



TOWN OF KITTERY

# CITIZEN PLANNER ACADEMY

**A Development & Project Design Workshop**



**Oct 21, 2023  
10 AM - 4 PM**



**Kittery Community Center  
120 Rogers Road, Kittery, ME**



## ABOUT THE WORKSHOP

Join the Kittery Housing Committee and the Urban Land Institute for a free, interactive workshop that provides a hands-on exercise and role playing activity where participants can learn about the fundamental forces that affect development in our local communities.

Participants will have an opportunity to experience challenging issues, private and public sector roles, complex trade-offs and fundamental economics in play when proposing realistic land use solutions.

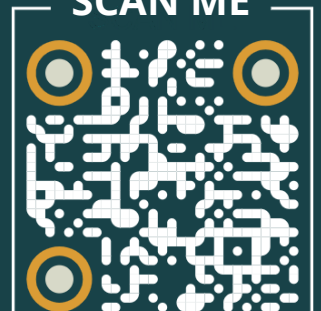
## APPLY TODAY

The Citizen Planner Academy Workshop is FREE but space is limited. Complete an application today to reserve your spot and participate in this exciting workshop. For more information, scan the QR code or visit the website below.

**APPLICATION DEADLINE: 4:00 PM ON SEPTEMBER 25, 2023.**

**[WWW.KITTERYME.GOV/URBANPLANWORKSHOP](http://WWW.KITTERYME.GOV/URBANPLANWORKSHOP)**

**SCAN ME**



The Town of Kittery has begun examining its zoning standards in areas throughout town and is preparing for an update to the town's Comprehensive Plan in 2025. Demographic trends, post-pandemic migration and employment patterns, economic uncertainty, climate change, and high housing costs make land use and planning decisions more important and more uncertain than ever.

Like people in many places, Kittery's residents, businesspeople, and visitors are grappling with these issues, trying to make decisions today that will ensure the best possible outcomes for tomorrow. To inform and assist community members as they navigate these important decisions, the Town of Kittery is excited to offer an opportunity to learn the ins and outs of the planning and development process first-hand, at the Citizen Planner Academy Workshop.

Hosted by the Kittery Housing Committee, in partnership with the Urban Land Institute, the interactive, half-day Citizen Planner Academy Workshop will take place on Saturday, October 21, 2023, from 10:00 AM to 4:00 PM at the Kittery Community Center, located at 120 Rogers Road in Kittery. The Citizen Planner Academy is FREE, but space is limited and registration is required.

### **About the Workshop**

The Town of Kittery's Citizen Planner Academy Workshop provides a realistic role-playing exercise where participants can learn about the fundamental forces that affect development in our communities. Participants will have an opportunity to experience challenging issues, private and public sector roles, complex trade-offs and fundamental economics in play when proposing realistic land use solutions.

No experience in land use or development fields is required to participate in the workshop, but a commitment to community engagement and interest in Kittery's future is strongly encouraged.

### **Attending the Workshop**

If you're a Kittery resident or businessperson who is interested in participating in this free workshop, please complete the Town of Kittery Citizen Planner Academy Workshop application by clicking [here](#).

**The deadline to submit applications is 4:00 PM on Monday, October 2, 2023.**

If you have questions or would like additional information about the Citizen Planner Academy Workshop, please contact Director of Planning and Development, Jason Garnham at 207-475-1307 or [jgarnham@kitteryme.org](mailto:jgarnham@kitteryme.org).

DRAFT



**TOWN OF KITTELY**  
**Office of Planning & Development**  
**200 Rogers Road, Kittery, ME 03904**  
**Telephone: 207-475-1329 Fax: 207-439-6806**

## **Citizen Planner Academy Development & Project Design Workshop Application**

The Kittery Housing Committee invites Kittery residents and business-people to apply to participate in the Citizen Planner Academy Workshop. The workshop provides a realistic, engaging hands-on exercise in which participants learn about the fundamental forces that affect development in our communities. Participants will role-play as a team tasked with designing a project in a hypothetical, but realistic scenario that is facilitated by volunteers who are experts in real estate development and finance in the region.

No experience in land use or development fields is required but a commitment to community engagement and an interest in Kittery's future is strongly desired. This workshop is free to participants, but space is limited.

**Applications must be received by 4:00 PM on Monday, September 25, 2023.**

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**Name:**

**Street Address:**

**Phone Number:**

**Email Address:**

**Occupation:**

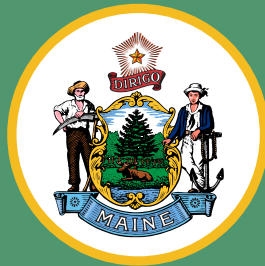
**Statement of Interest:**

**The Citizen Planner Academy Workshop is an in-person workshop and space is limited. Are you available to attend in-person on Saturday, October 21, 2023?**

**Yes**

**No**

# LD 2003 Guidance



MAINE DEPARTMENT OF  
ECONOMIC AND COMMUNITY  
DEVELOPMENT

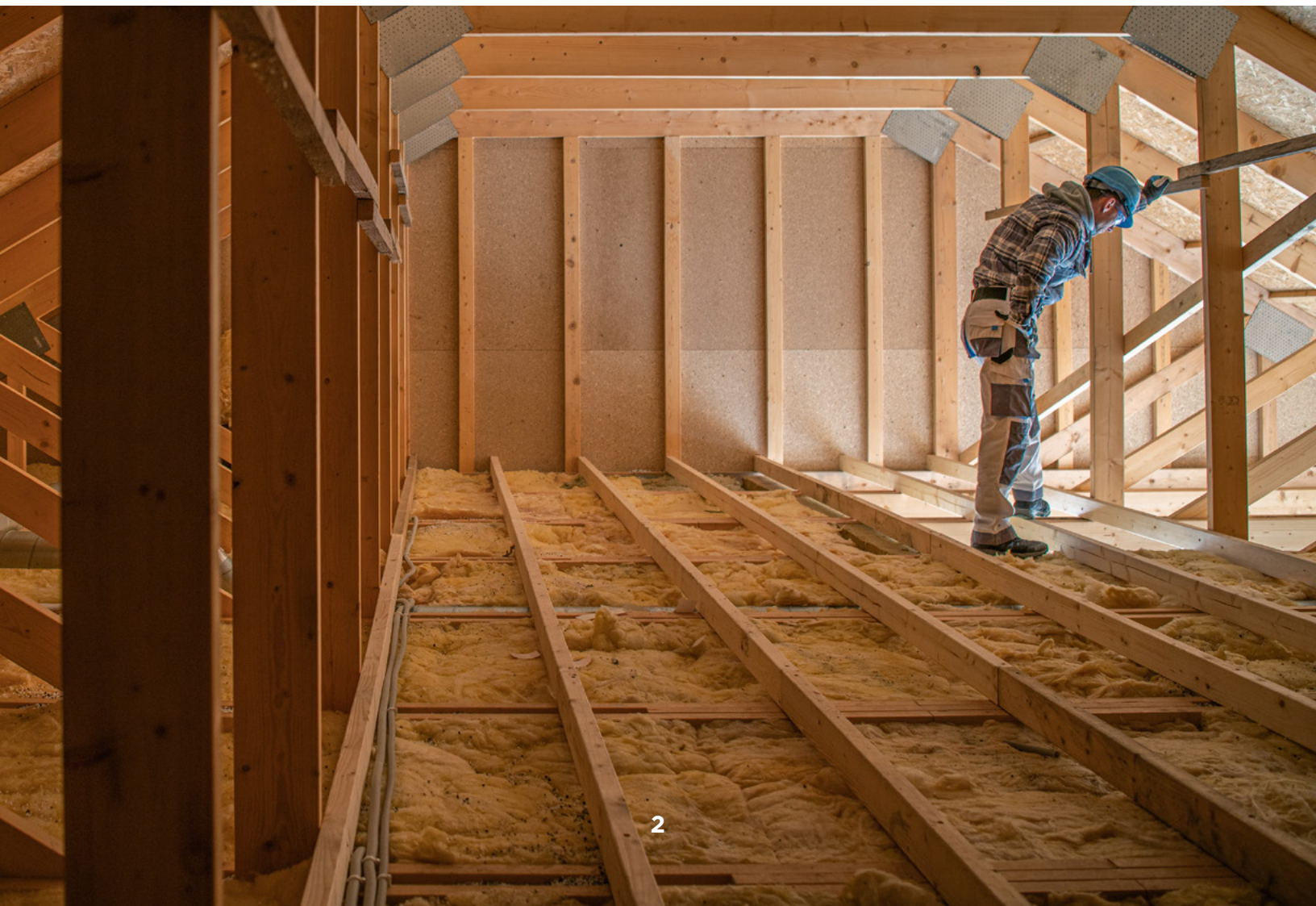
# LD 2003 Guidance

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“An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions,” generally referred to by its legislative tracking name of LD 2003, was signed into law by Governor Mills on April 27, 2022. 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. LD 2003 is based on the recommendations of the legislative commission named in the title, though not all those recommendations are included in the enacted legislation.

This guidance is the result of a collaborative effort by the Department of Economic and Community Development, the Governor’s Office of Policy Innovation and the Future, the Department of Agriculture, Conservation and Forestry; legislative staff, and several municipal lawyers and community planners. It is intended to provide information for local authorities to use in determining how LD 2003 affects their local zoning and land use codes, as well as what steps they can take if they wish to tailor their ordinances to avoid conflicts with state laws. While it is not legally binding or intended to serve as a substitute for the language of LD 2003 or the rules that will be adopted under the law, this guidance represents the interpretation of LD 2003 and its requirements by the state agencies that are responsible for its implementation.





LD 2003 has the following sections that are relevant to municipal government. The amended sections of state law are shown in the chart below. Among other things:

1. Section 4 allows for additional density for “affordable housing developments” in certain areas.
2. Section 5 generally requires that municipalities allow between two and four housing units per lot where housing is permitted.
3. Section 6 requires that municipalities allow accessory dwelling units to be located on the same lot as a single-family home, under certain conditions.
4. Sections 3 and 7 require that the state establish statewide and regional housing production goals and set forth ways in which local governments can coordinate with that goal.

**WHILE LD 2003 WENT INTO EFFECT ON AUGUST 8, 2022, SOME ELEMENTS OF THE LAW ARE NOT REQUIRED TO BE APPLIED UNTIL JULY 1, 2023**

LD 2003 in Brief			
<p>Effective Aug. 8, 2022</p> <p><b>Statewide Housing Production Goals</b></p> <p>(5 MRSA §13056, sub-§9)</p>	<p>Effective Aug. 8, 2022</p> <p><b>Municipal Role in Fair Housing/ Short Term Rentals</b></p> <p>(7 30-A MRSA §4364-C)</p>	<p>Effective July 1, 2023</p> <p><b>Accessory Dwelling Units</b></p> <p>(6 30 A MRSA §4364-B)</p>	
	<p>Effective July 1, 2023</p> <p><b>Affordable Housing Density in Growth Areas Bonus</b></p> <p>(4 30-A MRSA §4364)</p>	<p>Effective July 1, 2023</p> <p><b>Two to Four Units</b></p> <p>(5 30-A MRSA §4364-A)</p>	

## **IN GENERAL, AS LONG AS THESE ACTIONS ARE CONSISTENT WITH LD 2003, MUNICIPALITIES MAY:**

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**CONTINUE** to develop Growth Management programs, including comprehensive plans and zoning consistent with those plans

**ENFORCE** local shoreland zoning ordinances consistent with state shoreland zoning law

**REGULATE** how many square feet of land are needed for each dwelling unit (other than accessory dwelling units)

**CONDUCT** site plan review, if authorized by local ordinances, of any residential development

**REGULATE** the maximum size of accessory dwelling units

**REGULATE** short-term rentals in their community

**CREATE** rate of growth ordinances so long as they do not limit the number of accessory dwelling units outlined in Section 6

**CREATE** local ordinances that are more permissive for residential housing development than the requirements of LD 2003

**REGULATE** housing development based on documented water and wastewater capacity constraints

## **IN GENERAL, UNDER THIS LAW, LOCAL GOVERNMENTS MAY NOT:**

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**ENACT** local ordinances that allow housing but limit it to one unit per lot

**PROHIBIT** one accessory dwelling unit per lot or count those units towards a rate of growth ordinance

**LIMIT** the affordable housing density bonuses allowed in LD 2003 in growth areas as defined in state law



# Affordable Housing Density Bonus

## 30-A MRSA §4364

This section creates an automatic density bonus for certain affordable housing developments. To qualify for this bonus, the development must:

1. Be approved after June 30, 2023
2. Include a certain number of rent or sales price restricted affordable housing units
3. Be in a growth area under section 4349-A, subsection 1, paragraph A or B, or served by water and sewer
4. Be in an area in which multifamily dwellings are allowed
5. Meet shoreland zoning requirements, meet minimum lot sizes if using subsurface waste disposal, and verify that water and sewer capacity is adequate for the development

### **BONUSES FOR AN AFFORDABLE HOUSING DEVELOPMENT**

To take advantage of this density bonus, a development must qualify as “affordable” (as defined below). If eligible, the affordable housing development qualifies for the following exceptions to the zoning requirements in the community:

1. The number of units allowed will be 2.5 times the number allowed for a development not designated affordable
2. The off-street parking requirements may not exceed two spaces for every three units

So, for example, if a developer can build up to six units on a site under local rules, and designates the development as affordable, the developer would be eligible to build 15 units ( $6 \times 2.5$ ). The local off-street parking requirement for this development could not exceed ten spaces ( $15 \times \frac{2}{3}$ ). In cases of fractional results, the number of units would generally be rounded down, but the number of spaces would generally be rounded up.



