



Planning & Code Enforcement

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PLANNING & CODE ENFORCEMENT

WESTBROOK PLANNING BOARD
Tuesday, November 7, 2023, 7:00 P.M.
Westbrook High School – Room 114
125 Stroudwater Street

This meeting will be offered as a hybrid meeting, accommodating both in-person and remote participation.

Where public comment is permitted, members of the public attending remotely will have the opportunity to provide remote oral testimony. If you wish to speak during a Public Hearing or Public Comment, use the “Raise Hand” function through Zoom (or dial *9 on your phone) when instructed by the Planning Board chair.

Zoom Link: <https://us02web.zoom.us/j/81700741385>

Dial-in (audio only): 1-646-558-8656

Webinar ID: 817 0074 1385

AGENDA

1. **Call to Order**
2. **Approval of Minutes**

NEW BUSINESS

1. **2023.23 – Amendment to the 2012 Comprehensive Plan Chapter 10, Future Land Use Plan:** The proposed amendment to the 2012 Comprehensive Plan Chapter 10 Future Land Use Plan and Proposed Growth Areas and Rural Areas Map to adopt the designation of Transitional Areas into the map.
2. **2023.24 – Amendment to the Land Use Ordinance in response to the requirements of State Law L.D. 2003 – Section 335-1.8. Definitions, Article II General Provisions 335-2.2 Accessory Dwelling Unit, Article V Zoning Districts, Article VII Overlay Districts, Section 335-13.6 Site Plan Review Design and Performance Standards, and Land Use 335 Attachment 1 City of Westbrook Table 1: Land Use Table:** The proposed amendment to the Land Use Ordinance addresses the requirements of State Law LD 2003 regarding Accessory Dwelling Units and Affordable Housing Developments including associated map amendments to align the district boundaries with lot lines for split-zoned parcels. Additional minor amendments are included to update terminology, consolidate parking standards for retail establishments, add the parking standard for Congregate Care Facility to Site Plan Standards and remove the Community Living Arrangement use from the City Center District as this use is regulated as a single-family dwelling.

WORKSHOP

3. **2023.25 – Amendment to the Land Use Ordinance - §335-5.7 Highway Services District; §335-13.5 Site Plan Design and Performance Standards – NLM Enterprises, LLC** The amendment removes the driveway standards for parcels located within the Highway Services District and expands site access requirements within Site Plan Review to clarify compliance with MDOT Standards.
4. **2023.26 – Amendment to the Land Use Ordinance - §335-1.8 Definitions; New Section §335-2.15 Intermediate Care Facility; §335-7.5 Residential Growth Area 2 Service Business Overlay Zone –** The amendment creates a new use, Intermediate Care Facility and expands and replaces the Residential Growth Area 2, Service Business Overlay Zone with a proposed Residential Growth Area 2 Medical Office Overlay District where an Intermediate Care Facility is requested as a permitted use.
5. **2023.27 – Amendment to the Land Use Ordinance – Emergency Shelters –** Discussion on the creation of a new use to allow for small scale emergency shelters and accessory shelters as a permitted use.



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PLANNING & CODE ENFORCEMENT

DATE: November 3, 2023

TO: Planning Board

FROM: Jennie P. Franceschi, City Planner & Rebecca Spitella, Senior Planner

Cc: Plan Review Team

RE: November 7, 2023, Planning Board Meeting

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1. **2023.23 – Amendment to the 2012 Comprehensive Plan Chapter 10, Future Land Use Plan**
 2. **2023.24 – Amendment to the Land Use Ordinance and Zoning Map in response to the requirements of State Law L.D. 2003 – City of Westbrook**
 3. **2023.25 - Amendment to the Land Use Ordinance - §335-5.7 Highway Services District; §335-13.6 Site Plan Review Design and Performance Standards – NLM Enterprises, LLC**
 4. **2023.26 – Amendment to the Land Use Ordinance - §335-1.8 Definitions; New Section §335-2.15 Residential Care Facility; §335-7.5 RGA 2 Service Business Overlay Zone & Zoning Map Amendment – Unified Properties, LLC**
 5. **2023.27 – Amendment to the Land Use Ordinance – Emergency Shelters**

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1. **2023.23 – Amendment to the 2012 Comprehensive Plan Chapter 10, Future Land Use Plan**

PUBLIC HEARING

Amendment Description

The proposed amendment to the 2012 Comprehensive Plan Chapter 10 Future Land Use Plan and Proposed Growth Areas and Rural Areas Map to adopt the designation of Transitional Areas into the map.

