



TOWN OF FREEPORT, MAINE

Planning Department

30 Main Street

Freeport, ME 04032

Phone: 207-865-4743

www.freeportmaine.com

TO: FREEPORT PLANNING BOARD

FROM: CECILIA SMITH, ASSISTANT TOWN PLANNER

RE: STAFF MEMO: PROPOSED AMENDMENTS RELATED TO THE DECEMBER 13TH PLANNING BOARD PUBLIC HEARINGS

DATE: WEDNESDAY, DECEMBER 13TH, 2023

Background: This meeting will consist of three public hearings to discuss proposed amendments to Freeport’s Zoning, Subdivision and Shoreland Zoning ordinances. The primary purpose of the proposed amendments is to comply with Maine’s LD 2003 (P.L. 2021, Chapter 672) requirements and to remove additional barriers to the development of Accessory Dwelling Units in Freeport. In addition, proposed amendments to the Subdivision Ordinance incorporate the addition of State language regarding subdivision approval standards under M.R.S. 30-A §4404, general document updates, and language clarifications to the Subdivision Ordinance (that were previously discussed at the 1/10/23 Planning Board meeting).

LD 2003 is “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions.” The Act, which was signed into law in April 2022 (P.L. 2021, Chapter 672), expands the ability to build housing in residential zones by loosening some zoning restrictions. Freeport must amend its ordinances to comply with the State’s new rules (M.R.S. Title 30-A §4364; M.R.S. § 4364-A; M.R.S. §4364-B; and M.R.S. § 4364-C) by January 1st, 2024.

Planning staff has been working with the Planning Board and the Town Attorneys to draft amendments to the Town’s ordinances to comply with the new State LD 2003 rules. Throughout the course of several meetings, the Planning Board has instructed planning staff to further reduce barriers to housing development where it thought appropriate, such as reducing barriers to the development of Accessory Dwelling Units. The Planning Board also gave policy direction in cases where the Town has discretion over how Freeport will implement LD 2003 rules – which are discussed throughout this memo.

Given the breath of LD 2003 several sections of the zoning ordinance need to be amended. In addition, the Subdivision Ordinance and the Shoreland Zoning Ordinances need to be updated to reflect any changes made to the Zoning Ordinance.

ITEM I: PUBLIC HEARING – Proposed Amendments to Chapter 21 Freeport Zoning Ordinance

The Board will hold a Public Hearing to discuss proposed amendments to the Freeport Zoning Ordinance related to municipal compliance with 30-A M.R.S. §§ 4364 – 4364-C (including LD 2003, “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”). The proposed amendments will potentially allow more housing in almost all zoning districts; add a new section, Section 536. Affordable Housing Density Bonus; and also include amendments to lower barriers to the development of Accessory Dwelling Units (Accessory Apartments). Additional non-substantive text amendments are also proposed.

Text amendments are proposed to the following sections of the **Freeport Zoning Ordinance**:

- Article I – Section 102. Purpose, and Section 104. Definitions;
- Article II – Section 201. General Restrictions, and Section 202. Non-Conformance;
- Article IV- Zoning District Regulations: Section 402. Rural Residential District I (RR-1) and Rural Residential District IA (RR-IA); Section 403. Rural Residential District II (RR-2); Medium Density Residential District I (MDR-1); Section 405. Medium Density Residential District II (MDR-2); Section 406. Medium Density Districts MD-A and MD-B (MDA and MDB); Section 407. Village I (V-1); Section 407.A Village I-R (V-IR); Section 408. Village II (V-2); Section 409. Commercial District I (C-1); Section 411. Commercial District III (C-3); Section 412. Commercial District IV (C-4); Section 413. Village Commercial I (VC-1); Section 414. Village Commercial II (VC-2); Section 415. Village Commercial III (VC-3); Section 416. Village Commercial IV (VC-4); Section 417. Village Mixed Use District 1 (VMU-1); Section 418. Village Mixed Use District 2 (VMU-2); Section 425. Resource Protection II (RP-2); and Section 426. Island District (ID);
- Article V – Section 514. Off-Street Parking and Loading, Section 532. Accessory Apartments, and the creation of a new section, Section 536. Affordable Housing Density Bonus;
- Article VI – Clarifying language in Section 604. Conflict with Other Ordinances; and
- Additional non-substantive text amendments throughout other sections of the document to match words used in the document with words used in Section 104. Definitions (e.g. single family to Single-Family, two family to Duplex, etc.)