## **WHAT REQUIREMENTS DO AFFORDABLE HOUSING DEVELOPMENTS HAVE TO MEET TO RECEIVE THE DENSITY BONUS??**

For rentals, a household with an income at no more than 80% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford more than half of the units in the development. That means that rent and certain other housing expenses will not require more than 30% of the household's income.

For homeownership projects, a household with an income at no more than 120% of the area median income for the community, as defined by the U.S. Department of Housing & Urban Development, must be able to afford more than half of the units in the development. That means that mortgage payments (including mortgage insurance) and certain other housing expenses will not require more than 30% of the household's income.

The units that will be affordable at these levels must be restricted through a restrictive covenant that is enforceable by a party acceptable to the municipality (which could be the municipality) for at least 30 years, and that states that the units must be restricted in rent or sales prices accordingly. Often these developments will be getting funding through MaineHousing, which typically requires a comparable covenant.

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Information on Area Median Incomes is updated annually by the U.S. Department of Housing & Urban Development. For reference, MaineHousing maintains updated 80% of area median income and 120% of area median income data on their website.

[View AMI data on MaineHousing.org](https://www.mainehousing.org)

# QUESTIONS AND ANSWERS ON AFFORDABLE HOUSING DENSITY BONUS

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## What is meant by “multifamily dwellings?”

“Multifamily dwellings” will be defined in rulemaking, but in planning practice generally applies to three units or more.

## What is a “base density that is otherwise allowed?”

Under a local zoning code, the “base density that is otherwise allowed” is the number of dwelling units that might be allowed in a list of uses, and/or the maximum number of units allowed based on dimensional requirements, such as lot area per dwelling unit.

## If lot area per dwelling unit can be used as a measure of number of units permitted, do the limits on lot area per dwelling unit requirements in Section 5 apply?

This will be addressed in rulemaking.

## How does this density bonus interact with any local density bonus that might exist?

This will be addressed in rulemaking.

## What if a household exceeds the maximum income after living in the unit?

LD 2003 specifies that the income eligibility is based on household income “at the time of initial occupancy,” meaning that a household could be allowed to remain in an “affordable” unit if their income goes up after they occupy the unit. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally. The restrictive covenants should outline how this would work.

## What happens when a restricted affordable home ownership unit is sold?

The restrictive covenants should outline how this would work. MaineHousing has experience with this issue, as do communities that manage their own affordable housing programs, so there may be best practices that can be adopted locally.



# Residential Areas, Generally; Up to 4 Dwelling Units

## 30-A MRSA §4364-A

This section requires municipalities to allow multiple dwelling units on parcels where housing is allowed, provided evidence of sufficient water and wastewater capacity exists, beginning on July 1, 2023. Municipalities may not apply different dimensional requirements to lots with more than one housing unit on them than they would to a lot with one housing unit, with the exception that they may require a minimum lot area per dwelling unit. However, if the municipality chooses to require a minimum lot area per dwelling unit, the lot area required may not be less for the first unit than for subsequent units.

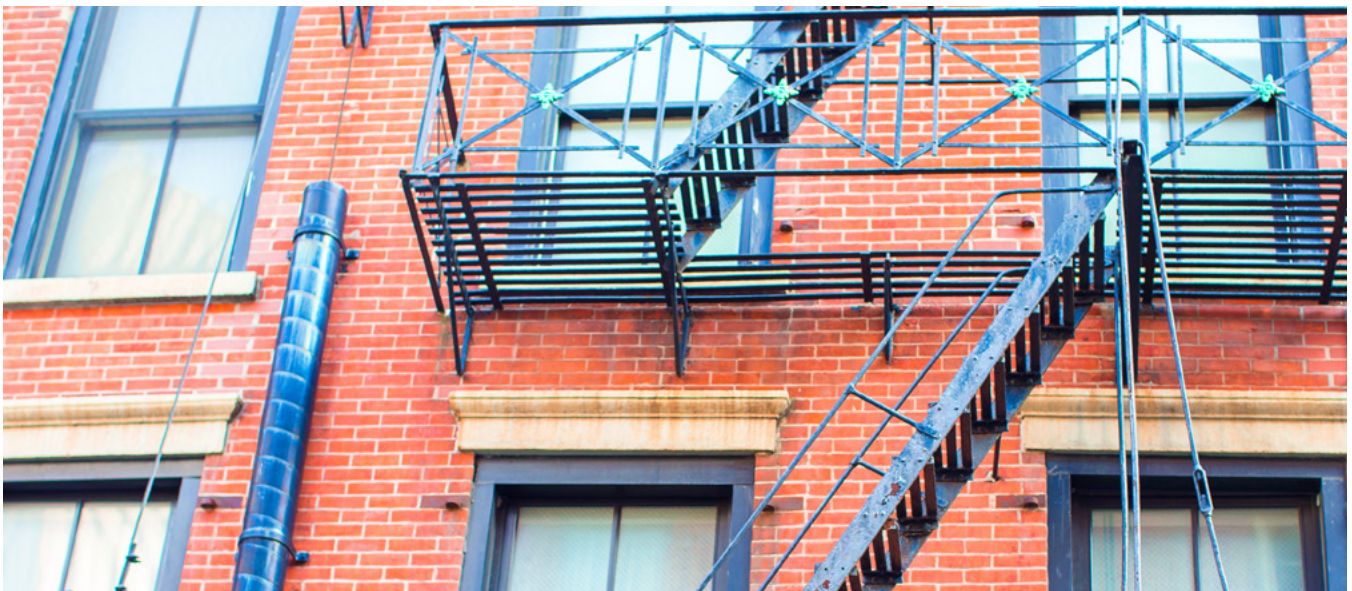
The number of units allowed under this section depends on a few factors:

- A lot without a dwelling unit already on it can have two units if it is not within a designated growth area under section 4349-A, subsection 1, paragraph A or B, served by water system and sewer in a municipality without a comprehensive plan.
- A lot with an existing dwelling unit may have up to two additional dwelling units, either one additional attached dwelling unit, one additional detached dwelling unit, or one of each.

- A lot without a dwelling unit already on it can have four units if it is either:
  - Within a designated growth area under section 4349-A, subsection 1, paragraph A or B, or
  - Served by water system and sewer in a municipality without a comprehensive plan.

Municipalities may allow more than the minimum number required to be allowed on all lots that allow housing, if they wish. In addition, private parties are permitted to restrict the number of housing units on a lot in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

Finally, a municipality may determine in local ordinance that if a property owner tears down an existing dwelling unit, the lot may be treated under this section as if the dwelling unit were still in existence.



# Lot Area per Dwelling Unit

Additional units may not require more land area per unit than the first unit

## NOT PERMITTED



One Unit Requires  
10,000 sq ft



Two Units Require  
30,000 sq ft



Three Units Require  
50,000 sq ft

## PERMITTED



One Unit  
Requires  
10,000 sq ft



Two Units  
May Require Up  
To 20,000 sq ft



Three Units  
May Require Up  
To 30,000 sq ft

# QUESTIONS AND ANSWERS ON RESIDENTIAL AREAS, GENERALLY UP TO 4 DWELLING UNITS

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**Subsection 2 (“Zoning Requirements”) says that municipal zoning ordinances “must” comply with certain conditions, but subsection B. says that they “may” regulate how this section applies to a lot where a dwelling unit is torn down. Is this a “must” or a “may”?**

Municipalities have the option of taking the actions in subsection B but do not have to do so, in which case a lot where a dwelling unit was torn down would be viewed as a vacant lot.

**Subsection 4 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?**

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

**What if a municipality does not use Certificates of Occupancy?**

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing.

**What is meant by “potable” water?**

This will be addressed in rulemaking.

**What if housing is allowed in an area but only as a conditional use?**

Housing would be considered allowed in that area for the purposes of subsection 1. This will be further addressed in rulemaking.

**What does “attached to an existing structure” mean?**

Local ordinance can define “attached” but it would generally mean having physically connected finished spaces, not just connected via a common porch, breezeway or foundation.

**Does the language in subsection 1 mean that if a lot is served by water and sewer in a municipality without a comprehensive plan that it does not need to be vacant to allow up to 4 units?**

No, that language still requires the lot not “contain an existing dwelling unit.”



# Residential Areas

## Empty Lot Where Housing Is Already Allowed

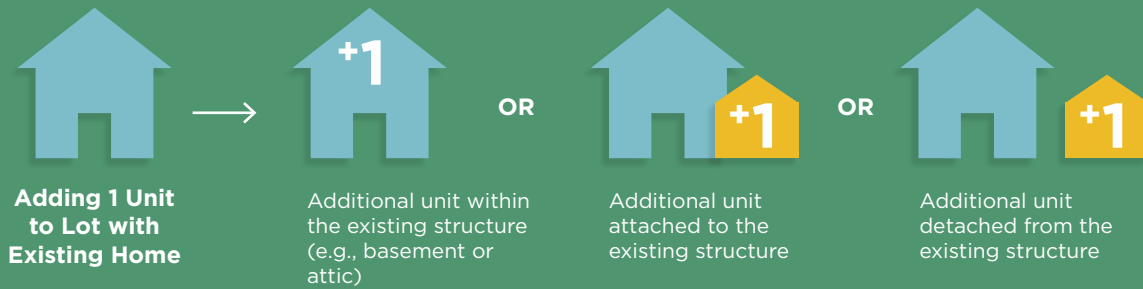


**NOTE:** The three and four units can be within one structure or multiple structures.

**THREE AND FOUR UNITS ALLOWED IF:**

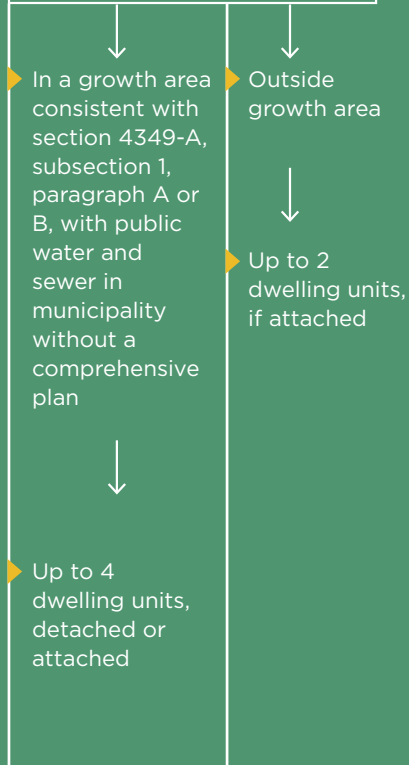
- Located in "growth area" consistent with section 4349-A, subsection 1, paragraph A or B.
- Located in area with existing water/sewer capabilities in towns without comprehensive plans.