Amendment History

September 5, 2023 – Planning Board Workshop

September 25, 2023 – City Council Presentation

November 7, 2023 – Public Hearing

Staff Comments

For more information on L.D. 2003 please view the September 5, 2023 and October 3, 2023 Planning Board meetings. Recordings of Planning Board meetings can be found on the City website or by going to www.vimeo.com/showcase/westbrookmeetings.

The standards of LD 2003 are an effort at the State level to remove barriers to development that were previously under the jurisdiction of local zoning regulations possibly in response to efforts of some communities to limit

growth and prohibit multifamily development. Municipalities are expected to amend all applicable local land use ordinances by January 1, 2024 when the state law goes into effect.

Westbrook's Land Use Ordinance is (and has been) housing progressive and already includes multiple strategies to encourage growth. In a recent study of communities located in the Southern Maine area by the Greater Portland Council of Governments (GPCOG) on "Barriers to Housing Development", Westbrook's Ordinances have the least amount of barriers to development (Multifamily Housing and Land Use Regulation Report by Jeff Levine, 2021) and as such, based on the 2020 Census Data, Westbrook as a community has grown at a faster rate than our surrounding communities (16% increase in population from 2010 to 2020). Accordingly, Westbrook has already been doing the work that was intended to come out of the LD2003 process to promote affordable housing.

In response to the intent of LD 2003 Westbrook's Ordinances are ahead of the curve:

1. Westbrook permits multi-family dwelling units in all districts where residential use is permitted and where public sewer is available.
2. Westbrook does not limit any conforming parcels to a single primary structure (aka, "single-family only zoning") nor does the community set increased density standards for duplexes or multifamily structure (which incentivizes single-family only development).
3. Westbrook already allows for Accessory Dwelling Units in all residential districts.
4. Westbrook has increased density in the Downtown District.
5. Westbrook has already implemented increased densities in residential districts or approved contract zones to encourage further growth in our sewered areas which provides the ability to construct affordable housing.
6. Westbrook has memorialized Lots of Record to create infill opportunities for old, recorded subdivisions.

For communities that are on the other end of the regulations spectrum where they have standards that create barriers or limit growth in their communities, these barriers raise the cost of the available housing stock and furthers housing inequities. The strategies implemented in Westbrook's Land Use Ordinances are intentional to promote equitable growth and due to these efforts, most of the requirements of LD 2003 have minimal to no impact on Westbrook because our ordinances are already compliant with the newly formed State statute. Although we have a very progressive ordinance and we had hoped through the Legislative process that we could be provided an exemption from the standards on that basis, there are some elements of LD2003 that do need to be added into Westbrook's Ordinance & Comprehensive Plan, the most notable being the affordable housing development density bonus.

With the passing of L.D. 2003, the State Statute designated all areas labeled as "Growth Area" within a municipality's comprehensive plan as eligible for a density bonus for projects defined as "Affordable Housing projects". An Affordable Housing project is defined as a project where at least 51% of the units provided are rented at 80% AMI or sold at 120% AMI. This program affords an affordable housing development a density bonus of 2.5x the base density and further *limits* the parking requirement a municipality may impose to no more than 0.67 spaces/unit. This density bonus thereby incentivizes denser growth and results in an increase in **both** the total number of market rate and affordable units. The intent of attaching a density bonus to a designated growth area identified in a municipality's comprehensive plan was to require the permitted higher density growth in areas that the municipality has already determined growth is *desired and expected*.

As part of the Future Land Use Plan (chapter 10) of the 2012 Comprehensive Plan, the City split the community into two districts, Growth and Rural. A Growth Area, by definition, is meant to represent the area within a community where the majority of the expected growth over the next 10 years would occur. This is to represent where growth within a community is "desired and expected". The City of Westbrook's 2012 Comprehensive Plan called out, "All but those areas planned and zoned Rural, or within the Shoreland Zone, are designated as Growth Areas". As performance standards within the Rural district are growth limiting, and there are not as many permitted/conditional uses allowed, this action at the time met the standard of "placing the portion of the community where the majority of growth is desired and expected within a growth area".

However, the entirety of the City’s land area, exclusive of the land zoned Rural/within the Shoreland Overlay Zone, does not all meet the threshold of “desired and expected” for most of the growth as currently defined in the Comprehensive Plan.

