



City of Auburn, Maine

Office of Economic and Community Development

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To: Auburn Planning Board

From: Doug Greene, AICP, RLA; City Planner

Date: October 18, 2016

RE: Adaptive Re-use Ordinance

The staff is coming back to you at your October 18, 2016 meeting to discuss the draft Adaptive Re-use Ordinance. Several months ago, your hard work was presented to at a City Council workshop. At that meeting, questions were raised about the extent of legal review on the text amendment. The staff had to acknowledge that process did not happen.

The staff sought a legal review from the City Attorney at the time, Dan Stockford, who felt the text amendment would not meet legal standards for a change of use without the benefit of a zone change. He suggested the City adopt new language in our zoning ordinance that would allow contract zoning. (See attached email from Mr. Stockford and referenced State Zoning Law) The City of Auburn has taken a position in the past that it does not want to make contract zoning part of our zoning standards.

More recently, Eric Cousens and I met with Michael Malloy; the new City Attorney to discuss possible ways to reach the goal of allowing new uses in buildings of community significance. The options we discussed were:

- A thorough review of state statutes, local zoning and comprehensive plan
- A zone change with permitted or special exception type uses that would allow the St. Louis Church to become a financially stable part of the community

This is what the staff wants to discuss with you at your next meeting. If possible, our goal would have you make a motion that would give new direction to the situation. We look forward to presenting new information to you and hearing your thoughts.

(Email from Dan Stockford- dated July 8, 2016)

Hi Doug,

Yes, I did receive the Adaptive Reuse Ordinance and have begun to review it. Because the ordinance would allow a use not allowed as a permitted use or a special exception in the zoning district in which the property is situated, I believe this type of approval would require compliance with the conditional and contract rezoning requirements at [30-A M.R.S. §4352\(8\)](#). When I looked through the Auburn ordinances it appears that there is not currently an ordinance that addresses conditional and contract rezoning. (If there is an existing ordinance on conditional and contract rezoning that I overlooked, please let me know.)

I would propose incorporating the necessary requirements for conditional or contract rezoning into the Adaptive Re-use Ordinance, including both the procedural and substantive requirements that are required by statute. If there may be situations in which conditional or contract rezoning would be considered in circumstances that are outside the scope of the Adaptive Reuse Ordinance, however, it may make sense to have a separate ordinance on conditional and contract rezoning that is then incorporated by reference in the Adaptive Reuse Ordinance. Please let me know your thoughts on this.

Thanks.

Dan

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Maine Revised Statutes
Title 30-A: MUNICIPALITIES AND COUNTIES
HEADING: PL 1987, c. 737, Pt. A, §2 (new)
Chapter 187: PLANNING AND LAND USE REGULATION
HEADING: PL 1989, c. 104, Pt. A, §45 (new)

§4352. ZONING ORDINANCES

A municipal zoning ordinance may provide for any form of zoning consistent with this chapter, subject to the following provisions. [1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW).]

1. Public participation required. The public shall be given an adequate opportunity to be heard in the preparation of a zoning ordinance.

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

2. Relation to comprehensive plan. A zoning ordinance must be pursuant to and consistent with a comprehensive plan adopted by the municipal legislative body, except that adoption of an adult entertainment establishment ordinance does not necessitate adoption of a comprehensive plan by a municipality that has no such comprehensive plan. As used in this section, "adult entertainment establishment ordinance" means an ordinance that regulates the operation of adult amusement stores, adult video stores, adult bookstores, adult novelty stores, adult motion picture theaters, on-site video screening establishments, adult arcades, adult entertainment nightclubs or bars, adult spas, establishments featuring strippers or erotic dancers, escort agencies or other sexually oriented businesses. For purposes of this subsection, "zoning ordinance" does not include a cluster development ordinance or a design ordinance prescribing the color, shape, height, landscaping, amount of open space or other comparable physical characteristics of development.

[2007, c. 247, §6 (AMD) .]

3. Zoning map required. A zoning map describing each zone established or modified must be adopted as part of the zoning ordinance or incorporated in the ordinance. Any conflict between the zoning map and a description by metes and bounds shall be resolved in favor of the description by metes and bounds.

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

4. Exemptions. Real estate used or to be used by a public utility, as defined in Title 35-A, section 102, subsection 13, by a person who is issued a certificate by the Public Utilities Commission under Title 35-A, section 122 or by a renewable ocean energy project as defined in Title 12, section 1862, subsection 1, paragraph F-1 is wholly or partially exempt from an ordinance only when on petition, notice and public hearing the Public Utilities Commission determines that the exemption is reasonably necessary for public welfare and convenience. The Public Utilities Commission shall adopt by rule procedures to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

[2009, c. 615, Pt. G, §1 (AMD) .]

5. Effect on local governments. County and municipal governments and districts are subject to any zoning ordinance.

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

6. Effect on State. A zoning ordinance that is not consistent with a comprehensive plan that is consistent with the provisions of section 4326 is advisory with respect to the State. Except as provided in this section, a state agency shall comply with a zoning ordinance consistent with a comprehensive plan that is consistent with the provisions of section 4326 in seeking to develop any building, parking facility or other publicly owned structure. The Governor or the Governor's designee may, after public notice and opportunity for public comment, including written notice to the municipal officers, waive any use restrictions in those ordinances upon finding that:

- A. The proposed use is not allowed anywhere in the municipality; [1993, c. 721, Pt. A, §11 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]
- B. There are no reasonable alternative sites for or configurations of the project within the municipality that would achieve the necessary public purposes; [1993, c. 721, Pt. A, §11 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]
- C. There are no reasonable alternatives to the project, including sites in other municipalities, that would achieve the necessary public purposes; [1993, c. 721, Pt. A, §11 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]
- D. The project will result in public benefits beyond the limits of the municipality, including without limitation, access to public waters or publicly owned lands; and [1993, c. 721, Pt. A, §11 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]
- E. The project is necessary to protect the public health, welfare or environment. [1993, c. 721, Pt. A, §11 (NEW); 1993, c. 721, Pt. H, §1 (AFF).]