ITEM I: PUBLIC HEARING – Proposed Amendments to Chapter 25 Freeport Subdivision Ordinance

The Board will hold a Public Hearing to discuss proposed amendments to the Freeport Subdivision Ordinance. The majority of the changes are related to municipal compliance with 30-A M.R.S.A. §§ 4364 – 4364-C (including LD 2003, “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”). Additional proposed amendments include adding and/or amending standards to comply with State subdivision approval standards (M.R.S. 30-A § 4404) and as previously discussed by the Planning Board); several non-substantial text amendments to update reference documents used throughout the Ordinance; and non-substantial text amendments for clarification purposes.

Text amendments are proposed to the following Articles of the **Subdivision Ordinance**:

- Article 3. Definitions;
- Article 7. Preliminary Plan for Major Subdivision;
- Article 11. Approval Standards – Including amendments to incorporate State review criteria (under M.R.S. 30-A §4404) in the following sections: 11.5 Traffic Conditions, 11.11. Impact on Water Quality or Shoreland, a new section 11.15. Identification of Farmlands, and 11.21. Land Impacted by Timber Harvesting;
- Appendix G; and
- Non-substantive text amendments throughout other sections of the document to match words used in the document with words used in Section 104. Definitions (e.g. single family to Single-Family, two family to Duplex, etc.).

ITEM III: PUBLIC HEARING – Proposed Amendments to Chapter 65 Freeport Shoreland Zoning Ordinance

The Board will hold a Public Hearing to discuss proposed amendments to the Freeport Shoreland Zoning Ordinance related to municipal compliance with 30-A M.R.S. §§ 4364 – 4364-C (including LD 2003, “An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions”). The intent of the proposed changes is to keep consistency with the proposed amendments in the Freeport Zoning Ordinance and to clarify that Accessory Dwelling Units are still subject to Shoreland Zoning Space Standards.

Text amendments are proposed to the following sections of the **Shoreland Zoning Ordinance**:

- Article I – Section 107. Definitions – Amendments to definitions to keep consistent with the definitions in the Zoning Ordinance; and
- Non-substantive text amendments throughout other sections of the document to match words used in the document with words used in Section 104. Definitions (e.g. single family to Single-Family, two family to Duplex, etc.)

Process: The Planning Board met several times this year to learn more about and discuss the State’s LD 2003 rules (meeting dates: 3/2/2023, 4/5/2023, 6/13/2023, 8/2/2023, and 9/12/2023). During these meetings the Planning Board revisited Freeport’s current Accessory Dwelling Units (Section 532. Accessory Apartments) standards, discussed potential new standards mandated by the State, received feedback and answered questions from members of the public, and gave policy direction to the planning staff.

The next step in this process is to hold public hearings, which are scheduled for this Planning Board meeting. Notice of the meeting was circulated to property owners as required per the Planning Board’s notification policy. Approximately 3,795 property owners were notified via letters and an email with the agenda was sent to subscribers of the Planning Department email list. If the Planning Board wishes to act, they may do so at this meeting and recommend/not recommend the proposed amendments to the Zoning, Subdivision and Shoreland Zoning Ordinances to the Town Council. Once the Planning Board completes its public process and decides on a recommendation to the Town Council, the Town Council will follow its public process and take action to approve before the amendments would become effective.

While municipalities must meet the minimal State requirements to be consistent with State law, optional housing policy recommendations that are more permissive than LD 2003 (P.L. 2021 Chapter 672) requirements made by the Planning Board must be found to be in general harmony with the [Freeport Comprehensive Plan](#). Please note that the Comprehensive Plan outlines a direction for housing in Freeport in the Comprehensive Plan’s Vision and the Plan also addresses housing needs, including affordable housing.