For example, infill developments within existing neighborhoods exist and are permitted, however these projects do not contribute to where dense developments are expected. Most of the vacant parcels within existing neighborhoods are smaller, which would lend themselves to a smaller scale development as compared to the 100 – 200-unit projects that require larger parcels, preferably with direct access to a major connector road. Similarly, development in the areas of the community that do not have public sewer is still permitted and does occur, but these areas are not “expected” in the same scale that the development of a 50-acre parcel with access and frontage on Spring Street would, for example. **In short, the City’s Growth Area Map was not laid out in 2012 with the intent of using it in the way that the 2022 LD 2003 State Statute now requires.**

Another component of LD 2003 that we would need to incorporate into our ordinance is the parking standard of no more than 0.67 space per unit can be required of any affordable housing project (51% min affordable housing). Although this parking ratio can work in dense urban areas where transit is available, or for senior housing where parking needs have been demonstrated to be less, Staff sees significant concern in the placement of this standard City wide where there isn’t the off-site infrastructure (i.e., public parking lots, transit, etc.) to address a project’s true parking need. This piece will be discussed later in the rationale for the proposed locations of the density bonus.

To provide the Board and the public with a means of understanding the implications of LD 2003’s density bonus, the following table has been assembled. The table shows all residential projects approved in 2023* to demonstrate what was approved, vs what could be approved under the L.D. 2003 State Law if these projects had proceeded as an Affordable Housing project (minimum of 51% affordable units required):

*For the purpose of this exercise we have omitted recently approved projects located in the City Center District – Downtown District as the density overlay in this location already provides a density bonus greater than 2.5x the base density.

Project Name/Address	Number of units approved	Number of units permitted on lot based on current density requirements (Gross Density).	Required parking spaces for Approved Units	Number of units that would be permitted for an Affordable Housing Project at 2.5 times the base density	Required parking spaces for an Affordable Housing project at 2.5x Base Density
185 Park Road	11	20	22	50	33
40 Bell Street	10	10	15	25	17
41 Arlington Ave	3	3	6	7	5
984 Spring Street	204	230	306	575	386

Given the success seen in the City’s growth and development trends, Staff is concerned with inserting a density bonus of this scale (essentially) throughout the entire community, as would be required with our current Growth Area Map per LD 2003, because this could substantially alter Westbrook’s current growth patterns as established in the Comp Plan. The density requirement of the RGA1 District (our most dense of the “Residential Districts”), for example, is 1 unit per 5,000 sf. With the affordable housing density bonus this would result in a density of 1 unit per 2,000 sf which is more than the highest densities of our Commercial Districts that allow for residential use (City Center, Gateway Commercial and Highway Services Districts (where sewer)). Also, development could be approved with a drastically reduced parking requirement causing overflow parking onto adjacent streets on existing narrower, residential roads which may not have adequate width to support regular parking use. If the development is outside of transit routes, the residents couldn’t rely on public transportation to address their transportation needs.

It is with these thoughts in mind and the progressive nature of our current ordinances that we are proposing the density bonus be afforded in our more urban, dense areas and along major corridors. Our ordinances already provide for density levels that allow affordable housing projects to be financially viable. In order to achieve the goal of placing the density bonus appropriately in Westbrook, the Comp Plan Growth Map needs to be amended to add a new term which is allowed under State law, “Transitional Areas”.

Transitional Areas

Staff have been very engaged over the last two years with the legislative review of L.D. 2003, specifically as it pertains to the implementation of a flat density bonus to be applied within every community in the state. Staff provided significant testimony throughout the process on concerns we saw with the previous language potentially causing a negative impact on Westbrook and the region and were successful in working with legislative members during the review process. During some of these discussions, Staff were advised of the term “Transitional Areas” or areas of limited growth within a community. Most communities have a stepped approach in their Comprehensive Plans to have Growth, Limited Growth and Rural, which our plan is lacking the Limited Growth designation.

A Transitional Area, as it sounds, is the transition between a community’s Growth Area and Rural Area. While there is not a set standard, a good rule to use is that a Growth Area is where a community expects to see at least 60% of the growth over the next 10 years to occur, with 30% in the Transitional Area. Staff were advised that all areas within a Growth Area would be treated the same under the regulations of LD 2003 and, without the utilization of a “Transitional Area” in the comprehensive plan, all of the areas shown as Growth would be subject to the density bonus as defined, which was not the intent of the legislation as this would encourage sprawl vs smart growth. Adjusting our Growth Map to include Transitional Areas would be in keeping with the intent of LD 2003.