## Existing Home



## What Can Be Built On This Lot?

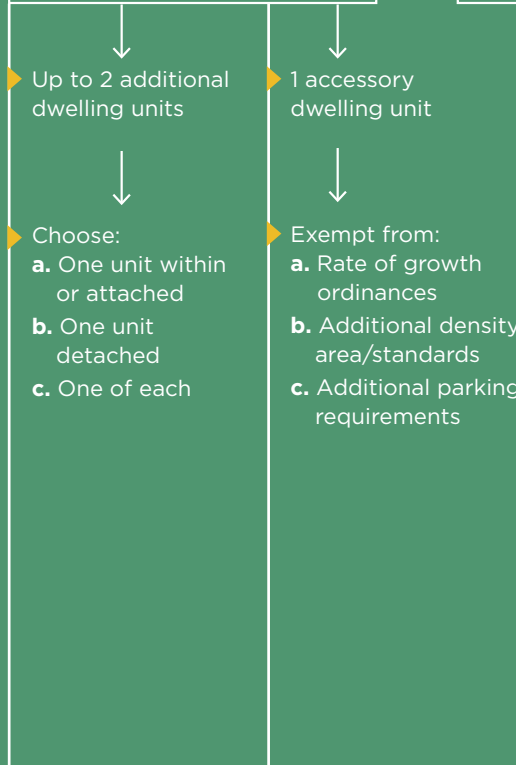
### ON LAND WITH ZERO EXISTING UNITS



#### PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size, set back, density (not greater than single family)
- Septic requirements
- Minimum Lot Size
- Additional Parking requirement
- Growth ordinance permits
- Shoreland Zoning
- Subdivision Law

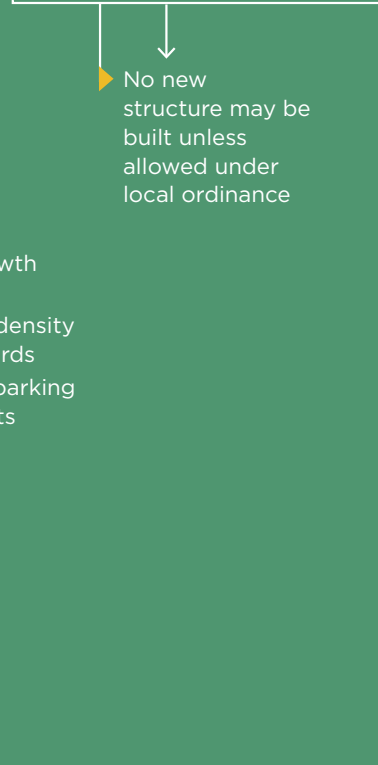
### ON LAND WITH ONE EXISTING UNIT



#### PRIVATE, STATE OR LOCAL STANDARDS SUCH AS THESE MAY APPLY:

- Home Owners Association regulations
- Deed restrictions
- Lot size or set back requirements (not greater than single family/existing accessory structure)
- Septic requirements
- Shoreland Zoning
- Other locally determined ADU standards (e.g. maximum size, rules regarding short term rental, etc.)

### ON LAND WITH TWO EXISTING UNITS





# Accessory Dwelling Units

## 30-A MRSA §4364-B

This section essentially allows any lot with a single-family dwelling in an area where housing is permitted to have one accessory dwelling unit (ADU) as well, effective July 1, 2023. That ADU can be within the existing home, attached to it, or in a new structure. Municipalities may also allow existing accessory structures to be converted into an ADU.

An ADU allowed under this law is exempt from zoning density requirements. In reviewing an ADU, the setback and dimensional requirements for a single-family home continue to apply unless the municipality makes them more permissive for an ADU. For ADUs in an accessory structure, the setback and dimensional requirements for such a structure apply.

### **ACCESSORY DWELLING UNIT PARKING**

Additional parking requirements for the ADU beyond those required for the single-family dwelling are not permitted.

### **ACCESSORY DWELLING UNIT SIZE**

ADUs must be at least 190 square feet in size. Municipalities may set a maximum size for ADUs in local ordinance.

### **OTHER MUNICIPAL POWERS**

Municipalities may establish an application and permitting process for ADUs provided it is consistent with in this section. Municipalities may also define ADUs, as long as the definition is consistent with state law in Title 30-A, §4301. 1-C. In addition, municipalities may establish requirements for ADUs that are less restrictive than those in this section, such as allowing more than one ADU on a lot or allowing an ADU for two-family or multifamily dwellings.

## **SIMILARITIES AND DIFFERENCES FROM OTHER SECTIONS**

**LIKE SECTIONS 4 AND 5**, shoreland zoning still applies, as do requirements to verify adequate water and wastewater capacity.

**LIKE SECTION 5**, private parties are permitted to restrict the number of housing units on a lot, including ADUs, in a private easement, covenant, deed restriction or other agreement provided the agreement does not violate State or Federal rights such as equal protection.

**UNLIKE SECTION 5**, one ADU for each single-family dwelling does not count towards any rate of growth ordinance as described in §4360.

**UNLIKE SECTIONS 4 & 5**, additional parking cannot be required for an ADU.

# QUESTIONS AND ANSWERS ON ACCESSORY DWELLING UNITS

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## How is an ADU defined?

The law does not define ADUs. There is a definition in 30-A MRSA §4301 and many communities define them in local ordinances. Rulemaking will clarify which definition to use.

## Can an ADU be larger than a primary structure?

Yes, unless the municipality limits the maximum size of an ADU.

## Can a previously illegal ADU be legalized under this section?

This will be addressed in rulemaking.

## If a pre-existing single-family dwelling is on a non-conforming lot (with respect to size, frontage, or similar characteristics) can an ADU be built on that lot?

This will be addressed in rulemaking.

## Subsection 7 says that verification must be provided to “the municipality” of water and wastewater services. Who should that verification be provided to?

These capacity issues should be reviewed by the municipal staff or board that would normally review these issues as part of any housing development.

## What if a community does not use Certificates of Occupancy?

Subsection 4 says that the municipality will “certify [a] structure for occupancy.” This requirement should be met for new housing developments under this section the same way they would be for any other housing, whether through a formal Certificate of Occupancy or otherwise.

## What is meant by “potable” water?

This will be addressed in rulemaking.

## What if housing is allowed in an area but only as a conditional use?

Housing would be considered allowed in that area for the purposes of subsection 1. This will be further addressed in rulemaking.

## What does “attached to an existing structure” mean?

Local ordinance can define “attached” but it would generally mean having physically connected finished spaces, not just connected via a common porch, breezeway or foundation.

## If a parcel has an existing two-unit structure, does subsection 1 allow an ADU to be built?

No, though a municipality would have the ability to allow that.



# Parking for ADUs

## Example Parking Requirement

### NOT PERMITTED



Single Family Home  
2 spaces minimum



Single Family Home + ADU  
3 spaces minimum



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### PERMITTED



Single Family Home  
2 spaces minimum



Single Family Home + ADU  
2 spaces minimum



This example applies to towns with minimum parking requirements.  
For towns without parking restrictions, no additional restrictions would be imposed.

# Housing Goals & Fair Housing

MRSA §13056, sub-§9 AND 30-A MRSA §4364-C

Section 3 directs the Department of Economic & Community Development, in coordination with Maine-Housing, to develop a statewide housing production goal and regional production goals based on that statewide goal. In doing so, the section instructs the Department to set benchmarks for meeting those goals, as well as to consider information provided by municipalities on current and potential housing development and permits.

Section 7 outlines ways municipalities can play a role in achieving those state and regional goals. It states that municipalities must ensure that local ordinances and regulations are designed to affirmatively further the purposes of the Federal Fair Housing Act, as well as the Maine Human Rights Act, as part of meeting the housing goals. It also explicitly authorizes municipalities to establish and enforce regulations related to short-term rentals to help meet those goals.

## QUESTIONS AND ANSWERS ON SECTIONS 3 & 7

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### What obligations do the affirmatively furthering fair housing provisions put on municipalities that didn't already exist before LD 2003 passed?

Until recently, the link between land use regulation and fair housing was often not recognized. Section 7 clarifies that municipalities must ensure that zoning and land use ordinances and regulations are designed to affirmatively further the purposes of these state and federal laws.

### What happens if local, regional or statewide housing goals are not met?

These sections do not set forth any specific penalties for not meeting these goals.

### How does this relate to local Growth Management programs and comprehensive plans?

Local comprehensive plans, while not regulatory documents, should not conflict with these sections. The regulations for comprehensive plans under Chapter 208 state that communities should “[s]eek to achieve a level of at least 10% of new residential development built or placed during the next decade be affordable.”

### Do municipalities have to regulate short term rentals?

No.



## GENERAL QUESTIONS

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### **What happens if a municipality does not act to update local ordinances, or tries to act and the updates are not approved by the local legislative body?**

LD 2003 is an express preemption on municipal home rule authority. Therefore, any ordinance or regulation that is not consistent with the law may be challenged as invalid. Municipalities are encouraged to contact legal counsel to discuss how the law will affect the enforcement of existing ordinances and regulations.

### **If a town does not have growth areas as defined by section 4349-A, subsection 1, paragraph A or B, and does not have any areas served by water or sewer, does it need to comply with LD 2003?**

These communities would not be subject to the affordable housing density provisions in Section 4, and would not have areas that are required to allow up to four units on a residential lot as per Section 5. Other sections of LD 2003 would apply.

### **How will LD 2003's requirements be related to municipal comprehensive plans?**

Comprehensive plans seeking a finding of consistency under the regulations in Chapter 208 should meet those requirements. Since a comprehensive plan is not a regulatory document, LD 2003 would not create any additional requirements. However, zoning ordinances adopted in a municipality would have to be consistent with both a local comprehensive plan and LD 2003.

### **Is LD 2003 a model ordinance for use in local zoning?**

LD 2003 is not a model ordinance. Communities will be able to seek funding from the Housing Opportunity Program to develop new ordinances. In addition, the Department of Economic & Community Development will be hiring staff to provide technical assistance to communities.

### **Can developers “double count” bonuses from various sections?**

This issue is outlined in §4364-A Section 2.A. and §4364-B Section 3.B. It will be further addressed for applicability to §4364 in rulemaking.

### **Sections 4, 5, and 6 require written verification of “adequate water and wastewater services.” What about a municipal concern that while a specific housing development may not immediately threaten water quality, the cumulative impact of new development may do so in a way that it did not prior to LD 2003?**

As was true prior to the passage of LD 2003, communities are free to take regulatory actions as appropriate for protection of natural resources or existing water systems. These can include changes to zoning districts to limit where housing is permitted; changes to lot size requirements; or the creation of an impact fee system consistent with state law to fund environmental or water quality protection.

### **What does section 4349-A, subsection 1, paragraph A or B say?**

It directs the State to make growth-related capital investments only in:

*A. A locally designated growth area, as identified in a comprehensive plan adopted pursuant to and consistent with the procedures, goals and guidelines of this subchapter or as identified in a growth management program certified under section 4347A;*

or

*B. In the absence of a consistent comprehensive plan, an area served by a public sewer system that has the capacity for the growth-related project, an area identified in the latest Federal Decennial Census as a census-designated place or a compact area of an urban compact municipality as defined by Title 23, section 754; or [PL 1999, c. 776, §10 (NEW).]*

Growth areas are defined in section 4301, subsection 6-C as:

*An area that is designated in a municipality’s or multi-municipal region’s comprehensive plan as suitable for orderly residential, commercial or industrial development, or any combinations of those types of development, and into which most development projected over 10 years is directed.*



### **RULEMAKING PROCESSES**

Sections 4, 5 and 6 authorize rulemaking to be led by the Department of Economic & Community Development, in consultation with the Department of Agriculture, Conservation & Forestry. These rules are considered “technical” – meaning they “establish standards of practice or procedure for the conduct of business with or before an agency” and can be approved administratively. Rulemaking is expected to begin in the fall of 2022.