SUMMARY OF RULES AND PROPOSED AMENDMENTS RELATED TO LD 2003:

While LD 2003 (P.L. 2021, Chapter 672) includes several housing-related provisions, such as: the establishment of statewide housing production goals (5 M.R.S. § 13056, sub-§9 and M.R.S. § 4364-C), the municipal role in statewide housing production goals, fair housing and non-discrimination, and clarifying that municipalities may regulate short-term rentals, the bulk of the proposed amendments relate to the following rules: 1) the Affordable Housing Density Bonus Requirement M.R.S. § 4364; 2) the Extra Dwelling

Units Allowance M.R.S. § 4364-A; and 3) the Accessory Dwelling Units M.R.S. 30-A § 4364-B. A brief summary of each rule and proposed amendments to comply with the rules is included below.

Amendments Pertaining to the Affordable Housing Density Bonus Requirement – M.R.S. 30-A § 4364

M.R.S. 30-A § 4364 requires municipalities to allow a density bonus for Affordable Housing Developments of two and a half times the base density of the underlying zoning district. In addition, M.R.S. 30-A § 4364 also prohibits municipalities from requiring more than 2 off-street spaces for every 3 units. Please note that the affordable housing density bonus only applies to certain zoning districts that meet the State’s criteria under M.R.S. 30-A § 4364. The zoning district must: 1) allow multifamily dwellings, and 2) either be in a Designated Growth Area OR served by water and sewer.

A list of zoning districts that allow multifamily dwellings is provided in the table below:

Zoning District	Growth Area*	Multifamily Allowed**
Village I-R	No	Yes
Medium Density Residential I	No	Yes
Medium Density Residential II	No	Yes
Commercial IV	No	Yes
Medium Density A	Yes	Yes
Medium Density B	Yes	Yes
Commercial I	Yes	Yes
Commercial III	Yes	Yes
Village I	Yes	Yes
Village Commercial I	Yes	Yes
Village Commercial II	Yes	Yes
Village Commercial III	Yes	Yes
Village Commercial IV	Yes	Yes
Village Mixed Use I	Yes	Yes
Village Mixed Use II	Yes	Yes
<p>* Designated Growth Areas based on the 2011 Comprehensive Plan.</p> <p>** Please note that while Multifamily dwellings are allowed, they are subject to conditions outlined in each zoning district section.</p>		

Summary of draft amendments to comply with M.R.S. 30-A § 4364:

Amendments to the **Zoning Ordinance**, including, but not limited to:

- Section 104. Definitions – Adding new definitions, such as a definition for Affordable Housing Development that aligns with the State’s language. This include the stipulation that 51% of more of the units in an Affordable Housing Development must be affordable for household whose income don’t exceed 80% of the Area Median Income for rental housing, or 120% of the Area Median Income for owned housing;
- Adding Affordable Housing Development to the list of *permitted uses subject to site plan review* in all zoning districts that allow multifamily housing;

- Section 514. Off-Street Parking and Loading – Amendments to clarify that only 2 parking spaces are required for every 3 dwelling units in an Affordable Housing Development; and
- A new section in the Zoning Ordinance, Section 536. Affordable Housing Developments, containing specific standards for Affordable Housing Developments.

Amendments to the **Subdivision Ordinance**, including, but not limited to:

- Article 3. Definitions – Amendments to definitions to keep consistent with the definitions in the Zoning Ordinance;
- Article 7 - Preliminary Plan for Major Subdivision 7.2. D. – Amendments to include Affordable Housing Developments to submission requirement related to providing copies of draft Community Association Documents, or Conservation Ownership and Management Plans; and
- APPENDIX G Community Association Documents and Conservation Ownership and Management Plan Submission Requirements – Amendments to include Affordable Housing Developments submission requirements related to affordability covenants and water/wastewater systems.

Amendments to the **Shoreland Zoning Ordinance**, including, but not limited to:

- Section 107. Definitions – Amendments to definitions to keep consistent with the definitions in the Zoning Ordinance.