Therefore, Staff is recommending an amendment to the 2012 Comprehensive Plan Chapter 10 Future Land Use Plan and Proposed Growth Areas and Rural Areas map to introduce Transitional Areas to designate those areas that are not Rural or Growth.

Rural Areas

Although the change in the Growth Area map may appear substantive, the amendment proposed **does not** change areas currently designated as Rural Areas on the Comp Plan Map to a transitional or growth.

Growth Areas

The Growth Areas that are being proposed for the updated map generally follow the district lines of Commercial-Based Districts (City Center, Gateway Commercial (North of Arterial), Manufacturing, Industrial Park Districts, and the section of Highway Services located along Spring Street) which are on major road systems that can readily absorb dense development, are sewerred areas, and are within a reasonable walking distance to transit.

All other areas would then be deemed as Transitional Areas where growth is permitted as the base density allows. This would avoid drastic impacts within existing established neighborhoods where a 2.5 multiplier on the base zoning would substantially alter the growth patterns of these communities and was not the intent of the LD 2003 legislation.

The rationale of the split in Highway Services District is to include those Highway Services parcels that are adjacent to/surrounded by other Growth Areas with the remaining Highway Services is placed in Transitional Area similar to those the adjacent parcels.

With these changes to the Comprehensive Plan Map and Growth area descriptions, we would then move forward with the ordinance amendments necessary to codify the language to incorporate the requirements of the LD 2003 Housing Bill.

Motion

That the Planning Board recommends the amendments to the 2012 Comprehensive Plan, Chapter 10 Future Land Use Plan and the Proposed Growth Areas and Rural Areas map to include the designation of Transitional Areas.

2. 2023.24 – Amendment to the Land Use Ordinance and Zoning Map in response to the requirements of State Law L.D. 2003 – City of Westbrook

PUBLIC HEARING

Amendment Description

The proposed amendment to the Land Use Ordinance addresses the requirements of State Law LD 2003 regarding Accessory Dwelling Units and Affordable Housing Developments including associated map amendments to align the district boundaries with lot lines for split-zoned parcels. Additional minor amendments are included to update terminology, consolidate parking standards for retail establishments, add the parking standard for Congregate Care Facility to Site Plan Standards and remove the Community Living Arrangement use from the City Center District as this use is regulated as a single-family dwelling.

Amendment History

October 3, 2023 – Planning Board Workshop
November 7, 2023 – Public Hearing

Staff Comments

The State of Maine has taken substantive steps to address the housing shortage. In 2022 the State Legislature passed a law commonly known as L.D. 2003, which mandates state-wide legislation on various land use standards. With the adoption of this law, municipalities are now required to amend local land use ordinances to be in compliance with this State Law. In summary every municipality is required to:

1. Allow up to four residential structures or units on lots where housing is permitted.
2. Allow an accessory dwelling unit on any lot where a single-family dwelling unit is located & permitted.
3. Allow a density bonus for certain affordable housing developments.

Municipalities are expected to amend all applicable local land use Ordinances by January 1, 2024 when the state law goes into effect.

For more information on L.D. 2003 please view the September 5, 2023 and October 3, 2023 Planning Board meetings. Recordings of Planning Board meetings can be found on the City website or by going to www.vimeo.com/showcase/westbrookmeetings.

1. Allow up to four residential structures or units on lots where housing is permitted.

Westbrook Land Use Ordinance already permits this. (*Item addressed*)

Multiple dwelling units or structures are permitted on a lot provided:

1. The lot is located in a zoning district where residential use is permitted;
2. The lot has adequate residential density to support more than one dwelling unit; and
3. All other performance standards of the zoning district in which the lot is located can be met (ex: setbacks, building footprints, etc.)

For example, the Residential Density Factor for the Residential Growth Area 1(RGA1) District is 1-dwelling unit/5,000 sf. Therefore, if a lot located in the RGA1 District is 20,000 sf that lot could support 4-residential dwelling units or structures provided all other standards of the RGA1 District are met. If a lot located in the RGA1 District is 7,000 sf, that lot may only have 1-residential dwelling unit or structure as a minimum of 10,000 sf would be required to support 2-residential units.

The intent of this law was to prohibit a municipality from only allowing 1-residential unit or structure on a lot in a particular district *regardless of that lot's size*. Where Westbrook regulates residential uses based on a lot's size and not based on the number of structures or units permitted, no changes to the Westbrook Land Use Ordinance are required to meet this standard.

