

**To:** Planning Board, City of Auburn, ME

**FROM:** Sustainability and Natural Resources Board (SNRB)

**RE:** Opinion and finding regarding Council resolves numbers 06-09062022 and 09-11072022 to amend the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-145(a)(1) and Sec. 60-145(b)(18) to remove an income standard requirement for new residential dwelling units within the Agriculture and Natural Resource protection zone outside of the Auburn Watershed Protection Overlay and to amend strip zone regulations in all areas outside of the Lake Auburn Watershed Overlay District.

During its October 13, 2022 meeting, the Sustainability and Natural Resources Board (SNRB) formed an ad hoc committee to develop a draft opinion for consideration by the full SNRB. Members Jane Costlow, Dave Griswold, Ralph Harder and Bill Sylvester were chosen to serve on the ad hoc committee. The ad hoc committee met nine times, with at least one meeting including City Staff and a representative of the Planning Board. During its process the ad hoc committee also sought, and received, clarification on both resolves from the City Council. Additionally, the ad hoc committee presented their draft and received feedback from members of all SNRB working groups.

SNRB met on December 8, 2022 to finalize its recommendation. During that meeting SNRB voted to recommend not adopting text amendments to strike the current income requirement from the Agriculture and Resource Protection (AGRP) Zone without first replacing it with alternative limitations on residential development that promotes the purpose and future land use descriptions in Chapter 60 of Auburn's Ordinances as well as in Auburn's revised 2021 Comprehensive Plan. The Board also voted to recommend that there should be no changes to the current regulation of residential strips that would encroach into land that is currently zoned AGRP.

The SNRB's adopted recommendation may be found attached to this cover letter.

Respectfully,  
Members of the SNRB

## Primary Recommendation

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- PR1. SNRB recommends rejecting the proposed text amendment to strike the current income requirement from the Agriculture and Resource Protection (AGRP) Zone without first replacing it with alternative limitations on residential development that align with the purpose of the AGRP zone as defined in Chapter 60 of Auburn's Ordinances as well as in Auburn's revised 2021 Comprehensive Plan.
- PR2. SNRB recommends rejecting any change to the current regulation of residential strips that would encroach into land that is currently zoned AGRP.

## Primary Findings

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- PF1. SNRB finds that striking the current income requirement from the Agriculture and Resource Protection Zone (AGRP) does not align with the stated purpose of the AGRP zone found in the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-144 because eliminating the income requirement without alternative regulations of residential development would not allow for the control of residential growth in the AGRP zone. (See **APPENDIX A**)
- PF2. SNRB finds that, apart from one parcel located on Gracelawn Rd, all parcels in Auburn that are currently zoned AGRP are also identified as Agriculture District (AG) AND either Restricted Growth or Non-Growth Areas within the *City of Auburn Comprehensive Plan: 2010 UPDATE 2021*. (See **APPENDIX B**)
- PF3. SNRB finds that striking the current income requirement from the Agriculture and Resource Protection Zone (AGRP) would allow for residential uses inconsistent with the description of uses found in the Agriculture District (AG) section of the *City of Auburn Comprehensive Plan: 2010 UPDATE 2021*. (See **APPENDIX B, EXIBIT C**)
- PF4. SNRB finds that striking the current income requirement from the Agriculture and Resource Protection Zone (AGRP) would allow for residential growth inconsistent with the descriptions of desired growth found in the Restricted Growth or Non-Growth Areas sections of the *City of Auburn Comprehensive Plan: 2010 UPDATE 2021*. (See **APPENDIX C, and APPENDIX B, EXIBIT C**)
- PF5. SNRB finds that the incursion of residential strips into area currently zoned AGRP would have a negative effect on the AGRP zone.

## **Additional Recommendations**

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- AR1. SNRB recommends that any change to the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-145(a)(1) and Sec. 60-145(b)(18) take place through a subsequent zoning amendment process, separate from the Planning Board's response to the Auburn City Council's resolves numbered **06-09062022** and **09-11072022**.
- AR2. SNRB recommends that any change to the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-145(a)(1) and Sec. 60-145(b)(18) include requirements for setting aside a large ratio of the parcel to be developed for conservation, set-asides, easements, or other land protection programs.
- AR3. SNRB recommends consideration of specific questions identified in **APPENDIX D** if the Auburn Planning Board chooses to develop an alternative to the current income standard found in the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-145(a)(1) and Sec. 60-145(b)(18).
- AR4. SNRB recommends consideration of language utilized by other municipalities, identified in **APPENDIX E**, that could inform the creation of an alternative to the current income standard found in the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-145(a)(1) and Sec. 60-145(b)(18).