### **FUNDING FOR TECHNICAL ASSISTANCE**

While not part of LD 2003, the supplemental budget for Fiscal Years 2022 and 2023 included Section U-1. 5 MRSA §13056-J, providing funding for a new “Housing Opportunity Program.” That program will “encourage and support the development of additional housing units in Maine, including housing units that are affordable for low and moderate income people and housing units targeted to community workforce housing needs” by supporting “regional approaches, municipal model ordinance development, and ... policy that supports increased housing density where feasible to protect working and natural lands.”

The Housing Opportunity Program will consist of three general areas. “Service Provider grants” will be awarded to experienced service providers to support municipal ordinance development, technical assistance, and public process and community engagement support, and may encourage regional coordination. Community Housing Incentive Program grants will be funded to municipalities directly in two categories:

- Community housing planning grants to be awarded through a competitive process to municipalities to support the creation of housing development plans, and ordinance and policy amendments to support those plans. The grants will be awarded for a period of up to three years, with progress reports each year.
- Community housing implementation grants to be awarded through a competitive process to support the implementation of community housing priorities.

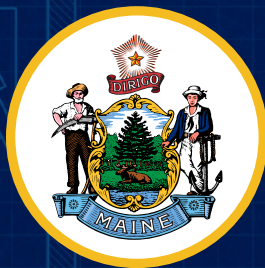
Finally, the Department of Economic and Community Development will be adding staff to provide direct technical assistance to communities.

The Housing Opportunity Program is currently undergoing internal development and is expected to be launched in the coming months.

**Still have questions?  
Need more information?**



**VISIT: [MAINE.GOV/DECD/HOUSING-LEGISLATION](https://www.maine.gov/decd/housing-legislation)**



**MAINE DEPARTMENT OF  
ECONOMIC AND COMMUNITY  
DEVELOPMENT**





## **LD-2003 related amendments to Kittery's Land Use and Development Code (Title 16)**

*LD-2003 is a three-part ordinance. The first part deals with affordable housing and the associated density bonus, the second part focuses on allowing more density where housing is currently allowed in zoning districts (affordability not a requirement) and the third part addresses Accessory Dwelling Units (ADUs), requiring that all communities allow them without adherence to land area per dwelling unit requirements and parking requirements.*

Part 1. According to LD-2003, to utilize the 2.5x affordable housing density bonus, the development must:

- designate greater than 50% of the dwelling units proposed as affordable (defined as below 80% AMI for rental and 120% AMI for owned)
- be zoned for multifamily as of July 1, 2023
- be in a growth area as defined by a community's comprehensive plan or be zoned for public utilities, special utility district etc.
- meet the State's minimum lot size requirements (basically 20,000 sf for septic)
- meet water and wastewater verification requirements
- meet the long-term affordability requirements

1. Growth areas as identified by Kittery's Comprehensive Plan's Future Land Use Map
  - a. Business-Local Zone (B-L)
  - b. Business-Local-1 Zone (B-L1)
  - c. Business-Park Zone (B-PK, formerly MU-N, Neighborhood Mixed-Use Zone)
  - d. Commercial-1 Zone (C-1)
  - e. Commercial-2 Zone (C-2)
  - f. Commercial-3 Zone (C-3)
  - g. Mixed-Use (MU-BI)
  - h. Mixed-Use Zone (M-U)
  - i. Residential-Rural (R-RL – but only a small portion between Rt 236 and Wilson Road)
  - j. Residential-Suburban (R-S)
  - k. Residential-Urban (R-U)
2. Of those zones, only these allow multifamily currently:
  - a. Business-Local Zone (B-L)
  - b. Business-Local-1 Zone (B-L1)
  - c. Commercial-1 Zone (C-1)
  - d. Commercial-3 Zone (C-3)
  - e. Mixed-Use Zone (M-U)
  - f. Residential-Suburban (R-S)
  - g. Residential-Urban (R-U)

Part 2. According to LD-2003's dwelling unit allowance section, a municipality must allow:

1. 4 dwelling units per undeveloped lot if the lot is in a zone that allows housing and is in a growth area as defined by a community's comprehensive plan or served by public utilities, special utility district etc.
2. 2 dwelling units per undeveloped lot if the lot doesn't meet the requirements of #1 above, but the lot is in a zone that allows housing and the lot meets the State lot size requirements (20,000 sf for septic)
3. Two additional dwelling units if a lot already has one dwelling unit.

No more restrictive setbacks than those for a single-family dwelling are allowed and the land area per dwelling unit may not be more than that for a single-family dwelling unit. There are also sewer/septic and drinking water verification requirements. Affordability as defined by LD-2003 is not a requirement.

4. The following zones allow housing and are in the growth area as defined by the Town's comprehensive plan:
  - a. Business-Local Zone (B-L) \*
  - b. Business-Local-1 Zone (B-L1) \*
  - c. Business Park Zone (B-PK, formerly MU-N, Neighborhood Mixed-Use)\*
  - d. Commercial-1 Zone (C-1) \*
  - e. Commercial-3 Zone (C-3) \*
  - f. Mixed-Use Zone (M-U) \*
  - g. Residential-Rural Zone (R-RL) (only portion between Rt 236 and Wilson Road)
  - h. Residential-Suburban Zone (R-S) \*
  - i. Residential-Urban Zone (R-U) \*

\*All or part of the zone has public utilities or access to them

5. These zones also allow housing but are not in the growth area designated by the comprehensive plan:
  - a. Mixed-Use-Kittery Foreside (MU-KF)
  - b. Residential-Kittery Point Village Zone (R-KPV)
  - c. Residential-Rural (R-RL, the majority of it)
  - d. Residential-Rural Conservation Zone (R-RC)
  - e. Residential-Village Zone (R-V)

Of these zones, the Residential-Village Zone (R-V) and the Mixed-Use-Kittery Foreside (MU-KF) have public water and sewer. These two zones have few, if any, undeveloped lots so the 2 units per lot with an existing residence would apply, provided other requirements are met.

The Residential-Kittery Point Village Zone (R-KPV) and the Residential-Rural Conservation Zone (R-RC) have no sewer but do have public water for the most part, while the R-RL zone has limited public water and no sewer. There are undeveloped (vacant) lots in all three of these zones so the two units per vacant lot would apply. For lots that have an existing residence, the two additional units per lot would apply provided other requirements are met.

Part 3. According to LD-2003, Accessory Dwelling Units (ADUs) must be allowed in all zones where housing is allowed.

It appears that Kittery's ADU ordinance is nearly in full compliance with this portion of LD-2003 except for parking.

***Conclusion: LD-2003's affordable housing and/or density allowances apply to 14 of Kittery's 18 zoning districts because they include housing as a permitted use. The ADU provisions in LD-2003 apply to those 14 zones as well as the C-2 zone that doesn't allow new housing because there are existing "grandfathered" dwelling units in that zone.***

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**TITLE 16**  
**AMENDMENTS TO CONFORM WITH LD 2003:**  
**AN ACT TO IMPLEMENT THE RECOMMENDATIONS OF THE COMMISSION**  
**TO INCREASE HOUSING OPPORTUNITIES IN MAINE**

1. **AMEND § 16.3.2 Definitions as follows:**

~~**DWELLING, ATTACHED SINGLE-FAMILY**~~

~~A dwelling unit, located on its own lot that shares one or more common or abutting walls with one or more dwelling units. The common or abutting wall must be shared for at least 25% of the length of the side of the dwelling.~~

**DWELLING, MULTIFAMILY**

A structure that contains ~~three~~ **five** or more dwelling units that share common walls or floors/ceilings with one or more units. The land underneath the structure is not divided into separate lots.

**DWELLINGS, MULTIFAMILY 2-4 (“Limited”)**

**A residential development comprised of 2, 3, or 4 primary units on the same lot that are attached within the same structure or detached in separate structures in any combination.**

**LOT AREA**

The area of land enclosed within the boundary lines of a lot, minus:

- A. Land below the normal high-water line of a water body or upland edge of a coastal wetland;
- B. Areas beneath Planning-Board-approved right-of-way; and
- C. Land within public street rights-of-way.

**LOT AREA PER DWELLING UNIT**

**The number of dwelling units in a development per lot area as defined in this code. Calculations which result in a fraction of .5 or greater shall be rounded up to the nearest whole number. Calculations which result in a fraction less than 0.5 shall be rounded down.**

~~**MINIMUM LAND AREA PER DWELLING UNIT**~~

~~The gross area of a parcel not subject to subdivision regulations minus the land area listed below. Where land areas to be subtracted overlap, the area therein shall be subtracted once. For land area subject to subdivision, see "net residential acreage."~~

- ~~A. All land located below the highest annual tide elevation as published in the Maine DEP Highest Annual Tide (HAT) levels for the most current year.~~
- ~~B. All wetlands as defined in the definition of "wetland," as well as vernal pools, ponds, streams and other water bodies.~~

- 40 C. ~~All land located on filled tidal lands, per the definition of "tidal land, filled."~~
- 41 D. ~~All land located within existing rights of way and other existing easements wherein~~
- 42 ~~dwelling units cannot be built.~~

43 **NET RESIDENTIAL ACREAGE**

44 The total area of the parcel(s) of record subject to development land area subject to

45 subdivision that is identified for regulatory purposes as developable and is the gross

46 available acreage minus land area identified in § 16.5.18, Net residential acreage, unless

47 otherwise exempt in § 16.5.18D, Exemptions to net residential acreage calculations.

48 **NET RESIDENTIAL DENSITY**

49 The number of dwelling units in a subdivision development per net residential acre.

50 This is calculated by dividing the net residential acreage by the square feet specified as

51 minimum land area per dwelling unit in the dimensional standards in § 16.4 for the

52 relevant base zone or overlay zone(s) where applicable. Net residential density

53 calculations which result in a fraction shall be rounded down to the nearest whole

54 number.

55 **2. Amend § 16.4.10 Residential — Rural (R-RL) zoning as follows:**

56 B. Permitted uses. The following uses are permitted in the R-RL Zone:

- 57 (1) Accessory dwelling unit.
- 58 (2) Conservation subdivision. [Amended 10-24-2022]
- 59 (3) Dwelling, manufactured housing.
- 60 (4) Dwelling, single-family.
- 61 (5) **Dwelling, multifamily 2-4 “Limited”, as follows:**

	<u>Total maximum # of units allowed on lot (attached or detached)</u>	
<u># of Existing Units</u>	<u>Public Sewer and Water Available</u>	<u>Public sewer and water not available</u>
<u>0</u>	<u>4</u>	<u>2</u>
<u>1</u>	<u>3</u>	<u>3</u>
<u>2</u>	<u>2</u>	<u>2</u>

62

63 E. Shoreland Overlay Zone OZ-SL — Residential — Rural Zone (R-RL).

- 64 (1) Permitted uses.
  - 65 (a) Accessory buildings, structures, and uses.
  - 66 (b) Agriculture.

67 (c) Dwelling, single family, if located farther than 100 feet from the normal high-  
68 water line of any water bodies, or the upland edge of a wetland individual private  
69 campsite.

70 ~~[1] Dwelling, single family.~~

71

72 **3. Amend § 16.4.11 Residential — Suburban (R-RS) zoning as follows:**

73 B. Permitted uses. The following uses are permitted in the R-S Zone:

74 (1) Accessory dwelling unit.

75 (2) Conservation Subdivision.

76 ~~(3) Dwelling, attached single family.~~

77 (4) Dwelling, multifamily 2-4 “Limited”

78 (5) Dwelling, single-family.

79 ~~(6) Dwelling, two family.~~

80

81 D.Standards. The following standards must be met unless modified per §**16.8.10**,  
82 Conservation Subdivision:

83 (1) Design and performance standards. The design and performance standards of  
84 Chapters **16.5**, **16.7** and **16.8** must be met. The Design Handbook provides examples  
85 of appropriate design for nonresidential and multiunit residential projects.

86 (2) Dimensional standards.