2. Allow an accessory dwelling unit on any lot where a single-family dwelling is located.

Westbrook Land Use Ordinance mostly permits this. (Ordinance amendment needed)

An accessory dwelling unit is a dwelling unit that is permitted on a lot where the lot does not have adequate square footage to support a second unit. In the example described above, a single-family dwelling located on the 7,000-sf lot located in the RGA1 District could be afforded an accessory dwelling unit where the lot is not large enough for a second dwelling unit by right. From a land use perspective, the difference between a permitted second dwelling unit and an accessory dwelling unit is that accessory dwelling units are subject to size & occupant restrictions and additional performance standards that a permitted second unit is not. Accessory dwelling units also have financing implications where a lot with a single-family dwelling with an accessory dwelling unit is assessed differently than a lot with two single-family structures or a legal duplex.

§335-2.2 of the Land Use Ordinance already permits an accessory dwelling unit on any lot where a single-family dwelling unit located. The current ordinance requires an ADU to be attached to or part of the principal single-family structure. L.D. 2003 expands this to require municipalities to allow for detached ADUs if they are constructed for the purpose of creating an accessory dwelling unit and that structure is located so that all dimensional standards of the base zone are met.

Further, L.D. 2003 prohibits a municipality from requiring *any* additional parking for an ADU beyond the parking requirements of the single-family dwelling on the lot where the ADU is located. Where the existing Ordinance requires a landowner to demonstrate a minimum of 3 off-street parking spaces to be eligible for an ADU (Single-Family Dwelling (2 spaces) + Accessory Dwelling Unit (1 space)), the Ordinance must be amended to permit an accessory dwelling unit in locations where only 2 off-street parking spaces are provided. This is a requirement of state law that municipalities are mandated to comply with regardless of the location of the ADU.

Therefore, Staff reviewed §335-2.2 (Accessory Dwelling Unit) and are proposing the following amendments in response to the requirements of L.D. 2003:

1. Amend the definition of Accessory Dwelling Unit to use language consistent with the language used throughout the Land Use Ordinance (revise “primary” to “principal”) and clarify the ADU must be located on the same parcel of land as the single-family dwelling they are affiliated with.
2. Reorganize the ADU section to be consistent with proper ordinance layout (Purpose; Applicability; Authority; etc.)
3. Permit a detached ADU in a structure that is constructed for the purpose of being an accessory dwelling unit.
 - a. An ADU may be permitted within an existing accessory structure if it meets district standards and is built for human habitation per building code.
4. ADUs that are attached or within a principal structure may share a utility meter.
5. Clarifies that a Single-Family Structure/ADU must remain under single ownership and cannot be converted to condominium ownership.
 - a. Current ownership requires a single-family structure with an ADU to be owner occupied (i.e., both the SF structure and ADU cannot both be rental properties). This standard is proposed to remain.
6. Remove the off-street parking requirement.

The proposed language has been reviewed by the City Solicitor and is in compliance with the requirements of L.D. 2003.

3. Allow a density bonus for certain affordable housing developments. (Ordinance amendment needed)

An Affordable Housing Development is defined as a project where at least 51% of the units provided are rented at 80% AMI or sold at 120% AMI. L.D. 2003 requires municipalities to provide a density bonus of 2.5x the base density to Affordable Housing Developments that are located within a designated growth area, as identified in that municipality's comprehensive plan. L.D. 2003 further *limits* the parking requirement a municipality may require to no more than 0.67 spaces/unit for the units that are designated as affordable. Units that are not designated as affordable, as defined in the Affordable Housing Development definition, are required to comply with the parking standards of the appropriate use (multiple-family, two-family, etc.).

On September 5th 2023 the Planning Board held a workshop on an amendment to the 2012 Comprehensive Plan Chapter 10, Future Land Use Plan, and the Growth Area and Rural Area map in response to this requirement to align the Growth Area with more commercial-based districts where the City anticipated high density growth to occur.

On October 3, 2023, the Board held a workshop on the Ordinance & Map amendments generated from the LD 2003 standards as well as ancillary amendments to the ordinance and Zoning Map.

On November 7, 2023 the Planning Board will hold a public hearing on the Comprehensive Plan Amendment which places the Growth Area designation over the following districts: City Center District, Industrial Park District, Manufacturing District, Gateway Commercial District (*where sewer service is located), the portion of the Highway Services District located along Spring Street, adjacent Main St fronting parcels, split district parcels and adjacent contract zones. All remaining areas (outside of the current Rural Districts, or areas proposed to be Rural in the future) would then be designated as Transitional Areas. More information on this can be found in the Staff Memo dated September 1, 2023, or by watching the September 5, 2023 Planning Board workshop.

