

**[External]RE: [External]RE: Questions for Jenson-Baird**

Mark A. Bower <mbower@jensenbaird.com>

Mon 4/1/2024 4:37 PM

To: Katherine Cook <kcook@auburnmaine.gov>; Eric Cousens <ECousens@auburnmaine.gov>

Cc: John Blais <jblais@auburnmaine.gov>

Good afternoon all,

I have provided my responses to your four questions below. Please let me know if it would be helpful to follow up with a discussion of these issues.

**1. How should the allowance of a second (accessory) unit apply in the AGRP zone. Can we require accessory status to an Ag or recreational use as we currently do for the first unit? Not in growth zone, no water and sewer.**

LD 2003 requires up to 2 dwelling units per lot if the lot does not contain an existing dwelling unit. Under [Sec. 60-145\(a\)\(1\)](#), in AGRP a single-family use is permitted as long as it is accessory to agriculture, recreation, or natural resource uses, and is subject to other restrictions listed in that section. DECD regs state: "Private, state or local standards such as homeowners' association regulation, deed restrictions, lot size, set back, density, septic requirements, minimum lot size, additional parking requirements, growth ordinance permits, shoreland zoning and subdivision law, may also apply to lots." Based on that language, which recognizes that there may be other zoning regulations applicable to lots, I believe that the City could impose the same requirement on the second unit as it does for the first single-family unit – that the residential use must be accessory to agriculture/recreation.

**2. How could the city approach road frontage for additional units as allowed by LD 2003? May road frontage increase as additional structures are added to a lot? We don't necessarily want to do this but DECD has said you can require additional frontage for additional units. One unit, 100', 2 units 200', etc. Staff and MMA don't read it the same way. What is the most defensible interpretation.**

Both the statute and regs address this issue:

- The statute provides: "A municipal ordinance may not establish dimensional requirements, including but not limited to setback requirements, for dwelling units allowed under this section that are greater than dimensional requirements, including but not limited to setback requirements, for single-family housing units, except that a municipal ordinance may establish requirements for a lot area per dwelling unit as long as the required lot area for subsequent units on a lot is not greater than the required lot area for the first unit."
- The DECD regulations provide: "A municipal ordinance may not establish dimensional requirements or setback requirements for dwelling units allowed pursuant to this Section [3 – Dwelling Unit Allowance] that are more restrictive than the dimensional requirements or setback requirements for single-family housing units."
- The DECD guidance document states: "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."

I checked in with my contact at DECD (Hilary Gove), who confirmed that that the guidance document remains their interpretation. (She said she had received an inquiry from MMA on this issue a couple of months ago, and she checked in with the bill's drafter, Ryan Fecteau, who confirmed that was the

intent of the law.) However, she noted that if the lot is in the shoreland zone, all shoreland-related dimensional requirements must be met – including shore frontage – on a per-unit basis.

Therefore, while the regs do allow municipalities to require more lot area for lots with a multi-unit than for a single-family unit, they otherwise cannot apply different dimensional requirements for lots with additional units under the Dwelling Unit Allowance provision. For example, if the lot frontage requirement for a single-family is 100 feet, the frontage requirement for a four-unit must also be 100 feet, not 400 feet.

**3. How could the city approach setbacks for additional units as allowed by LD 2003? May setbacks be increased as more structures are added to a lot? Same conflicting opinions as #2 above but MMA closes with logical people could reach different conclusions so you should seek your own legal counsels opinion.**

Because the term “dimensional requirements” includes frontage, and the rule says “dimensional requirements or setback requirements,” I think the same rule applies as above for frontage.

**4. Will it be sufficient to add language that simply references that additional dwelling provisions that are allowed on a vacant lot as stated in LD 2003 public law periodically amended as general provision? Or should we add more specific use language to each zoning district in the ordinance. We really want a single general provision without repeating the full text of the allowances in each district.**

Yes, I believe that you can have a general, standalone section that deals with the dwelling unit allowance so that you don’t have to repeat it in each section of the Zoning Ordinance. I have seen that in other municipalities and I think it works well. For an illustration, you could look at the Town of Yarmouth’s Zoning Ordinance, Art. II, Sec. EE. (But I’m not necessarily endorsing that provision, as we did not work on it.)

Thanks.

-- Mark

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**From:** Katherine Cook <kcook@auburnmaine.gov>

**Sent:** Monday, April 1, 2024 12:14 PM

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