## **APPENDIX A**

**EXCERPT:** Auburn, Maine Code of Ordinances:  
Chapter 60, Article IV  
Division 2, Sec. 60-144.

### **Sec. 60-144. - Purpose.**

The purposes of this district are to allow for conservation of natural resources and open space land, and to encourage agricultural, forestry, and certain types of recreational uses. It is declared to be in the public interest that these areas should be protected and conserved because of their natural, aesthetic, and scenic value, the need to retain and preserve open space lands, their economic contribution to the city, and primarily because these areas are so remote from existing centers of development that any added uncontrolled growth could result in an economic burden on the city and its inhabitants. This section shall be construed so as to effectuate the purposes outline here and to prevent any attempt to establish uses which are inconsistent with these purposes or any attempt to evade the provisions of this division.

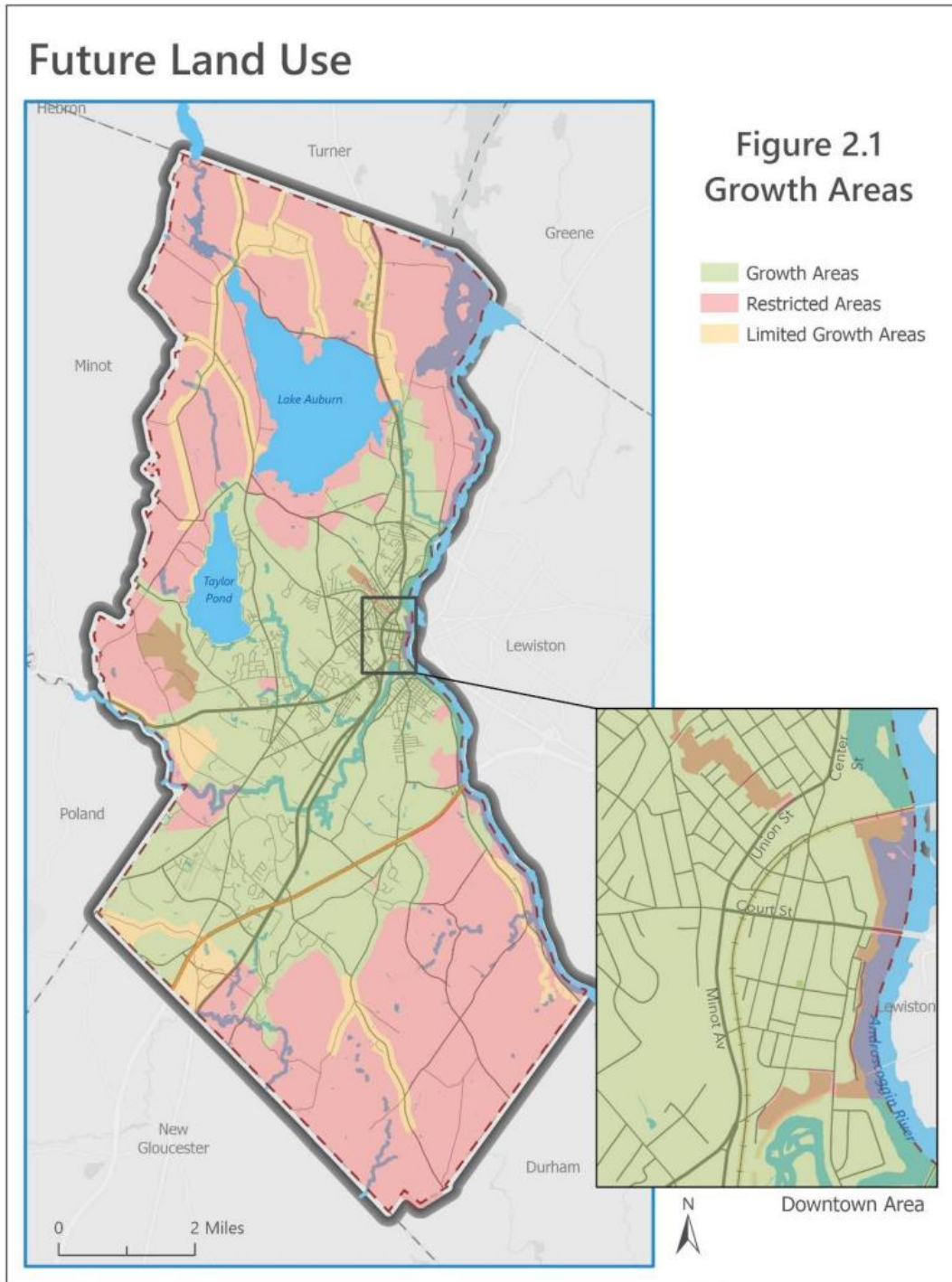
EXHIBIT A

City of Auburn Comprehensive Plan: 2010 UPDATE 2021

Chapter 2: Future Land Use Categories

Figure 2.1 – Growth Areas

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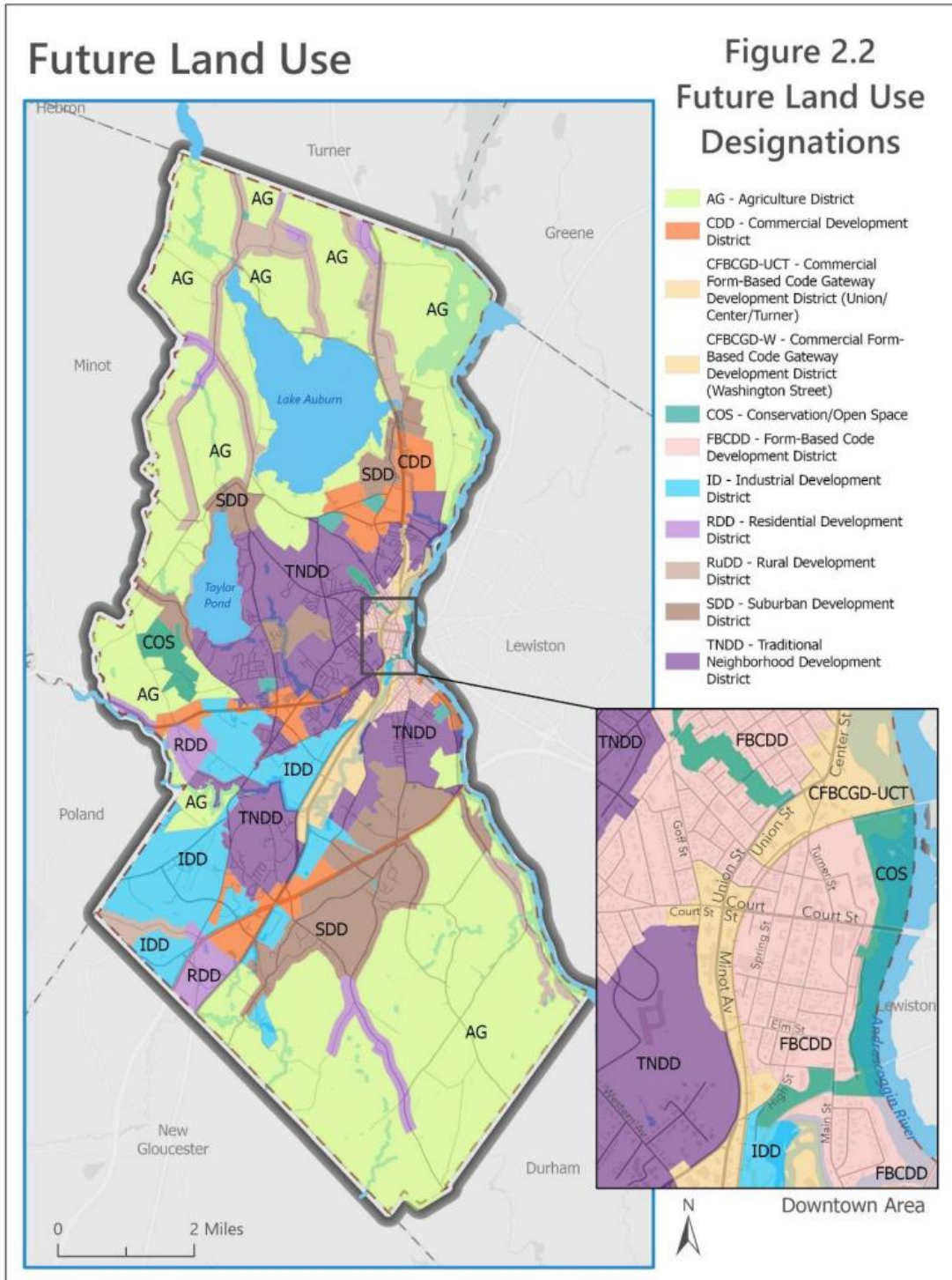
**EXHIBIT B**