As certain districts are proposed to be split between Growth and Transitional areas, the challenge was to figure out the most appropriate methodology of inserting a density bonus into districts where only part of that district would be afforded the bonus. For example, some of the parcels zoned Highway Services and Gateway Commercial Districts are in locations that do not have access to public sewer services and therefore would not be recommended to permit the Affordable Housing Density Bonus at this time.

Further, while Staff did not find it appropriate to insert the 2.5 Density Bonus throughout the entirety of the Residential Districts where established neighborhoods exist, Staff also agreed that while not all locations in the RGA districts may be appropriate for a density bonus, some locations *could* be. Just as Staff did not want to open up the entirety of the city to this higher level of density, Staff also did not want to completely exclude certain areas of the community to the potential of an Affordable Housing Development at the increased density that L.D. 2003 permits.

In that vein, Staff is proposing the use of an Overlay District to achieve the goal which would be called the "Affordable Housing Development Overlay District". By utilizing an overlay district, the City retains the flexibility of expanding the Affordable Housing Density Bonus option beyond the Growth Area (minimum required by State Law) *where appropriate*. If a developer or the City were to identify in the future a location that is appropriate and feasible for an Affordable Housing Development, that developer could request an amendment to the Zoning Map to expand the Affordable Housing Overlay District over a parcel. This would then follow the process of review/recommendation by the Planning Board and final approval by City Council but would not require a further amendment to the Comprehensive Plan. Again, L.D. 2003 *requires* the Affordable Housing Development density bonus in a municipality's growth area, but it does not limit it to these locations. Thus, an overlay provides flexibility for the City into the future.

Included with the Planning Board packets is draft language for the Affordable Housing Development Overlay District which includes the performance standards for the density bonus, parking reduction and requirement to demonstrate long-term affordability for the units designated as affordable.

Staff is proposing the Affordable Housing Development Overlay District to be inclusive of the City Center District, Gateway Commercial District (*where sewer services are located), the portion of the Highway Services District located along Spring Street, adjacent Main St fronting parcels, split district parcels and adjacent contract zones, as these are the areas proposed to be designated as Growth Area where residential dwellings are currently permitted.

Along with the amendments related to the ADU provisions and Affordable Housing Overlay District, Staff is proposing the following clean-up items:

1. Revisions to the definition of Maximum Residential Density Factor to remove outdated language and clarify the use of the term “Base Density”,
2. Remove Community Living Arrangement from the Land Use Table.
 - a. This use was inadvertently included in the table when Community Based Residential Facilities were added to the ordinance. A community-based living arrangement is permitted by right in all districts where single-family dwellings are permitted and therefore there is no need to have this included as an independent use in the Land Use Table and is inaccurately shown in the table as it currently states it is only permitted in the City Center District.
3. General cleanup to the Table of Off-Street Parking standards.
4. Adjustment of the Zoning Map for City Center District parcels that are split district to adjust district lines to property lines and placement of all Main Street fronting parcel into the City Center District where access is primarily off of Main St.
 - a. As discussed during the October 3rd Planning Board meeting, the parcel located at 40 William Street is proposed to be rezoned to Residential Growth Area 1 consistent with the nature of the street on which the parcel is located (lot is currently split zoned between RGA1 and City Center District). Staff have spoken with the owner of the parcel to discuss amendment.

Motion

To recommend the proposed Land Use Ordinance Amendment and Zoning Map amendments package related to LD 2003 to the City Council for adoption.

3. 2023.25 - Amendment to the Land Use Ordinance - §335-5.7 Highway Services District; §335-13.5 Site Plan Review Design and Performance Standards - NLM Enterprises, LLC

WORKSHOP

Amendment Description

The amendment removes the driveway standards for parcels located within the Highway Services District and expands site access requirements within Site Plan Review standards to clarify compliance with MDOT Standards.

Amendment History

November 7, 2023 – Planning Board Workshop

Staff Comments

The City received a request to amend the Highway Services District (HSD) standard regarding Traffic Impact (§335-5.7.C(12)) which prohibits driveways located within the HSD from being located 150' from another intersection or curb cut. The applicant is the owner of the parcel located at 368 Bridgton Road (058/003B). The subject parcel is currently vacant (split from 058-003 in 2020) and the Planning and Public Services Departments were approached with a request to review a preliminary concept plan for development. Upon initial review, it was noted that there is no location along the parcel frontage where a driveway could be located so that the driveway is at least 150' from a neighboring curb cut. As this standard is located in the Zoning District, rather than a Site Plan standard, it cannot be waived by the reviewing authority during an application review process.