A decision to waive a restriction under this section may be appealed by the municipality or any aggrieved party to Superior Court.

[2003, c. 688, Pt. C, §20 (AMD) .]

7. Petition for rezoning; bond. Any zoning ordinance may provide that if a person petitions for rezoning of an area for the purpose of development in accordance with an architect's plan the area may not be rezoned unless the petitioner posts a performance bond equal to at least 25% of the estimated cost of the development. The bond shall become payable to the municipality if the petitioner fails to begin construction in a substantial manner and in accordance with the plan within one year of the effective date of the rezoning.

[1989, c. 104, Pt. A, §45 (NEW); 1989, c. 104, Pt. C, §10 (NEW) .]

8. Conditional and contract rezoning. A zoning ordinance may include provisions for conditional or contract zoning. All rezoning under this subsection must:

- A. Be consistent with the growth management program adopted under this chapter; [2001, c. 578, §21 (AMD) .]
- B. Establish rezoned areas that are consistent with the existing and permitted uses within the original zones; and [1991, c. 504, §1 (AMD) .]
- C. Only include conditions and restrictions that relate to the physical development or operation of the property. [1991, c. 504, §1 (AMD) .]

The municipal reviewing authority shall conduct a public hearing before any property is rezoned under this subsection. Notice of this hearing must be posted in the municipal office at least 13 days before the public hearing. Notice must also be published at least 2 times in a newspaper having general circulation in the municipality. The date of the first publication must be at least 7 days before the hearing. Notice must also be sent to the owner or owners of the property to be rezoned and to the owners of all property abutting the

property to be rezoned at the owners' last known addresses. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. This notice must contain a copy of the proposed conditions and restrictions with a map indicating the property to be rezoned.

[2001, c. 578, §21 (AMD) .]

9. Notice; general requirements. Before adopting a new zoning ordinance or map or amending an existing zoning ordinance or map, including ordinances or amendments adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B, the municipal reviewing authority must post and publish notice of the public hearing required under subsection 1 in accordance with the following provisions.

A. The notice must be posted in the municipal office at least 13 days before the public hearing. [1997, c. 36, §2 (AMD) .]

B. The notice must be published at least 2 times in a newspaper that complies with Title 1, section 601 and that has a general circulation in the municipality. The date of the first publication must be at least 12 days before the hearing and the date of the 2nd publication must be at least 7 days before the hearing. That notice must be written in plain English, understandable by the average citizen. [1997, c. 36, §2 (AMD) .]

C. [1993, c. 374, §3 (RP) .]

D. [1993, c. 374, §3 (RP) .]

E. Notice must be sent by regular mail to a public drinking water supplier if the area to be rezoned contains its source water protection area. [1999, c. 761, §8 (NEW) .]

[1999, c. 761, §8 (AMD) .]

10. Additional notice; limited areas. Notice must be given in accordance with this subsection and subsection 9 when a municipality has proposed an amendment to an existing zoning ordinance or map that, within a geographically specific portion of the municipality, has the effect of either prohibiting all industrial, commercial or retail uses where any of these uses is permitted or permitting any industrial, commercial or retail uses where any of these uses is prohibited.

A. The notice must contain a copy of a map indicating the portion of the municipality affected by the proposed amendment. [1993, c. 374, §4 (NEW) .]

B. For each parcel within the municipality that is in or abutting the portion of the municipality affected by the proposed amendment, the notice must be mailed by first class mail at least 13 days before the public hearing to the last known address of the person to whom property tax on each parcel is assessed. Notice also must be sent to a public drinking water supplier if the area to be rezoned is within its source water protection area. The municipal officers shall prepare and file with the municipal clerk a written certificate indicating those persons to whom the notice was mailed and at what addresses, when it was mailed, by whom it was mailed and from what location it was mailed. This certificate constitutes prima facie evidence that notice was sent to those persons named in the certificate. Notice is not required under this paragraph for any type of zoning ordinance adopted under the laws governing growth management contained in chapter 187, subchapter II or the laws governing shoreland zoning contained in Title 38, chapter 3, subchapter I, article 2-B. [1999, c. 761, §9 (AMD) .]

Any action challenging the validity of an amendment to a zoning ordinance or map based on a municipality's failure to comply with paragraph B must be brought in Superior Court within 30 days after the adoption of the amended ordinance or map. The Superior Court may invalidate an amended ordinance or map if the appellant demonstrates that the appellant was entitled to receive a notice under paragraph B, that the municipality failed to send the notice as required, that the appellant had no knowledge of the proposed amendment to the

ordinance or map and that the appellant was materially prejudiced by that lack of knowledge. Nothing in this subsection alters the right of a person to challenge the validity of any ordinance based on the failure of the municipality to provide notice as required in paragraph A and subsection 9.

[1999, c. 761, §9 (AMD) .]

SECTION HISTORY

1989, c. 104, §§A45,C10 (NEW). 1991, c. 504, §§1,2 (AMD). 1993, c. 374, §§3,4 (AMD). 1993, c. 721, §A11 (AMD). 1993, c. 721, §H1 (AFF). 1997, c. 36, §§1-3 (AMD). 1999, c. 761, §§7-9 (AMD). 2001, c. 578, §21 (AMD). 2003, c. 595, §§4,5 (AMD). 2003, c. 688, §§C19,20 (AMD). 2007, c. 247, §6 (AMD). 2007, c. 656, Pt. A, §2 (AMD). 2009, c. 615, Pt. G, §1 (AMD).

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