**EXERPT:** City of Auburn Comprehensive Plan: 2010 UPDATE 2021

Chapter 2: Future Land Use Categories

Figure 2.2 – Future Land Use Designations

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## **EXHIBIT C**

**EXERPT:** City of Auburn Comprehensive Plan: 2010 UPDATE 2021

Chapter 3: Regional Coordination

Section: 3. NON-GROWTH AREAS – Type C: Protection/Reserve Areas Designation:

Conservation/Open Space

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### **AGRICULTURE DISTRICT (AG)**

**Objective** – Preserve and enhance the agricultural heritage of Auburn and protect the City’s natural resources and scenic open space while maintaining the economic value of the land (see Figure 2.3). The district is characterized by a rural, very low-density development pattern that limits sprawl and minimizes the City’s service costs. The district maintains the current rural development pattern allowing for a broad range of agriculture and natural resource-related uses, while restricting residential development. Recreational development is encouraged both as a means of protecting open space, and to provide reasonable public access to outdoor destinations such as Lake Auburn and the Androscoggin River. The Agriculture District is intended to serve as a land reserve, protecting valued community open space and rural landscapes, while maintaining the potential for appropriate future development.

**Allowed Uses** – The Agriculture District should continue to include the uses allowed in the existing AG/RP zoning district. In addition, a broader range of rural uses should be allowed. Agriculturally related businesses including retail and service activities and natural resource industries should be permitted. The reuse of existing agricultural buildings should be allowed for low intensity non-agriculture related uses.

Residential uses should continue to be limited to accessory residential development as part of a commercial agriculture or natural resource use, not just traditional farms. The criteria for determining when an accessory residential use is permitted should be based on updated standards that consider the economic realities of today’s commercial agricultural activities, including outside sources of income and part-time and small-scale commercial operations. Residential development may also be part of a commercial recreational use as part of a planned development in which the recreational open space is permanently preserved.

**Development Standards** – All new development, redevelopment, and expanded uses in the Agriculture District should be required to meet “best management practices” for stormwater management and environmental protection to ensure adequate protection of natural resources. All development activities in the Agricultural District should be subject to low impact development (LID) standards such as limiting impervious surfaces, minimizing lot disturbances, creating natural buffers, and capturing and treating runoff through filtration measures.

The city should continue to encourage a very low-density development pattern as a means of protecting natural resources and preserving the rural character. The basic residential density standard for the current AG/RP zoning district should be maintained. The standards for the development of accessory residential units should provide greater flexibility in the siting of those units. To place accessory residential development in areas where it will have the least impact on natural resource and/or the agricultural value of the land, the standards should allow for a waiver or elimination of road frontage requirements and access from a private driveway.

Residential development that is proposed as part of a master planned commercial recreational development should be limited to the same density standard (one unit per 10 acres) as other accessory residential uses, unless necessary for economic reasons to increase the density as a project incentive. A recreational master plan should be required outlining the scope, scale, and location of residential units and ensuring a cluster development pattern in which most of the land is retained as recreation/open space. A conservation easement, or other legally binding City of Auburn Comprehensive Plan – 2021 Chapter 3: Regional Coordination 105 preservation measure, should be required to permanently conserve the recreation/open space areas.

As part of the 2021 Comprehensive Plan update, it is understood that agriculture and forestry may not be profitable in some areas of the city and the existing Agriculture and Resource Protection Zoning, in some cases, eliminates the economic use of private land. The city should create a mechanism in which private landowners can petition the city for a change of use based on the individual circumstances of their lot(s).

The city also recognizes differences between Agriculture and Resource Protection, and as such it is recommended that the districts be treated separately within the zoning ordinance (Agricultural District and Conservation/Open Space District). This committee acknowledges that in practice there is overlap between Agriculture and Resource Protection, and that the conversation about how to distinguish the two should include a broad group of voices including residents, relevant City Committees (Conservation Commission, Agriculture Committee, etc.) and experts who can support the City in meeting its goal to untangle these activities. Council

Approval: December 6, 2021, ORDER 131-12062021



**APPENDIX C**

***EXHIBIT D***

**EXERPT:** City of Auburn Comprehensive Plan: 2010 UPDATE 2021

Chapter 2: Future Land Use Categories

Future Land Use Categories, 3. Non-Growth Areas

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**3. NON-GROWTH AREAS** – Areas that are either unsuitable for development or in which the city desires to see little growth and development over the next ten years.

## **APPENDIX D**

Questions for consideration if the Auburn Planning Board chooses to develop an alternative to the current income standard found in the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-145(a)(1) and Sec. 60-145(b)(18). These questions are not in any particular order and should each be contemplated as though they carry equal importance.