87 (a) Minimum ~~land~~ **Lot** area per dwelling unit (~~note: as per Chapter 16.3 definition~~  
88 ~~of "minimum land area per dwelling unit,"~~ except to exempt properties which  
89 are unable to meet the square feet required for a single-family dwelling unit,  
90 provided the lot was conforming prior to October 25, 2012):

91 [1] Without public sewage disposal: 40,000 square feet.

92 [2] With public sewage disposal: 30,000 square feet unless reduced in  
93 accordance with Note A.

94 [3] When more than 50% of the dwelling units proposed will be  
95 affordable as defined by this Code and have public sewer: 12,000  
96 square feet

97 (b) Minimum lot size:

98 [1] Without public sewage disposal: 40,000 square feet.

99 [2] With public sewage disposal: 30,000 square feet unless reduced in  
100 accordance with Note A.

101 (c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.

102 (d) Minimum front yard: 40 feet.

103 (e) Maximum building coverage: 20%.

104 (f) Minimum rear and side yards: 15 feet.

105 (Note: Buildings higher than 40 actual feet must have side and rear yards not  
106 less than 50% of the building height.)

107 (g) Maximum building height: 35 feet.

108 (Note: Minimum distance between principal buildings on the same lot is the  
109 height equivalent to the taller building.)

- 110 (h) Minimum water body setback for functionally water-dependent uses: zero feet.  
111 (i) Minimum setback from streams, water bodies and wetlands: in accordance with  
112 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

Note A:

The required minimum ~~land~~ **Lot** area per dwelling unit and/or minimum lot size for residential uses that are served by public sewage disposal and that are located outside of areas subject to shoreland zoning may be less than 30,000 square feet per lot/unit if the established average density of development in the immediate area of the use as determined below is less than 30,000 square feet.

If the average of the lot sizes and/or ~~land~~ **Lot** area per dwelling unit of the developed residential lots that are located on the same street and within 500 feet of the parcel is less than 30,000 square feet, the required minimum lot size or required minimum ~~land~~ **Lot** area per dwelling unit is the calculated average lot size or average ~~land~~ **Lot** area per dwelling unit but not less than 20,000 square feet.

If the required minimum lot size is reduced, the required minimum street frontage for new residential uses served by public sewerage may also be reduced to the average of the lot frontage of existing developed residential lots that are located on the same street and within 500 feet of the parcel but in no case to less than 100 feet.

- 113  
114 (3) Subdivision types and standards. ~~Subject to net residential acreage and net~~  
115 ~~residential density per Chapter 16.3.~~

116 (a) Conservation Subdivision. In a conservation subdivision, the above standards  
117 may be modified in accordance with special provisions of §16.8.10, including  
118 that there is no minimum lot size, and with the conditions that:

119 [1] Minimum principal building separation as required by the Fire Chief, but  
120 not less than 15 feet.

121 (b) Subdivision development (per special exception uses, §16.4.11C). In a  
122 subdivision development, standards in §16.4.11D(1) and (2) apply and include:

123 [1] Minimum percentage of common open space: 15%.

124 (4) Mobile homes. Mobile homes must meet the standards of §16.5.17.

125 **(5) Parking. When more than 50% of the dwelling units provided while be**  
126 **affordable as defined by this code: two parking spaces per three dwelling units.**

127 **(6) Affordable housing requirements:**

128 (a) **All requirements in §16.5.4 Affordable Housing must be met.**

129 (b) **Density incentives outlined above in subsection D.(2).(a).[3] may be applied**  
130 **to projects that create affordable housing units, as defined by this code. No**  
131 **proportional payment-in-lieu is required if the affordable dwelling unit**  
132 **requirements for the density incentives are met.**

133

134 E. Shoreland Overlay Zone OZ-SL — Residential — Suburban Zone (R-S).

135 (1) Permitted uses.

- 136 (a) Day-care facility.  
137 (b) Dwellings if located farther than 100 feet from the normal high-water line of any  
138 water bodies, or the upland edge of a wetland.  
139 [1] Dwelling, attached single-family.  
140 [2] Dwelling, multifamily (not more than four units per building).  
141 [3] Dwelling, single-family.  
142 [4] Dwelling, two-family.  
143

144 **4. Amend § 16.4.12 Residential — Kittery Point Village (R-KPV) zoning as follows:**

145 B. Permitted uses. The following uses are permitted in the R-KPV Zone:

- 146 (1) Accessory dwelling units.  
147 (2) Conservation subdivision.  
148 ~~(3) Dwelling, attached single-family.~~  
149 (4) Dwelling, multifamily (not more than four units per building). 2-4 "Limited"  
150 (5) Dwelling, single-family.  
151 ~~(6) Dwelling, two-family.~~  
152

153 D. Standards. The following standards must be met unless modified per § 16.8.10,  
154 Conservation subdivision.

- 155 (1) Design and performance standards in Chapters 16.5, 16.7 and 16.8. The Design  
156 Handbook provides examples of appropriate design for nonresidential and multiunit  
157 residential projects.  
158 (2) Dimensional standards.  
159 (a) Minimum ~~land~~ lot area per dwelling unit: 40,000 square feet. (Note: As per  
160 Chapter 16.3 definition of "minimum land area per dwelling unit," except to  
161 exempt properties which are unable to meet the square feet required for a  
162 single-family dwelling unit, provided the lot was conforming prior to October  
163 25, 2012).  
164 (b) Minimum lot size: 40,000 square feet.  
165 (c) Minimum street frontage: 150 feet unless reduced in accordance with Note A.  
166 (d) Minimum front yard: 40 feet.  
167 (e) Maximum building coverage: 20%.  
168 (f) Minimum rear and side yards: 15 feet. (Note: Buildings higher than 40 actual  
169 feet must have side and rear yards not less than 50% of the building height.)  
170 (g) Maximum building height: 35 feet. (Note: Minimum distance between principal  
171 buildings on the same lot is the height equivalent to the taller building.)  
172 (h) Minimum water body setback for functionally water-dependent uses: zero feet.  
173 (i) Minimum setback from streams, water bodies and wetlands: in accordance with  
174 Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules. Subdivision types  
175 and standards.  
176 ~~(3) Subject to net residential acreage and net residential density per Chapter 16.3.~~



- 177  
178 E. Shoreland Overlay Zone OZ-SL — Residential — Kittery Point Village (R-KPV).  
179 (1) Permitted uses.  
180 (a) Agriculture.  
181 (b) Accessory buildings, structures, and uses.  
182 (c) Day-care facility.  
183 (d) Dwellings if located farther than 100 feet from the normal high-water line of  
184 any water bodies, or the upland edge of a wetland.  
185 [1] Dwelling, attached single-family.  
186 [2] Dwelling, multifamily (not more than four units per building): Two-  
187 family  
188

189 **5. Amend § 16.4.13 Residential — Urban (R-U) zoning as follows:**

190 B. Permitted uses. The following uses are permitted in the R-U Zone:

- 191 (1) Accessory dwelling units.  
192 (2) Conservation subdivision.  
193 ~~(3) Dwelling, attached single family.~~  
194 (4) Dwelling, manufactured housing.  
195 (5) Dwelling, multifamily.  
196 (6) Dwelling, single-family.  
197 (7) Dwelling, ~~two-family.~~ multifamily 2-4 “Limited”  
198

199 D. Standards. The following standards must be met unless modified per §16.8.10  
200 Conservation Subdivision:

- 201 (1) The design and performance standards in Chapters 16.5, 16.7 and 16.8.  
202 (2) Dimensional standards:  
203 (a) Minimum ~~land~~ lot area per dwelling unit: 20,000 square feet. ~~(Note: As per~~  
204 ~~Chapter 16.3 definition of “minimum land area per dwelling unit,” except to~~  
205 ~~exempt properties which are unable to meet the square feet required for a~~  
206 ~~single-family dwelling unit, provided the lot was conforming prior to~~  
207 ~~October 25, 2012.)~~  
208 (b) When more than 50% of the dwelling units proposed will be affordable  
209 as defined by this code and have public sewer: 8,000 square feet  
210 (b) Minimum lot size: 20,000 square feet.  
211 (c) Minimum street frontage: 100 feet.  
212 (d) Minimum front yard, all buildings: 30 feet.  
213 (e) Minimum rear and side yards, all buildings: 15 feet.  
214 (Note: Buildings higher than 40 actual feet must have side and rear yards not  
215 less than 50% of building height.)  
216 (f) Maximum building height: 35 feet.  
217 (Note: Minimum distance between principal buildings on the same lot is the  
218 height equivalent to the taller building.)

- 219 (g) Maximum building coverage: 20%.  
220 (h) Minimum water body setback for functionally water-dependent uses: zero  
221 feet.  
222 (i) Minimum setback from streams, water bodies and wetlands: in accordance  
223 with Table 16.5.30 § 16.4.28 and Appendix A, Fee Schedules.
- 224 (3) Subdivision types and standards. ~~Subject to net residential acreage and net~~  
225 ~~residential density per Chapter 16.3.~~
- 226 (a) Conservation Subdivision. In a subdivision, the above standards may be  
227 modified in accordance with special provisions of §16.8.10, including that  
228 there is no minimum lot size, and with the conditions that:  
229 [1] Minimum principal building separation as required by the Fire Chief,  
230 but not less than 15 feet.
- 231 (b) Subdivision development (special exception uses, §16.4.13C). In a  
232 subdivision development, standards in §16.4.13D(1) and (2) apply and  
233 include:  
234 [1] Minimum percentage of common open space: 15%.
- 235 (4) Age-restricted housing. In the case of age-restricted housing, the above standards  
236 may be modified in accordance with the special provisions of §16.5.15 and with  
237 the condition that:  
238 (a) Municipal sewerage and water must be provided.  
239 (b) A minimum land area of three acres must be provided.  
240 (c) The maximum net density may not exceed four dwelling units per net  
241 residential acre. In no event may the Planning Board authorize a departure  
242 which increases the total number of dwelling units greater than that specified  
243 under the applicable zoning ordinance.  
244 (d) A single-bedroom unit may not be less than 550 square feet and a two-  
245 bedroom unit not less than 650 square feet.
- 246 (5) Manufactured housing. Manufactured housing must meet standards of §16.5.15.
- 247 **(6) Parking. When more than 50% of the dwelling units provided while be**  
248 **affordable as defined by this code: two parking spaces per three dwelling units.**
- 249 **(7) Affordable housing requirements:**
- 250 **(a) All requirements in §16.5.4 Affordable Housing must be met.**
- 251 **(b) Density incentives outlined above in subsection D.(2).(a).[3] may be**  
252 **applied to projects that create affordable housing units, as defined by this**  
253 **code. No proportional payment-in-lieu is required if the affordable**  
254 **dwelling unit requirements for the density incentives are met.**

255

256 E. Shoreland Overlay Zone OZ-SL — Residential — Urban Zone (R-U).

- 257 (1) Permitted uses.
- 258 (a) Accessory buildings, structures, and uses.
- 259 (b) Day-care facility.
- 260 (c) Dwellings if located farther than 100 feet from the normal high-water line  
261 of any water bodies, or the upland edge of a wetland.

- 262 [1] ~~Dwelling, attached single-family.~~
- 263 [2] Dwelling, manufactured housing.
- 264 [3] ~~Dwelling, multifamily.~~
- 265 [4] Dwelling, single-family.
- 266 [5] Dwelling, two-family.

267  
268 **6. Amend § 16.4.14 Residential — Village (R-V) zoning as follows:**

269 B. Permitted uses. The following uses are permitted in the R-V Zone:

- 270 (1) Accessory dwelling unit.
- 271 (2) Dwelling, ~~attached single-family.~~ multifamily 2-4 “Limited”
- 272 (3) Dwelling, manufactured housing.
- 273 (4) Dwelling, single-family.
- 274 ~~(5) Dwelling, two-family.~~

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276 D. Standards. All development and the use of land in the R-V Zone must meet the  
277 following standards. In addition, the design and performance standards of Chapters  
278 **16.5, 16.7** and **16.8** must be met. The Design Handbook provides examples of  
279 appropriate design for nonresidential and multiunit residential projects.

