



City of Auburn, Maine

Economic & Community
Development

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To: Auburn Planning Board
From: Eric Cousens, Deputy Director of Economic and Community Development
Re: Back Lots Options for discussion
Date: March 10, 2020

- I. **ORDINANCE OVERVIEW** – At the February meeting the Planning Board discussed the creation of an ordinance to allow for back lots. Attached is a draft that includes requirements that attempt to address the issues raised by the Board and a summary of the Boards discussion.

Staff wishes to discuss this with the Board and receive feedback to finalize a draft for public hearing at the next meeting.

ARTICLE II. - GENERAL PROVISIONS

Sec. 60-33. - Permitted uses.

In the zoning districts specified in this article and in article XII of this chapter, the designated buildings and alterations and extensions thereof and buildings accessory thereto and the designated uses of land, of buildings and of parts of land or buildings and the uses accessory thereto are permitted. Except as provided in this article, all other buildings and uses of land or of buildings are hereby expressly prohibited, except those already lawfully existing which by the operation of this provision would hereby become lawfully nonconforming.

(Ord. of 9-21-2009, § 3.1A)

Sec. 60-34. - Buildings per lot.

No more than one principal building shall be erected on any lot in residential zoning districts except in the case of multifamily buildings and/or developments approved under divisions 10 and 11 of article IV of this chapter.

(Ord. of 9-21-2009, § 3.1B)

Sec. 60-35. - Conversion of one-family dwellings.

In all residential, general business and form based code districts, one-family dwellings erected prior to January 1, 1958, may be converted to two-family dwellings provided that:

- (1) Any floor space created by additions to the existing structure after January 1, 1958, shall not be converted to a second dwelling.
- (2) There will not be less than one accessible off-street parking place of 200 square feet in area, exclusive of driveways, per dwelling unit resulting from such conversion.
- (3) Stairways leading to any floor above the first floor will be enclosed within the exterior walls of the dwelling and any fire escapes required will be on the rear or one side of the dwelling and not on any wall facing a street.
- (4) After such conversion, the building converted will retain substantially the appearance and character of a one-family dwelling.

(Ord. of 9-21-2009, § 3.1C; Ord. No. 04-03072016, 5-16-2016)

Sec. 60-36. - Lots in more than one jurisdiction.

When a lot in one ownership lies in more than one jurisdiction, the whole lot shall be considered for density and lot dimension purposes in the same manner as if the entire lot were situated in the city. Any site plan or special exception review of the use or development of the lot in the city, however, shall be limited to that portion that lies within the city's jurisdiction only.

(Ord. of 9-21-2009, § 3.1D)

Sec. 60-37. - Minimum lot area determined.

In determining the minimum area of lot required in any zoning district, any land within the lines of the street upon which such lot abuts shall not be included, even if the fee to such street is in the owner of the

lot with the following exception: If a lot at a street corner is bounded in part by a curved exterior street line not more than 80 feet in length connecting other exterior street lines bounding such lot which, if extended, would intersect, the area required in such lot shall be computed as if said line were extended. If such curved line is more than 80 feet in length, the minimum area required in such lot shall be measured and computed entirely within the lines bounding such lot.

(Ord. of 9-21-2009, § 3.1E)

Sec. 60-38. - Nonconforming lots.

- (a) Abutting undeveloped nonconforming lots under one ownership shall be considered as one lot and shall not again be divided.
- (b) Abutting nonconforming lots under one ownership or joint ownership shall be considered as one lot. Such a lot may be divided provided that:
 - (1) One or more of the lots has been developed.
 - (2) The lots were purchased by separate deed.
 - (3) The lots are divided along the historical lot dimensions.
 - (4) All dimensional regulations are maintained.
- (c) An abutting conforming and nonconforming lot under one ownership, or joint ownership shall be considered as one lot. Such a lot may be divided provided that:
 - (1) The lots are divided along the historical lot dimensions.
 - (2) The conforming lot is not reduced in any manner that violates any provision of this chapter.
 - (3) All dimensional regulations are maintained.

(Ord. of 9-21-2009, § 3.1F)

Sec. 60-39. - Lot area, width and depth exception.

The lot area (except as otherwise may be required), lot width and lot depth requirements of this chapter shall not apply to any lot which was lawfully laid out in conformance with zoning regulations in effect at the time of lot creation and duly recorded by plan or deed.

(Ord. of 9-21-2009, § 3.1G)

Sec. 60-40. - Reduction in dimensional regulations.