When reviewing site ingress/egress Staff will look to MDOT standards for driveway entrances, which are determined by the speed and classification of the roadway the site gain access to. Utilizing a set requirement for distance between driveway entrances, does not take into consideration the individual attributes of each parcel or the roadway system that parcel is located on. Further, this requirement does not appear feasible with the minimum lot frontage standard of the district (100') as lots with that frontage could not each have their own site access while maintaining the 150' requirement. It appears the intent of the standard was to encourage shared driveway access within parcels; however, the City cannot *require* a private property owner to provide access to an abutting property. In the instance of the 368 Bridgton parcel for example, if neither of the abutting properties agree to a shared driveway access, then the 368 Bridgton parcel is denied access and is therefore unbuildable.

Staff supports the requested amendment to the HSD to clarify that new or expanded driveways are required to meet the MDOT standard for driveways. However, as this is a standard that is applied to all driveway/curb cuts, Staff finds this standard to be more appropriately located within Site Plan Review standards for Vehicular Access (§335-13.6.C(2)) rather than within a singular zoning district. Its current place in the ordinance gives the impression this is a standard that *only* applies to parcels within the Highway Services District, which is not the case.

The request before the Board is for an amendment to the ordinance. Any potential development on the 368 Bridgton Road will still need to demonstrate that driveway access can meet MDOT driveway standards and all other applicable requirements of the Ordinance. The requested amendment to the ordinance does not guarantee or approve access to the subject site.

Board Action: Provide comments to Staff on proposed amendments and hear questions/feedback from the public.

4. 2023.26 – Amendment to the Land Use Ordinance - §335-1.8 Definitions; New Section §335-2.15 Residential Care Facility; §335-7.5 Residential Growth Area 2 Service Business Overlay Zone

WORKSHOP

Amendment Description

The amendment creates a new use, Residential Care Facility and expands and replaces the Residential Growth Area 2, Service Business Overlay Zone with a proposed Residential Growth Area 2 Medical Office Overlay District where a Residential Care Facility is requested to be a permitted use.

Amendment History

November 7, 2023 – Planning Board Workshop

Staff Comments

The City was approached by Unified Properties, LLC with a request to operate a residential recovery house to specialize in substance abuse treatment at a property located at 271 Cumberland Street. This is intended to serve up to 16 individuals who have already completed the more intensive initial stages of recovery (ex: detox, in-patient treatment, etc.) but are still seeking a professional support while they continue with outpatient therapeutic services and integrate back into their daily lives.

Westbrook’s Land Use Ordinance has been limited in definitions for residential health facilities. Prior to this year, the only permitted care facility was “Nursing Home” which specifically requires a “skilled nursing facility” or “intermediate care facility” license. This past April the City adopted a new use, Short-Term Care Facility, intended to provide inpatient care and treatment for individuals where a hospital or nursing home is not required on a short-term basis. This use was approved for up to 45 consecutive days of care and placed in the Highway Services District, as requested by the applicant, and found appropriate due to the anticipated level of turnover and access to city services.

After meeting with Unified Properties, LLC, it was determined that the requested use did not fit either the Nursing Home or the Short-Term Care Facility. The applicant has therefore provided an application to amend the Ordinance to allow for a staffed facility which acts as a residence while providing guidance or counseling services as a primary focus of the facility to be permitted at the 271 Cumberland Street location.

In response, Staff has provided the Planning Board with a draft ordinance for a new use, Residential Care Facility, to be defined as “A residential facility staffed or managed on-site which provides care and services to individuals above the level of room and board because of the individual’s mental or physical condition. Said facility must be licensed as a board care, residential care facility or equivalent by the State of Maine. A residential care facility shall provide care for individuals for a period of no less than 45-consecutive days and no more than 1 year.”. Staff is recommending the use include a parking standard, with the understanding that the standard can be waived by a reviewing authority with a parking management plan depending on the needs/policies of the facility (ex: if clients are not permitted personal vehicles on site and/or a van is provided for transportation purposes).

