determines that there is not capacity in the PWD water main to serve the lot and shall provide a PWD ability to serve letter prior to any approval of any site plan.

2) For a lot served by private wells the owner(s) must show evidence that water is potable and acceptable for domestic use prior to issuance of approval of any site plan.

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d. Long-Term Affordability

- 1) Prior to the issuance of a building permit for the construction of any dwelling unit within an affordable housing development, the owner shall execute and record in the Cumberland County Registry of Deeds, a declaration of covenants encumbering the entire affordable housing development, in a form that has been reviewed and approved by the Town Attorney. This declaration of covenants must provide that for a period of at least 30 years after completion of construction of an affordable housing development, the occupancy of at least 51% of the dwelling units therein shall remain limited to households whose taxable income is at or below 80% of local area median income for rental housing (or 120% of local area median income for owned housing), at the time of initial occupancy. Such restrictive covenants shall be enforceable by the Town of Gorham or its designee.
- 2) For any affordable housing development where not all units are “affordable” the developer shall designate which units are “affordable” and which are “market rate”.

e. Shoreland Zoning

Notwithstanding the foregoing, an affordable housing development must comply with all shoreland zoning requirements imposed by this Code and by the Maine Department of Environmental Protection.

f. Subdivision

This section shall not be construed to exempt affordable housing developments from the subdivision requirements imposed by Chapter 3 of this Code.

g. Board of Appeals

The Board of Appeals may not grant any variance from the density bonus or minimum off-street parking standards set forth by this Code.

Add the following to parking standards in Chapter 2:

Section 2-2 – Parking, Loading, and Traffic

A. OFF-STREET PARKING STANDARDS

- 1) Off-street parking, in addition to being a permitted use, shall be considered as an accessory use when required or provided to serve conforming uses located in any district.
- 2) The following minimum and maximum off-street parking and loading requirements shall be provided and maintained in case of new construction, alterations and changes of use. Such parking may be provided in the open air in spaces each nine (9) feet wide by eighteen (18) feet long, or in garages. All spaces shall be accessible from lanes of adequate size and location.

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Affordable Housing Developments _____ Maximum of two (2) for every three (3) dwelling units
(Fractional results shall be rounded down)

3. State Requirements for Affordable Housing Density Bonus

The state guidelines for the density bonus are as follows:

1. For purposes of this section, a municipality shall verify that the development:
 - a) Is an affordable housing development as defined in this chapter, which includes the requirement that a majority of the total units on the lot are affordable.
 - b) Is in a designated growth area pursuant to 30-A M.R.S. §4349-A(1)(A) or (B) or served by a public, special district or other centrally managed water system and a public, special district or other comparable sewer system.
 - c) Is located in an area in which multifamily dwellings are allowed per municipal ordinance.
 - d) Complies with minimum lot size requirements in accordance with Title 12 Chapter 423-A; and
 - e) Owner provides written verification that each unit of the housing development is proposed to be connected to adequate water and wastewater services prior to certification of the development for occupancy or similar type of approval process. Written verification must include the following:
 - i. If a housing 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 housing 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 housing 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; and
 - iv. If a housing 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.
2. Long-Term Affordability

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Prior to granting final approval of an affordable housing development, including but not limited to issuing an occupancy permit, a municipality must require that the owner of the affordable housing development (1) execute a restrictive covenant that is enforceable by a party acceptable to the municipality; and (2) record the restrictive covenant in the appropriate registry of deeds to ensure that for at least thirty (30) years after completion of construction:

- a) For rental housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 80% of the local area median income at the time of initial occupancy; and
- b) For owned housing, occupancy of all the units designated affordable in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy.

Areas of Gorham which are located within the growth area, and which are zoned to allow multi-family housing, are included in the map provided as “Attachment A”.

The state has provided the following guidelines that must be met when implementing the density bonus:

If the requirements in Section 2(B)(1) and (2) are met, a municipality must:

1. Allow an affordable housing development to have a dwelling unit density of at least 2.5 times the base density that is otherwise allowed in that location; and
2. Require no more than two (2) off-street parking motor vehicle spaces for every three (3) dwelling units of an affordable housing development.

If fractional results occur when calculating the density bonus in this subsection, the number of units is rounded down to the nearest whole number. Local regulation that chooses to round up shall be considered consistent with and not more restrictive than this law. The number of motor vehicle parking spaces may be rounded up or down to the nearest whole number.

PROPOSED MOTIONS:

Move to send the proposed amendment to the Land Use and Development Code to implement the Affordable Housing Density Bonus Overlay District to the (Ordinance Committee for review or Comprehensive Plan Implementation Committee for review and recommendations).

OR

Move to send the proposed amendment to the Land Use and Development Code to implement the Affordable Housing Density Bonus Overlay District to the Town Council with a recommendation for adoption.