No lot (except as allowed by the planning board at the time of final approval of a subdivision or development plan) shall be reduced, subdivided, conveyed, divided or otherwise transferred that violates, or creates a lot that violates, any minimum or maximum dimensional regulation of this chapter. No building permit or other municipal permit or license shall be issued to any of the land so transferred or to the land retained until all of such land or lots are in conformance with all dimensional regulations. If a serious health or safety issue with the property should arise, the director of planning and permitting services shall determine if a permit should be issued to correct the problem. This provision shall not allow further nonconformity to occur in order to achieve the corrective action necessary. Any land taken by eminent domain or conveyed for a public purpose shall not be deemed in violation of this provision. Any setback or lot that is reduced below the minimum or extended beyond the dimensional requirements as a result of land taken by eminent domain or conveyed for a public purpose shall not be deemed nonconforming. Setbacks for the enlargement of any existing building located on such a lot shall be

referenced to the property line as it was located prior to the eminent domain action or the conveyance for a public purpose.

(Ord. of 9-21-2009, § 3.1H; Ord. No. 04-03072016, 5-16-2016)

Sec. 60-41. - Lot of record.

Where used in this article, the term "lot" means "lot of record" as defined in sections 60-1 and 60-2.

(Ord. of 9-21-2009, § 3.1I)

Sec. 60-42. - Unsewered lots.

The minimum lot sizes specified in this chapter for residential districts are for lots having sanitary sewer service. No unsewered lots having an area less than 20,000 square feet shall be developed for residential dwelling purposes. This regulation does not reduce lot size requirements in residential districts having larger minimum lot sizes.

(Ord. of 9-21-2009, § 3.1J)

Sec. 60-43. - Residential accessory buildings and structures.

- (a) Accessory buildings of 120 square feet and ten feet or less in height will have a zero rear and side setback. The front yard setback shall be maintained.
- (b) Accessory buildings greater than 120 square feet shall have rear and side yard setbacks that are 50 percent of the requirement for principal buildings, except that in no case shall the setbacks be reduced to less than five feet. The front yard setback shall be maintained.
- (c) A deck that is no greater than 30 inches high shall be allowed a zero rear and side setback provided that the deck is no closer than 15 feet to a neighboring principal building. All decks that are higher than 30 inches shall meet the requirements of subsection (b) of this section.
- (d) A deck that attaches a principal building to an accessory building shall be allowed and shall not be deemed to cause the accessory building to be nonconforming. Such decks shall meet all other requirements as found in this section.
- (e) The maximum first floor space of accessory buildings on lots under two acres is 1,000 square feet. On lots of over two acres, there is no maximum size.

(Ord. of 9-21-2009, § 3.1K; Ord. No. 30-01182011-02, 1-18-2011)

Sec. 60-44. - Conflicts.

In any case where there is a conflict with another ordinance the more stringent standard shall apply.

(Ord. of 9-21-2009, § 3.1L)

Sec. 60-45. - Site plan/special exception review.

- (a) Projects requiring site plan review shall be reviewed by the planning board in accordance with divisions 2 and 3 of article XVI of this chapter and according to the standards and criteria contained therein. No project requiring site plan review shall be expanded, extended or enlarged so as to occupy additional land area greater than ten percent of the original area or one-half acre, whichever

is less; or by the construction of a structure or an addition to an existing structure by more than ten percent of additional floor space unless approval has been secured from the planning board in the manner provided in this section. A reduction in the scope of the project, except for land area, does not have to be reviewed by the planning board provided that an amended plan is submitted to the planning department to determine that all other land use provisions are satisfied.