1. What will the public process be if the Planning Board chooses to initiate a zoning text amendment changing the income requirements to build a residence in the AGRP zone?
2. Where are the areas of prime soils and soils of statewide importance located within the City of Auburn?
3. Have wildlife corridors, natural habitats, wetlands and areas of cultural value been identified in order to minimize the possible impact of any changes to the AGRP zone would have on those areas?
4. Which lots can currently be developed within the AGRP zone in Auburn?
5. Should future changes to development standards for residential use in the AGRP include a provision requiring that land be set aside on the same parcel for permanent protection as farmland, forestry, or open space and conservation?
6. Do any proposed changes to development standards for residential use in the AGRP zone align with both the purposes of the AGRP zone as defined in ordinance as well as with the Comprehensive Plan?
7. Do any proposed changes to development standards for residential use in the AGRP zone disrupt the contiguous nature of land now used for working farms and forests, recreation, and sports?
8. Do any proposed changes to development standards for residential use in the AGRP zone increase potential for impermeable surfaces and run-off beyond current expected impacts from currently allowed uses?
9. Do any proposed changes to development standards for residential use in the AGRP zone exacerbate potential loss of forest, pasture, and cropland?
10. Do any proposed changes to development standards for residential use in the AGRP zone increase the potential for leapfrog development or sprawl?
11. Do any proposed changes to development standards for residential use in the AGRP zone substantially increase the need for municipal services such as roads, police, fire, and school buses or lead to unnecessary municipal expense?
12. Do any proposed changes to development standards for residential use in the AGRP zone substantially create or increase traffic or a traffic hazards?
13. Do any proposed changes to development standards for residential use in the AGRP zone negatively impact the current economic value of the land or create conflict between residential uses and currently allowed uses?

14. Do any proposed changes to development standards for residential use in the AGRP zone further or enhance the current economic value of land or current uses within the zone including agriculture, forestry, and recreational uses?
15. Do any proposed changes to development standards for residential use in the AGRP zone further or enhance access, or the potential for access, to local food or promote food security within Auburn?
16. Which areas within the City should be targeted for conservation or preservation and should thereby be excluded from new development under any standards adopted in considering proposed changes to development standards for residential use in the AGRP zone?
17. Should any proposed changes to development standards for residential use in the AGRP zone include provisions or requirements for enrolling properties in state tax use programs? If so, what proportion of a parcel should be included and for what period of time?
18. Do any proposed changes to development standards for residential use in the AGRP zone create conflict between uses of land within the zone?

## **APPENDIX E**

Example language utilized by other municipalities that could inform the creation of an alternative to the current income standard found in the Auburn, Maine Code of Ordinances Chapter 60, Article IV, Division 2, Sec. 60-145(a)(1) and Sec. 60-145(b)(18).

### **Fairfield land Use Ordinance<sup>1</sup>**

"The owner of a parcel actively used for agriculture or forest operations may create new lots no smaller than 40,000 square feet, provided that for each new lot created, nine (9) acres of the remaining acreage be voluntarily entered into a deed restriction or conservation easement prohibiting development for residential purposes. There is no limit to the number of lots that may be created under this provision."

Fairfield also has a category called Open Space Subdivision, and a section Dedication and Maintenance of Common Open Space of the Town of Fairfield Subdivision Ordinance.

### **Unity Agricultural Protection Setback**

#### **Farmland Protection Incentive Measure<sup>2</sup>**

Where the landowner meets two conditions, the average size of new lots can be reduced to 60,000 square feet (sf) (individual lots may be made as small as 20,000 sf, as long as the average size of lots is no smaller than 60,000 sf). The first condition is that any lot created at a higher density (than one lot per 120,000 sf) cannot either locate structures or impervious surfaces on productive farmland, or otherwise diminish the land's potential for cultivation. The second condition is that for every lot created at the higher density, at least 40,000 sf of productive farmland must be preserved. This preserved land may be contained within the new lot, or within any other lot within the Town.

Open land must be preserved through deed restrictions.

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<sup>1</sup> Town of Fairfield (Maine) land use ordinance, 1999 (last amended 2006) p. 34.

[https://www.maine.gov/dacf/municipalplanning/docs/Fairfield\\_LandUse\\_Ord\\_Feb2010.pdf](https://www.maine.gov/dacf/municipalplanning/docs/Fairfield_LandUse_Ord_Feb2010.pdf)

<sup>2</sup> <http://www.unitymaine.org/gov/ordinances/landuse/doc.html>