- 280 (1) The following space standards apply:
  - 281 (a) Minimum ~~land~~ **lot** area per dwelling unit: 4,000 square feet. (~~Note: As per~~  
282 ~~Chapter 16.3 definition of "minimum land area per dwelling unit,"~~ except to  
283 exempt properties which are unable to meet the square feet required for a  
284 single-family dwelling unit, provided the lot was conforming prior to October  
285 25, 2012.)

286  
287 E. Shoreland Overlay Zone OZ-SL — Residential — Village Zone (R-V).

- 288 (1) Permitted uses.
  - 289 (a) Accessory buildings, structures, and uses.
  - 290 (b) Dwellings if located farther than 100 feet from the normal high-water line of  
291 any water bodies, or the upland edge of a wetland Public Facility.
    - 292 ~~[1] Dwelling, attached single-family.~~
    - 293 [2] Dwelling, manufactured housing.
    - 294 [3] Dwelling, single-family.
    - 295 [4] Dwelling, two-family.

296  
297 **7. Amend §16.4.15 Residential — Rural Conservation (R-RC) zoning as follows:**

298 B. Permitted use. The following uses are permitted in the R-RC Zone:

- 299 (1) Accessory dwelling units.
- 300 (2) Conservation subdivision.
- 301 (3) Dwelling, manufactured housing.

302 (4) Dwelling, single-family.

303 **(5) Dwelling, multifamily 2-4 as follows**

	<u>Total maximum # of units allowed on lot (attached or detached)</u>	
<u># of Existing Units</u>	<u>Public Sewer and Water Available</u>	<u>Public sewer and water not available</u>
<u>0</u>	<u>4</u>	<u>2</u>
<u>1</u>	<u>3</u>	<u>3</u>
<u>2</u>	<u>2</u>	<u>2</u>

304

305 D. Standards. The following standards must be met unless modified per §16.8.10,  
306 Conservation Subdivision:

307 (1) The design and performance standards of Chapters 16.5, 16.7 and 16.8 must be  
308 met.

309 (2) The following dimensional standards apply:

310 (a) Minimum ~~land area~~ net residential acreage per dwelling unit: 80,000 square  
311 feet. (~~Note: As per Chapter 16.3 definition of "minimum land area per~~  
312 ~~dwelling unit,"~~ except to exempt properties which are unable to meet the  
313 square feet required for a single-family dwelling unit, provided the lot was  
314 conforming prior to October 25, 2012.)

315

316 **8. Amend §16.4.17 Business — Local (B-L) zoning as follows:**

317 B. Permitted uses. The following uses are permitted in the B-L Zone:

318 (1) Accessory dwelling unit.

319 (2) Dwelling, ~~attached single family.~~ multifamily 2-4

320 (3) Dwelling, manufactured housing.

321 (4) Dwelling, multifamily.

322 ~~(a) Development proposing three or four dwelling units is permitted through~~  
323 ~~minor site plan review;~~

324 ~~(b) Development proposing five or more dwelling units is permitted through~~  
325 ~~major site plan review;~~

326 (5) Dwelling, single-family.

327 ~~(6) Dwellings, two-family.~~

328 (7) Dwelling units as part of a mixed-use building.

329

330 D. Standards. All development and the use of land in the B-L Zone must meet the following  
331 standards. Kittery's Design Handbook illustrates how these standards can be met. In addition, the

332 design and performance standards of Chapters 16.5, 16.7 and 16.8 must be met. [Amended 9-12-  
333 2022]

334 (1) The following space and dimensional standards apply:

335 (a) Minimum ~~land~~ lot area per dwelling unit:

336 [1] If served by on-site sewage disposal: 20,000 square feet;

337 [2] If served by the public sewerage system and:

338 [a] When no frontage on State Road or Route 1 Bypass exists: 3,000 square  
339 feet;

340 [b] When less than five dwelling units are proposed at minimum, one  
341 nonresidential use must be located on the first floor facing State Road or  
342 Route 1 Bypass such that the use will be visible from the street: 3,000  
343 square feet. Such a nonresidential use or uses need not occupy the entire  
344 first floor but must be an independent nonresidential use, e.g., not a  
345 home office marketed with a dwelling unit as a work/live unit;

346 [c] When five or more dwelling units are proposed at minimum, one  
347 nonresidential use must be located on the first floor facing State Road or  
348 Route 1 Bypass such that the use will be visible from the street: 2,500  
349 square feet. Such a nonresidential use or uses need not occupy the entire  
350 first floor but must be an independent nonresidential use, e.g., not a  
351 home office marketed with a dwelling unit as a work/live unit; or

352 [d] 25% or more of the dwelling units will be affordable housing units as  
353 defined by this code: 1,000 square feet.

354 Note: Except as otherwise required by the buffer provisions of this title.

355 (b) Parking. Parking requirements are to be met on site. If meeting the parking  
356 requirements is not possible, the parking demand may be satisfied off site or  
357 through joint-use agreements as specified herein. Notwithstanding the off-street  
358 parking requirements in § 16.7.11F(4), minimum parking requirements for the  
359 uses below are modified as specified:

360 [1] Dwelling units: 1.5 parking spaces per dwelling unit; unless:

361 [a] Affordable housing as defined by this code is proposed, in which case  
362 the parking requirements may be reduced to one parking space per  
363 dwelling unit at the Planning Board's discretion; and/or

364 [b] Some or all of the proposed dwelling units are one-bedroom or  
365 studio-type units, in which case parking requirements for these types  
366 of units may be reduced to one parking space for each unit so  
367 described.

368 [c] More than 50% of the dwelling units proposed will be affordable  
369 as defined by this code in which case parking is reduced to two  
370 spaces per three dwelling units.

371

372 E. Shoreland Overlay Zone OZ-SL — Business — Local Zone (B-L).

373 (1) Permitted uses.

374 (a) Accessory buildings, structures, and uses.

375 (b) Dwellings if located farther than 100 feet from the normal high-water line of

- 376 any water bodies, or the upland edge of a wetland.
- 377 ~~[1] Dwelling, attached single-family.~~
- 378 [2] Dwelling, manufactured housing.
- 379 ~~[3] Dwelling, multifamily.~~
- 380 [4] Dwelling, single-family.
- 381 [5] Dwellings two-family.

382  
383 **9. Amend §16.4.18 Business — Local 1 (B-L1) zoning as follows:**

384 B. Permitted uses. The following uses are permitted in the B-L1 Zone:

- 385 (1) Accessory dwelling unit.
- 386 (2) Dwelling, ~~attached single-family.~~ multifamily 2-4 “Limited”
- 387 (3) Dwelling, manufactured housing.
- 388 (4) Dwelling, multifamily. **[Amended 9-12-2022]**
  - 389 ~~(a) Development proposing three or four dwelling units is permitted through~~
  - 390 ~~minor site plan review;~~
  - 391 ~~(b) Development proposing five or more dwelling units is permitted through~~
  - 392 ~~major site plan review;~~
- 393 (5) Dwelling, single-family.
- 394 ~~(6) Dwelling, two family.~~

395  
396 D. Standards. All development and the use of land in the B-L1 Zone must meet the  
397 following standards. Kittery's Design Handbook illustrates how these standards can be  
398 met. In addition, the design and performance standards of Chapter **16.5** must be met.  
399 **[Amended 9-12-2022]**

- 400 (1) The following space and dimensional standards apply:
  - 401 (a) Minimum ~~land~~ (lot) area per dwelling unit:
    - 402 [1] When no frontage on State Road or Shapleigh Road: 2,500 square feet.
    - 403 [2] When less than five dwelling units are proposed with, at minimum, one
    - 404 nonresidential use must be located on the first floor facing State Road or
    - 405 Shapleigh Road such that the use will be visible from the street: 2,500
    - 406 square feet. Such a nonresidential use or uses need not occupy the entire
    - 407 first floor but must be an independent nonresidential use, e.g., not a home
    - 408 office marketed with a dwelling unit as a work/live unit.
    - 409 [3] When five or more dwelling units are proposed with, at minimum, one
    - 410 nonresidential use must be located on the first floor facing State Road or
    - 411 Shapleigh Road such that the use will be visible from the street: 2,000
    - 412 square feet. Such a nonresidential use or uses need not occupy the entire
    - 413 first floor but must be an independent nonresidential use, e.g., not a home
    - 414 office marketed with a dwelling unit as a work/live unit.
    - 415 [4] When 25% or more of the dwelling units will be affordable housing units
    - 416 as defined by this code, the minimum land area per dwelling unit is 1,500
    - 417 square feet.

**[5] When 50% or more of the dwelling units will be affordable housing units as defined by this code, the minimum land area per dwelling unit is 1,000 square feet.**

- (b) Minimum lot size: none.  
(Note: Except that all screening, open space, buffering and landscaping requirements must be met; or in instances where the Planning Board may approve modifications to such requirements, such modifications must be found satisfactory by the Board.
- (c) Minimum street frontage per lot: 50 feet.
- (d) Maximum front setback: 20 feet.  
(Note: This area must be designed to promote a pedestrian public space, which includes, but is not limited to, landscaping, sidewalks and sitting areas. The Planning Board may, at its discretion, allow a greater setback when public amenities such as pocket parks, outdoor dining or seating areas are proposed within the front setback. Pocket parks must be at least 200 square feet with a minimum of three trees and a bench for sitting required. Park must be vegetated with ground cover, except for walkways. Outdoor dining areas must meet any additional requirements specific to that use. Outdoor storage is prohibited anywhere in the front yard of the structure, except for seasonal sales items. Parking is also prohibited in the front setback, except as allowed in Subsection **D(2)(e)** below.
- (e) Minimum rear and side setbacks: 10 feet.  
(Note: Except as otherwise required by the buffer provisions of this title, and except where the side and/or rear setbacks abut a residential zone or single-family use; in which case a minimum of 15 feet or 50% of the building height, whichever is greater, is required.)
- (f) Maximum building height: 40 feet. Solar apparatus is excluded from height determinations.
- (g) The maximum impervious surface is:
  - [1] Seventy percent; or
  - [2] The Planning Board may, at its discretion, allow greater than 70% if:
    - [i] Additional landscaped or natural areas are proposed or preserved and such areas are integrated into the site design in an environmentally conscious way utilizing LID to provide stormwater filtration and/or water quality improvements. Such areas must exceed the requirement that 15% of the lot be landscaped or natural. See Subsection **D(4)**, Landscaping/Site improvements. When granting such a concession, the Board must find that the proposed additional landscaping and/or natural areas and the site design provide enough benefit to outweigh the impact of greater impervious surface; or
    - [ii] Affordable housing to be built, rather than a payment-in-lieu, is proposed.

Note: If using either option above, the stormwater requirements in Subsection **D(1)(i)** below may not be modified.

- 463 (h) Stormwater. All new development must use LID (low-impact development)  
464 and BMP (best management practices), based on Maine DEP's Maine  
465 Stormwater Best Management Practices Manual Volumes I through III, as  
466 amended from time to time, to manage 100% of the total stormwater  
467 generated on-site. The stormwater report and plan demonstrating that this  
468 requirement is met must be included with the application at the time of  
469 submission. A request for a modification may be submitted to the Planning  
470 Board, but it is incumbent on the applicant to prove to the Planning Board's  
471 satisfaction that such a modification is necessary. The Town reserves the  
472 right to submit such modification requests for independent engineering  
473 review at the applicant's expense. The Board may also require additional  
474 landscaping/plannings and/or LID features when granting such concessions.
- 475 (i) Minimum area dedicated to landscaped or natural areas: 15%.
- 476 [1] For the purposes of this zone, a natural area is an area that is not  
477 regularly mowed, and contains trees and/or shrubs which may not have  
478 been deliberately planted. Invasive plants, as defined by the State of  
479 Maine, must be removed.
- 480 [2] For multifamily dwelling, mixed-use buildings with dwelling units and  
481 attached single-family dwellings, in cases where the property cannot  
482 meet the 15% requirement due to existing development (including  
483 parking areas), and where redevelopment will remain at the same or a  
484 lower percentage of the lot, the Planning Board may, at its discretion,  
485 allow a smaller percentage of landscaped and/or natural area. In  
486 granting this concession, the Board may require more intensive  
487 landscape plantings and/or LID-designed features.
- 488 (j) Hours of operation must be noted on the final site plan and are determined by  
489 the Planning Board on a case-by-case basis. All lighting other than  
490 designated security lighting must be extinguished outside of noted hours of  
491 operation.
- 492 (k) Minimum setback for functionally water-dependent uses: zero feet.
- 493 (l) Minimum setback from streams, water bodies and wetlands: in accordance  
494 with Table 16.5.30, § 16.4.28 and Appendix A, Fee Schedules.