In looking at appropriate locations for this proposed use, Staff identified the rear abutting parcel that was the previous Northern Light Medical Center located within the Residential Growth Area 2 – Service Business Overlay District. The Service Business Overlay District currently encompasses four parcels, a vacant parcel (044/067), the previous Northern Light Hospital (044/068), a mixed use building primarily occupied by medical/therapeutic services (044/068A) and a vacant residential structure that was once affiliated with the Mercy (Northern Light) Hospital (044/056A). Although this original overlay district was intended to allow for service businesses in this specific area within the Residential Growth Area 2 District, with the exception of one service business, the overlay area is entirely occupied by health/medical uses. Therefore, Staff is proposing a repeal and replacement of the Service Business Overlay District and instead designate this area as Residential Growth Area 2 – Medical Office Overlay District where all medical uses are permitted, including the proposed Residential Care Facility. Service Businesses would continue to be permitted within this overlay district so as to not create a nonconformity of the existing Beauty Salon at 50 Park Road. Staff further recommend an extension of the

Medical Office Overlay District over the 271 Cumberland Street parcel to allow the Residential Care Facility to operate at that location as requested by the applicant. With this change, the zoning overlay has been revised to match what has organically grown at these locations.

Although the proposed Residential Care Facility use is residential in nature, it is a staffed residence and could potentially have a larger number of residents than would typically reside within a single-family structure. Therefore, staff recognize that the use is more intensive than a single-family dwelling and may not be appropriate to locate within the entirety of the RGA districts. At this time, Staff are recommending this use only be located within the Medical Office Overlay District, with the understanding that by creating a use there is a possibility of expanding the use into other districts if/when it is appropriate or requested. Additional performance standards could then be determined/implemented at that time depending on the proposed location(s). We have included as a placeholder in the draft a potential for local licensing but are still researching this piece.

With this revision, Staff are also proposing a revision to the title and definition of “Nursing Home” to “Extended Care Facility”. The intent of this revision is to broaden the definition and create consistency with the Short-Term Care and Residential-Care Facilities terminologies.

Board Action: Provide comments to Staff on proposed amendments and hear questions/feedback from the public.

5. 2023.27 - Amendment to the Land Use Ordinance – Emergency Shelters

WORKSHOP

Amendment Description

Discussion on the creation of a new use to allow for small scale emergency shelters and accessory shelters as a permitted use.

Amendment History

November 7, 2023 – Planning Board Workshop

Staff Comments

The City Council has provided a referral to the Planning Board on the topic of small-scale emergency shelters and accessory shelters. It is the Board role to provide back to the City Council a recommendation based on topics the Council specifically requested which were:

1. Allowance for existing Churches to be overnight shelters as an accessory use.
2. Allowance for Existing large Privately owned Civic Spaces to be used as an Emergency Shelter on a short-term basis.
3. Allowance for small scale (Max 8 occupants) shelters to be permitted uses in areas of our community which could function for either short-term shelter or transitional housing.
4. Define Large scale shelter but not looking for a specific location. Potentially use Contract zoning when an opportunity arises.

Staff researched area communities to see how other Cities have permitted Overnight/Temporary Shelters. We reviewed Portland and South Portland ordinances as well as some ideas from Portland, OR. From those ordinances we came up with a series of discussion points:

1. Need to define terms and uses associated with Overnight/Temporary Shelters.
 - a. Bed limits in definitions? Sq ft requirements for sleeping areas?
2. Would suggest having Performance Standards for Shelter Uses. (Portland has standards for various shelters, which we have included for reference in the attached document.)
 - a. Review by – Code Enforcement/Planning?
 - b. Parking requirements
3. Would suggest a yearly licensing process to ensure that the operations remain compliant with the requirements. (South Portland License standards were included for reference in the attached document.)
 - a. Review by – City Clerk, Code Enforcement, City Council?

Current Ordinance has definitions for:

- Boarding Home for Sheltered Care (i.e., Women’s shelter) allowed in the City Center District.
- Group Homes are defined as Community Living Arrangements and are permitted in all zones where single-family homes are permitted, for 8 or fewer individuals who meet the Federal definition of disability.

Our initial work started with determining various definitions that we need to include to address the points raised by the City Council. This is still a work in progress and additional definitions may be necessary. We suggest the Board walk through the topics we are tasked to address, the draft definitions and suggested performance standards and provide further direction for Staff to research to pull together a more defined document for a future workshop to continue this conversation. Ideally, we would return to the Board at the December meeting for another workshop then look to January to hold a public hearing on a formal proposal.

Staff suggests once the Board has had an initial opportunity to ask questions and provide feedback on the proposal, the public would then be afforded its opportunity to provide comment, then return to the Board for any follow up questions or further research request of staff.

Board Action: Provide comments to Staff on proposed amendments and hear questions/feedback from the public.