Amendments Pertaining to the Additional Dwelling Units Allowance – M.R.S. § 4364-A

In essence, M.R.S. § 4364-A eliminates the power of municipalities to continue to have zoning districts that only allow one single-family home per lot. To note, most zoning districts in Freeport already allow attached two-family dwellings (duplexes) but not two standalone single-family houses to be built in a lot if the lot is large enough to meet the required lot area for two dwelling units. M.R.S. § 4364-A stipulates that municipalities should allow up to two or four dwellings on lots that can meet zoning requirements, subdivision requirements, and any other property-specific requirements. The number of dwellings allowed under M.R.S. § 4364-A depends on a few factors. For any area where housing is allowed, up to:

- Two (2) houses per lot if the lot does not contain an existing dwelling unit and the lot is not in a designated growth area.
- Four (4) houses per lot if the lot does not contain an existing dwelling unit and the lot is in a designated growth area OR if the lot is served by water and sewer in municipalities without a comprehensive plan.
- Three (3) houses if there is already an existing house in the lot (either one additional attached dwelling unit, one additional detached unit, or one of each).

Please note that M.R.S. § 4364-A does not abrogate restrictive covenants or any other property-specific restrictions.

A list of zoning districts in the Designated Growth Areas is provided below. See Attachment A for a map of the Designated Growth Areas.

Designated Growth Areas*
Medium Density District A
Medium Density District B
Village District I
Commercial District I
Commercial District III

Village Commercial District I
Village Commercial District II
Village Commercial District III
Village Commercial District IV
Village Mixed Use District I
Village Mixed Use District II
<i>* Based on the 2011 Comprehensive Plan</i>

Policy direction from the Planning Board:

M.R.S. § 4364-A ties the number of permitted dwelling units to whether there is an existing unit on the lot, and the State does not require municipalities to allow lots with two existing dwelling units to take advantage of extra dwelling allowance. The Planning Board’s direction is to be more permissive than the State and allow up to 3 dwelling units (or 4 dwelling units in Designated Growth Areas) regardless of whether the lot contains two existing dwellings, and regardless of whether the lot is vacant or not. The reasoning for this more permissive approach is that in order to take advantage of the additional dwellings allowance a property would need to meet the underlying zoning district’s minimal land area per dwelling unit (density requirements).

Summary of draft amendments to comply with M.R.S. 30-A § 4364-A:

Amendments to the **Zoning Ordinance**, including, but not limited to:

- Section 201.General Restrictions - Removing the restriction stipulating that no more than one house (and accessory buildings) can be built on a residential lot;
- Section 201.General Restrictions – Adding language stipulating the requirements for dwelling unit allowances (201.L), and adding language clarifying that sanitary and potable water standards are applicable to any dwelling unit (201.M).

Amendments Pertaining to the Accessory Dwelling Units – M.R.S. 30-A § 4364-B

In essence, M.R.S. 30-A § 4364-B requires municipalities to allow one Accessory Dwelling Unit (ADU) in any lot with a single-family dwelling regardless of zoning density requirements and eliminates additional parking requirements for ADUs. To note, Freeport already allows ADUs in almost all residential zoning districts, as stipulated in Section 532. Accessory Apartments of the Zoning Ordinance. In addition to complying with the State’s rules, such as eliminating the parking requirements, the Planning Board discussed and instructed planning staff to update the current standards in Section 532 to further reduce barriers to ADUs development.

Policy direction from the Planning Board:

While the Planning Board indicated that they do not support allowing more than one ADU per lot, the Board indicated that, in addition to allowing ADUs in lots containing a single-family unit, the Board supports allowing lots that contain duplexes or two single-family homes to build an ADU. M.R.S. 30-A § 4364-B does not require municipalities to allow ADUs in lots that already contain two or more dwellings, so Freeport’s rule would be more permissive than the State. One of the

reasons the Planning Board arrived at this decision is that lots that contain a duplex or two single-family homes had to be larger to accommodate the two dwellings.