495 (2) Parking design:

496 Parking requirements are to be met on-site. If meeting the parking  
497 requirements is not possible, the parking demand may be satisfied off-site or  
498 through joint-use agreements as specified in 16.4.17.D.(1).(c) -  
499 16.4.17.D.(1).(e) under the B-L Zone. Notwithstanding the off-street parking  
500 requirements in 16.7.11.F.(4), minimum parking requirements for the uses  
501 below are modified as specified:

502 [1] Dwelling units: 1.5 parking spaces per dwelling unit; unless:

503 [i] Affordable housing as defined by this code is proposed in which case the  
504 parking requirements may be reduced to a minimum of 1/2 spaces per  
505 dwelling unit at the Planning Board's discretion; and/or



506 [ii] Housing is proposed within 1/4 mile of a public transit stop, in  
507 which case the parking requirements may be reduced to a minimum of 1/2  
508 spaces per dwelling unit at the Planning Board's discretion; and/or

509 [iii] Some or all of the proposed dwelling units are one-bedroom or  
510 studio type units in which case parking requirements for these types of units  
511 are reduced to one parking space for each unit so described.

512 [iv] More than 50% of the dwelling units proposed will be affordable as  
513 defined by this code in which case parking is reduced to two spaces per three  
514 dwelling units.

515 [2] For multifamily dwellings, if more than ten parking spaces are  
516 required, up to 20% of the parking may be designated for compact cars. See  
517 16.7.11.F.(4) Off-Street Parking Standards.

518 (b) [3] Electric car charging stations are allowed and encouraged in parking  
519 lots but must not interfere with pedestrian movement on sidewalks.

520 **10. Amend §16.4.28 Shoreland Overlay Zone (OZ-SL) as follows:**

521 E. Standards.

522 (1) Minimum lot standards.

523 (a) Minimum lot size by base zone, within the:

524 [1] Residential-Village (R-V) Zone: 8,000 square feet.

525 [2] Residential-Urban (R-U) Zone: 20,000 square feet.

526 [3] Residential-Rural (R-RL), Residential-Suburban (R-S) and  
527 Residential-Kittery Point Village (R-KPV) Zones: 40,000 square feet.

528 [4] Commercial (C1), (C2), (C3), Industrial (IND), Business-Local (B-  
529 L) and Business-Local 1 (B-L1) Zones: 60,000 square feet.

530 [5] Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

531 [6] Business-Park (B-PK) Zone: 120,000 square feet.

532 [7] Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.

533 [8] Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.

534 (b) Minimum ~~land area per dwelling unit~~ net residential density by base  
535 zone, within the:

536 [1] Residential-Village (R-V) Zone: 8,000 square feet.

537 [2] Business-Park (B-PK) Zone: 10,000 square feet.

538 [3] Residential-Urban (R-U), Business-Local (B-L) and Business-  
539 Local 1 (B-L1) Zones: 20,000 square feet.

540 [4] Mixed-Use (M-U), Residential-Rural (R-RL), Residential-  
541 Suburban (R-S) and Residential-Kittery Point Village (R-KPV) Zones:  
542 40,000 square feet.

543 [5] Residential-Rural Conservation (R-RLC) Zone: 80,000 square feet.

544 [6] Mixed-Use Badgers Island (MU-BI) Zone: 6,000 square feet.

545 [NOTE: 3,000 square feet for the first two dwelling units.]  
546 [7] Mixed-Use Kittery Foreside (MU-KF) Zone: 10,000 square feet.  
547

548 **11. Amend §16.5.3 Accessory dwelling units as follows:**

549 B. Applicability.

- 550 (1) An accessory dwelling unit is allowed in all zoning districts where the use is  
551 permitted in Chapter 16.4. The unit must be located:
- 552 (a) Within an existing structure, either principal or accessory on the property;
  - 553 or
  - 554 (b) Attached to the existing principal structure, sharing a common wall; or
  - 555 (c) Within a new accessory structure constructed for this purpose on the  
556 property.
  - 557 **(d) Outside of the shoreland overlay zone, as defined in Chapter 16.4.**
- 558 (2) Accessory dwelling units that have a valid certificate of occupancy or have vested  
559 rights in the permitting process with an active building permit as of April 28, 2020, are  
560 exempted from the use standard, § 16.5.3D(3).

561

562 D. Accessory dwelling unit standards.

563 (1) Lot standards.

- 564 (a) ~~Legal lot/residence. An accessory dwelling unit is allowed only on lots within the~~  
565 ~~Town that contain one legal single family residence as the primary unit.~~
  - 566 (b) Number of accessory dwelling units per lot. No more than one accessory dwelling  
567 unit is permitted on a lot **that is located in a limited growth area as depicted in**  
568 **Kittery's Comprehensive Plan. Up to two accessory dwelling units are**  
569 **permitted on a lot that is located in a targeted growth area.**
  - 570 (c) Zone lot size and unit density. The property on which an accessory dwelling unit is  
571 located must meet the size required by the applicable zoning standards for the  
572 principal residence, except in the case of legally nonconforming lots. However, an  
573 accessory dwelling unit is exempt from the density requirements of the zone in  
574 which it is located.
  - 575 (d) Setbacks and coverage. Yard setbacks for the zone must be met. However, for  
576 legally nonconforming lots where a proposed accessory dwelling unit will be  
577 attached to a principal dwelling unit and cannot meet the zone's side and rear yard  
578 setbacks, the percentage by which a lot is smaller than the required lot size for the  
579 zone will dictate the required setback for that lot. For example, a 30,000 square foot  
580 legally nonconforming lot in a zone that requires 40,000 square feet would require  
581 side and rear yard setbacks that are 75% of the zone's side and rear yard setbacks.  
582 Building coverage requirements will remain as required by the zone.
  - 583 (e) Utility connections. Accessory dwelling units must be connected to adequate water  
584 and wastewater services.
- 585 [1] Public sewer.  
586 [a] Service: written verification must be provided of adequate service to support the

- 587 additional flow from the Superintendent of Wastewater Treatment Facilities.
- 588 [b] Fees. Payment of appropriate fees for connection to the municipal sewer system is  
589 required prior to obtaining the certificate of occupancy.
- 590 [2] Septic systems. Verification of adequate sewage disposal for subsurface waste  
591 disposal is required. The septic system, existing or proposed, must be verified as  
592 adequate or reconstructed as required, pursuant to 30-A M.R.S. §4221. Plans for  
593 subsurface waste disposal must be prepared by a Maine-licensed site evaluator in  
594 full compliance with the State of Maine Subsurface Wastewater Disposal Rules, 10-  
595 144 CMR Ch. 241.
- 596 [3] Public water. Verification, in writing, is required from the Kittery water district for  
597 volume and supply.
- 598 [4] Wells. Verification of the potable water supply for private wells is required. Tests of  
599 the existing well or proposed well, if applicable, must indicate that the water supply  
600 is potable and acceptable for domestic use and must conform to the  
601 recommendations included in 01-672 C.M.R. ch. 10, section 10.25(J), Land Use  
602 Districts and Standards, the "Manual for Evaluating Public Drinking Water  
603 Supplies, Public Health Service No. 1180 (1969)."
- 604 (f) ~~Parking. Each accessory dwelling unit must have one on-site parking space in~~  
605 ~~addition to the parking for the primary dwelling unit. Tandem parking is permitted.~~  
606 No additional parking space is required for the accessory dwelling unit but the  
607 primary dwelling unit must have on-site parking.
- 608 (g) Private road or right-of-way access. Where an applicant seeks to locate an accessory  
609 dwelling unit on a privately maintained road or right-of-way the following applies:
- 610 [1] Applicant must submit written consent from the road or homeowner's association or  
611 owner and parties responsible for street maintenance.
- 612 (2) Unit standards.
- 613 (a) Unit size. The size of an accessory dwelling unit must meet the minimum size for a  
614 dwelling unit as set by building code standards adopted and amended from time to  
615 time by ~~Maine's Bureau of Building Codes and Standards~~ Technical Building code  
616 and Standards Board, pursuant to 10 M.R.S. § 9722, and be no larger than 1,000  
617 square feet. For principal dwelling units 1,000 square feet or smaller, an accessory  
618 dwelling unit may be no greater than 80% of the size of the principal dwelling unit,  
619 as measured in square feet. An accessory dwelling unit may have no more than two  
620 bedrooms.
- 621 (b) Unit location.
- 622 [1] An accessory dwelling unit must meet one or more of the following conditions:
- 623 [a] Be fully constructed within the existing footprint of any legal residence or accessory  
624 building; or
- 625 [b] Share a common wall with the principal residence, providing yard setbacks per  
626 § 16.5.3D(2)(a); or
- 627 [c] Be constructed as a new accessory building containing an accessory dwelling unit,  
628 providing yard setbacks can be met for the zone.
- 629 [2] Accessory dwelling units will be allowed to be fully constructed within the principal  
630 residence even if the building does not meet yard setbacks.

- 631 [3] Accessory dwelling units will not be allowed in accessory buildings encroaching on  
632 yard setbacks.
- 633 (3) Use standards. The accessory dwelling unit may not be rented to the same person or  
634 party for less than a thirty-day period.
- 635 (4) Development standards. Should an accessory dwelling unit fail to meet the  
636 applicable unit standards listed in this article, the accessory dwelling unit may still  
637 be allowed if the applicant obtains approval from the Board of Appeals under the  
638 provisions of a miscellaneous variation request, as outlines in § 16.2.12. The Board  
639 of Appeals shall review any appeal decision in conformance with § 16.2.12F, Basis  
640 for decision.
- 641 (5) Violations. A violation of the use standard § 16.5.3D(3) will lose the certificate of  
642 occupancy for the unit for no less than 30 days, and be assessed a penalty of \$500.
- 643

644 **12. Amend §16.5.18 Net residential acreage as follows:**

- 645 A. Purpose. Net residential acreage is used to determine the maximum number of dwelling  
646 units allowed on a parcel that is ~~subject to subdivision~~ **located in a limited growth area**  
647 **identified in the Comprehensive Plan**. The total number of dwelling units allowed is  
648 equal to the net residential acreage divided by the minimum land area per dwelling unit  
649 for a given land use zone.
- 650 **B. Applicability. Applies to development of land located in limited growth areas as**  
651 **designated in the Comprehensive Plan. Development of parcels located in targeted**  
652 **growth areas is subject to provisions for lot area as defined in Chapter 16.3 for**  
653 **calculating lot area, lot coverage, or unit density.**
- 654 ~~B.~~ **C.** Net residential acreage calculation. To calculate net residential acreage, the land  
655 area listed below must be subtracted from a parcel's gross area. Where land areas to be  
656 subtracted overlap, the area therein is subtracted once.
- 657 (1) All land located below the highest annual tide elevation as published in the Maine DEP  
658 Highest Annual Tide (HAT) levels for the most-current year.
- 659 (2) All land located within the floodplain as defined in the definition of "flood, 100-year" in  
660 Chapter 16.3.
- 661 (3) All wetlands as defined in the definition of "wetland" in Chapter 16.3, as well as vernal  
662 pools, ponds, lakes, streams and other water bodies, including 50% of the associated  
663 setbacks described in other buildings and structures, Table 16.5.30, Chapter 16.5 of this  
664 title.
- 665 (4) All land located on filled tidal lands, per the definition of "tidal land, filled" in Chapter  
666 16.3.
- 667 (5) All land located within existing rights-of-way and other existing easements wherein  
668 dwelling units cannot be built.
- 669 (6) All land located within proposed rights-of-way, including parking and travel ways.  
670 Driveways are excluded.
- 671 (7) All land isolated from the principal location for development on the parcel by a  
672 road/street, existing land uses, or any physical feature, natural or man-made, such that it  
673 creates a barrier to the central development of the site and no means of access is  
674 proposed nor likely to be provided in the future. However, to demonstrate that identified

675 isolated land may be considered developable for the purpose of this calculation, the  
676 applicant must submit a plan and supporting documentation for the Board's  
677 consideration.

- 678 ~~(8) All land zoned commercial (C-1, C-2, or C-3).~~  
679 (9) All land one acre or more of contiguous area with sustained slopes of 20% or greater.  
680 (10) All land identified as exposed bedrock, and soils with a drainage class of "poorly  
681 drained" and/or "very poorly drained" as defined in the definition of "soils" in Chapter  
682 **16.3**.  
683 (11) Fifty percent of all land characterized as drainage class of "somewhat poorly drained,"  
684 unless public sewer is used, in which case no land area is subtracted.  
685 (12) All land area within a cemetery and burying ground as defined in Chapter **16.3**,  
686 including associated setback per 13 M.R.S.A. § 1371-A, Limitations on construction  
687 and excavation near burial sites.  
688 (13) All land within a Commercial Fisheries/Maritime Uses Overlay Zone or Resource  
689 Protection Overlay Zone not included in Subsection **B(12)** above.

690 C. Documentation. The net residential acreage calculation must be supported by verifiable  
691 information and accurate data and be shown on the subdivision plan or other plan when  
692 applicable.

693 ~~D. Exemptions to net residential acreage calculations:~~

- 694 ~~(1) The maximum number of dwelling units for residential development not subject to~~  
695 ~~subdivision is based on minimum land area per dwelling unit defined in Chapter **16.3**,~~  
696 ~~Definitions, of this title.~~  
697 ~~(2) The creation of dwelling units subject to subdivision within existing buildings that are~~  
698 ~~connected to Town sewer and are located in the Mixed Use Kittery Foreside, Mixed~~  
699 ~~Use Badgers Island, Residential Village, Business Local, or Business Local 1 Zones~~  
700 ~~are exempt from the net residential acreage calculations in § **16.5.18A**. The total number~~  
701 ~~of dwelling units permitted is determined by dividing the gross lot area by the minimum~~  
702 ~~land area per dwelling unit allowed in the zone. The exemption is allowed in the above~~  
703 ~~base zones when subject to the Shoreland Overlay Zone.~~  
704 ~~(3) The Mixed Use Neighborhood Zone (MU-N) and certain residential uses in the C-1 and~~  
705 ~~C-3 Zones as noted in §§ **16.4.19** and **16.4.21** are exempt from § **16.5.18**, Net residential~~  
706 ~~acreage calculation, but are subject to the minimum land area per dwelling unit as~~  
707 ~~defined in Chapter **16.3**, Definitions, except that 50% of all wetlands may be subtracted,~~  
708 ~~rather than 100%.~~

709

710

711 **13. Amend §16.7.2 Applicability (Site Plan Review) as follows:**

712 A. A person who has right, title, or interest in a parcel of land shall obtain site plan approval  
713 prior to commencing any of the following activities on the parcel, including contracting or  
714 offering for the conveyance regulated activity permit for any structure within the  
715 development is issues, or undertaking work on any improvements, including installation of  
716 roads or utilities or land clearing.

- 717 (1) The construction or placement of any new building or structure for a nonresidential

718 use, including accessory buildings and structures, if such buildings or structures have a  
719 total area for all floors of all structures of 1,000 square feet or more measured  
720 cumulatively over a five-year period.

721 (2) The expansion of an existing nonresidential building or structure, including accessory  
722 buildings, if the enlargement increases the total area for all floors within a five-year  
723 period by more than 20% of the existing total floor area or 1,000 square feet,  
724 whichever is greater.

725 (3) The conversion of an existing building in which 1,000 or more square feet of total floor  
726 area are converted from residential to nonresidential use.

727 (4) The establishment of a new nonresidential use even if no buildings or structures are  
728 proposed, that involves the development of more than 25,000 square feet of land. This  
729 includes uses such as gravel pits, cemeteries, golf courses, and other nonstructural  
730 nonresidential uses.

731 (5) The conversion of an existing nonresidential use, in whole or in part, to another  
732 nonresidential use if the new use changes the basic nature of the existing use such that  
733 it increases the intensity of on- or off-site impacts of the use subject to the standards  
734 and criteria of site plan review described in this chapter.

735 (6) The construction of a residential ~~building~~ development containing three or more  
736 dwelling units.

737 (a) Development proposing three or four dwelling units is permitted through  
738 minor site plan review;

739 (b) Development proposing five or more dwelling units is permitted through  
740 major site plan review;

741 (7) The modification or expansion of an existing residential structure that increases the  
742 number of dwelling units in the structure by three or more in any five-year period.

743 (8) The conversion of an existing nonresidential building or structure, in whole or in part,  
744 into three or more dwelling units within a five-year period.

745 (a) Development proposing three or four dwelling units is permitted through  
746 minor site plan review;

747 (b) Development proposing five or more dwelling units is permitted through  
748 major site plan review;

749 (9) The cumulative development of an area equal to, or greater than, one acre within any  
750 five-year period. The applicability of this chapter does not include the construction of  
751 streets that are reviewed as part of a subdivision application.

752 (10) Marijuana businesses and medical marijuana registered caregiver home establishments.

753 B. Other development review. Unless subject to a shoreland development plan review or right-  
754 of-way plan per § 16.7.3A, the following do not require Planning Board approval:

755 (1) Single and duplex family dwellings.

756 (2) Division of land into lots (i.e., two lots), which division is not otherwise subject to  
757 Planning Board review as a subdivision.

758 (3) Business use as provided in § 16.4.26C(13).

759 (4) Small-scale ground-mounted solar energy systems below or equal to 1,000 square feet  
760 in area. [Added 4-11-2022]

761 (5) Multifamily 2-4 “Limited” dwellings (attached or detached)



**TOWN OF KITTERY**  
Planning & Development Department  
200 Rogers Road, Kittery, ME 03904  
Telephone: 207-475-1307 Fax: 207-439-6806

Jason Garnham, AICP  
Director

**TO:** KITTERY HOUSING COMMITTEE  
**FROM:** JASON GARNHAM, DIRECTOR OF PLANNING AND DEVELOPMENT  
**SUBJECT:** LD 2003 ZONING AMENDMENTS  
**DATE:** SEPTEMBER 7, 2023

**SUMMARY:**

Maine's Governor signed LD 2003, "An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions," into law in April of 2022. This law **requires Maine municipalities to adopt or amend zoning rules** that are intended to encourage development of affordable housing via three general approaches:

1. Allowing at least one Accessory Dwelling Unit to be constructed at any residential property.
2. Allowing additional units to be constructed for projects that include affordable housing.
3. Allowing development of at least 2-4 housing units per lot where housing is permitted.

Required zoning amendments – and the types of development that must be allowed by zoning – vary depending on the location of public utilities, targeted growth areas identified in the Comprehensive Plan, and Shoreland areas. Required amendments must be adopted by January 1, 2024.

Staff drafted amendments that are necessary for Kittery's Zoning code to remain compliant with Maine law. An initial draft was reviewed by Kittery's Land Issues Committee during the June 21, 2023 and August 16, 2023 meetings and by the Housing Committee on July 6, 2023. Members of both committees expressed an interest in provisions that would "go further" to encourage development of housing in targeted areas. The attached amendments include changes to the way residential density – the units allowed per acre of land – is calculated for development projects. These changes are stricter for projects in Limited Growth Areas than current rules, and more flexible for projects in Targeted Growth Areas as described below. They also include changes which would allow residential property owners in targeted growth areas to construct two accessory dwelling units on a lot.

***Does this Committee recommend including these additional changes in the amendments which will be reviewed by Town Council?***

**BACKGROUND:**

There are many types of zoning amendments the Town can consider to encourage property owners to develop housing, or specific housing types. The most impactful change(s) would be to increase the number of units that are allowed per acre within certain zoning districts. Limits on building size, footprint, or height would also need to be examined as part of an earnest effort to encourage development of housing through zoning density increases. Other potentially impactful changes would be to reduce parking minimums, reduce open space requirements, or reduce minimum setbacks. Staff and

committee members agreed that such amendments, if considered, should be tested via an extensive public process and should therefore be excluded from this time-sensitive effort.

### **TAKING LD 2003 FURTHER: PROPOSALS**

However, staff identified two opportunities to amplify the effects intended by LD 2003 and advance community goals as expressed in the Comprehensive Plan without taking on such controversial issues.

**First:** Title 16 currently contains two separate methods for calculating the number of housing units that can be developed on a parcel: “Minimum land area per dwelling unit” and “Net residential density.” **Minimum land area per dwelling unit** excludes all wetlands, rights-of-way, easements, tidal lands, and areas located below the Highest Annual Tide from the land available for a property’s density calculation. **Net residential density** excludes those areas PLUS floodplains, 50% of wetland setback areas, and *proposed* right-of-way and parking areas. Net residential density is therefore more restrictive than Minimum land area per dwelling unit because it subtracts more resource areas, flood risk areas, and future site improvement areas from the base land area calculation. Neither of these methods use gross lot area (size of the parcel minus waterbodies or roads) as the base land area to be used for the residential density calculation.

**Second:** Section 16.5.3 Accessory Dwelling Units (D.1.a) limits ADUs only to lots that “contain one legal, single-family residence as the primary unit” and specifies that only one ADU can be constructed on a lot. These limitations currently apply townwide. ADUs were devised as a separate residential unit type *because* they are generally perceived to be compatible with a wide variety of neighborhoods due to their limited size. Allowing more ADUs per lot *in targeted areas* may encourage property owners in existing neighborhoods to construct more of this affordable housing type in appropriate locations.

Staff propose the following:

1. Delete Minimum land area per dwelling unit from Title 16. This will remove the redundancy that is created by having two separate methods for establishing base developable land area for residential density calculations.
2. Require Net residential density calculation for ALL residential projects located in Limited Growth and Shoreland Areas. (Residential- Kittery Point Village, Mixed-Use Badgers Island, Residential- Rural and Residential- Rural Conservation Zoning districts). Net residential density currently only applies to subdivisions; this amendment would expand its use to all residential projects in those zoning districts. This amendment is supported by Comprehensive Plan goals which discourage growth and encourage protection of natural resources and open space in such areas because it would further limit the number of units which can be developed near wetlands and waterbodies.
3. Utilize “Lot area” for calculating residential density for projects located in Targeted Growth Areas. Projects in Mixed-Use, Mixed-Use Kittery Foreside, Commercial (1, 2, and 3), Business (B-L and B-L1), Residential- Suburban, Residential- Village, and Residential- Urban Zoning districts would therefore only exclude waterbodies and rights-of-way from the base land area used for calculating residential density. This may encourage “infill” development in existing neighborhoods and commercial areas where housing is allowed. This amendment is supported by Comprehensive Plan goals which encourage steering development toward areas that are served by public utilities and close to existing amenities instead of in current open space and natural areas. *Note: wetland setbacks, zoning setbacks, and building size and height limits would remain in effect as currently written.*



4. Amend the accessory dwelling unit regulations by allowing up to **two ADUs per lot** that is located in a targeted growth area as depicted in Kittery's Comprehensive Plan. Lots located in limited growth areas will continue to be limited to one ADU.

**EXHIBITS:**

Please find attached for your review:

1. Draft Zoning Amendments (required in **green**, optional in **blue**)

**OTHER RESOURCES:**

1. LD2003:  
<http://www.mainelegislature.org/legis/bills/getPDF.asp?paper=HP1489&item=9&snum=130>
2. LD2003 Guidance doc: [DECD\\_LD 2003\\_digital- Feb 2023 update website\\_0.pdf \(maine.gov\)](#)
3. Title 16 Kittery Zoning Code: <https://ecode360.com/38252756>