The State stipulates a minimum size for ADUs but allows municipalities to stipulate the maximum size allowed. Under the current Zoning Ordinance, Freeport restricts the sizes of ADUs to a maximum size no larger than 40% of the single-family home. To provide more flexibility and encourage the production of ADUs, the Planning Board gave direction that the maximum size should be increased to 75% of the existing single-family house or 1,100 square feet, whichever is less.

The State is silent on whether municipalities can restrict the number of bedrooms in ADUs. Under the current Zoning Ordinance, Freeport restricts the number of bedrooms allowed in an ADU to no more than one. To provide more flexibility and encourage the development of ADUs, the Planning Board indicated that they do not want to limit the number of bedrooms in ADUs.

Under the current Zoning Ordinance, Freeport requires that either the single-family dwelling or the ADU be occupied by the owner of the property. The State is silent on whether municipalities can impose owner-occupancy requirements. To provide more flexibility and encourage the development of ADUs, the Planning Board indicated that they do not want to retain the owner-occupancy requirement.

Under the current Zoning Ordinance, Freeport requires that any exterior alterations or new construction of ADU shall preserve the architectural style and character of the original structure and shall be in harmony with the general appearance of the neighborhood. Because this standard does not apply to Single-Family homes in many zoning districts and is therefore difficult to review outside of zoning districts that require a Design Review Certificate or a Design Standard Certificate, and to reduce barriers to the development of ADUs, the Planning Board indicated that this standard could be removed.

Summary of draft amendments to comply with M.R.S. 30-A § 4364-B:

Amendments to the **Zoning Ordinance**, including, but not limited to:

- Section 104. Definitions – Amendments to update ADU definition nomenclature and clarify that ADUs are subordinate to both Single-Family dwellings and Duplex dwellings.
- Section 202. Non-Conformance - Amendments to clarify that the construction of an ADU will not increase the non-conformance in terms of extension of uses.
- Section 514. Off-Street Parking and Loading – Amendments to clarify that additional parking is not required for ADUs.
- Section 532. Accessory Apartments (Accessory Dwelling Units) – Several amendments to both comply with M.R.S. 30-A § 4364-B and to further remove regulatory barriers, such as: allowing one ADU in lots that already contain a duplex, eliminating the 50 feet proximity requirement, eliminating the owner-occupancy requirement, eliminating the one-bedroom limit, increasing the allowable size of the ADUs, and eliminating the restriction in the Shoreland Zone that required ADUs to be connected to the public water and sewer.

Amendments to the **Subdivision Ordinance**, including, but not limited to:

- Article 3. Definitions – Adding a definition that references the Zoning Ordinance

No changes are proposed to the **Shoreland Zoning Ordinance** regarding ADUs.

- Under LD 2003 (P.L. 2021 Ch. 672) M.R.S. § 4364-B Shoreland zoning regulations are still valid and the development of any additional dwellings, including ADUs, must still meet Shoreland Zoning requirements. Therefore, within the Shoreland Zone, an ADU is still needs to comply with the space standards of Section 306. Land Use Standards of Chapter 65: Shoreland Zoning Ordinance of the Town of Freeport, Maine.

M.R.S. Title 30-A § 4364-B (5) Shoreland Zoning.

An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances, except that a municipality may not categorically prohibit accessory dwelling units in the shoreland zone that would otherwise meet requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

END OF SUMMARY

Note: This Summary of rules and proposed amendments is not meant to represent a complete list of all the proposed amendments to the Zoning, Shoreland and Subdivision ordinances.

Packet materials:

- 1 – Proposed Amendments to Chapter 21 Freeport Zoning Ordinance
- 2 – Proposed Amendments to Chapter 25 Subdivision Ordinance
- 3 – Proposed Amendments to Chapter 65 Freeport Shoreland Zoning
- 4 – Updated Maine Department of Economic and Community Development (DECD) LD 2003 Guidance Document

- Commercial 1 C1
- Commercial 3 C3
- Medium Density A MDA
- Medium Density B MDB
- Village Commercial 1 VC1
- Village Commercial 2 VC2
- Village Commercial 3 VC3
- Village Commercial 4 VC4
- Village Mixed Use 1 VMU-1
- Village Mixed Use 2 VMU-2
- Village 1 V1