- (b) The expansion, extension or enlargement of uses or buildings which are less than described subsection (a) of this section, shall be reviewed and approved by the planning department using the criteria of divisions 2 and 3 of article XVI of this chapter.
- (c) If an applicant disagrees with the review of the planning department, the planning board upon the written request of the applicant, shall conduct an administrative review of the planning staff's decision.
- (d) Permitted uses subject to special exception review pursuant to sections 60-499(b)(17), 60-525(b)(13), 60-547(b)(4) and 60-578(b)(33). which are to be located in a commercial or industrial subdivision which has been duly approved by the city planning board shall not be required to be reviewed and approved by the planning board in accordance with division 3 of article XVI of this chapter unless, in the determination of the municipal officer charged with enforcement, the project contains elements that deserve a full review by the planning board. In making such a determination, the municipal officer shall take into account the planning board's initial review of the subdivision, including but not limited to such issues as traffic, drainage, infrastructure improvements, availability of water and sewer, fire protection and the impact on the environment.
- (e) The permitted uses which have been exempted from special exception review and located in duly approved commercial or industrial subdivisions shall be processed by administrative review by the planning department in accordance with division 3 of article XVI of this chapter. Such uses shall also be subject to all city ordinances as would be required for review of special exceptions.
- (f) The planning board shall be notified of all action taken, or approvals granted, by the municipal officer pursuant to this section.
- (g) The city finds that a major retail development can have a significant impact on the immediate and surrounding areas and accordingly requires a determination by the city planning board of consistency with the adopted comprehensive plan in addition to the review and approval process of site plan/special exception review and other state and/or municipal permitting. A request for a determination of consistency shall be submitted to the department of planning and code enforcement a minimum of 15 days prior to this item being placed on the planning board agenda for action. Action on the request for a determination of consistency shall be made a minimum of one regularly scheduled meeting prior to the planning board meeting at which the project is to be reviewed. Notice for the consideration of a request for a determination of consistency shall conform to the requirements found in section 60-1474. and must state that the determination of consistency is being sought for a major retail development.

(Ord. of 9-21-2009, § 3.1M)

Sec. 60-46. - Home occupation.

The establishment of a home occupation shall be permitted in all residential zoning districts provided the use is consistent with the definition of home occupation and approval is secured from the department of community development and planning in accordance with article IX of this chapter.

(Ord. of 9-21-2009, § 3.1N)

Sec. 60-47. - Corner lots.

There shall be a front yard along the street line as provided for under yard requirements, front in the district where located. all other yards shall be considered as side yards and measured as provided for under yard requirements, side in the district where located. On corner lots within the form based code districts, there shall be a primary street front yard and a secondary street front yard with minimum and maximum building setback requirements. The yard opposite from the primary street shall be considered the rear yard while the yard opposite the secondary street shall be considered the side yard.

(Ord. of 9-21-2009, § 3.1O; Ord. No. 04-03072016, 5-16-2016)

Sec. 60-48. - Public utilities.

The use of property by a public utility for the transmission of water, electricity, telephone or gas by pipes, poles, wires, lines, conduits, cables or other devices is permitted in all zoning districts.

(Ord. of 9-21-2009, § 3.1P)

Sec. 60-49. - Railroads.

Railroad tracks, spurs, yards, crossings and structures existing as of the date of the enactment of this provision are permitted. The expansion, extension or enlargement of these facilities and the introduction of new facilities shall be reviewed and approved by the planning board in accordance with division 2 of article XVI of the chapter and according to the standards and criteria contained therein. Railroads shall be allowed in all zoning districts.

(Ord. of 9-21-2009, § 3.1Q)

Sec. 60-50. - Accessways to land zoned commercial or industrial.

Accessways over land zoned residential to parcels of land situated in commercial or industrial districts shall be allowed upon approval of a site plan reviewed by the planning department in accordance with division 2 of article XVI of the chapter and further provided that:

- (1) Access to a public street that does not require using land zoned as residential is reasonably available. Such access shall be used.
- (2) The accessway and the building shall be screened from adjacent residential lots or uses as provided for by section 60-579(3)g.
- (3) The street onto which access will be gained is adequate to carry the projected volumes of traffic. This shall be determined by a traffic study as provided for by chapter 52, pertaining to traffic and vehicles.
- (4) Accessways shall be designed in accordance with the standards for industrial/commercial streets as provided for by chapter 52, pertaining to traffic and vehicles.
- (5) Title to the land used for access will be retained by the owner of the land zoned for commercial or industrial use to which access is provided.

(Ord. of 9-21-2009, § 3.1R)

Sec. 60-51. - Mass gatherings.

The use of property for a mass gathering as defined and regulated by article II of chapter 6 is permitted in all zoning districts.

(Ord. of 9-21-2009, § 3.1S)

Sec. 60-52. - Adult day centers and child day care centers.

Adult day care centers and child day care centers proposed to be operated in a church, school or municipally owned building or recreation facility shall not be required to be reviewed and approved by the city planning board as a special exception. Such uses shall be processed by administrative review by the planning department in accordance with division 3 of article XVI of this chapter. The planning board shall be notified of any project approved by the planning department.

(Ord. of 9-21-2009, § 3.1T)

Sec. 60-52. - Back Lot on Frontage Right-of-Way

Lots in residential zoning districts existing as of April 1, 2020 may create one back lot if the following standards are met:

1. Minimum lot size is met for the zoning district in which the lot is located.
2. A deeded right-of-way or fee ownership of a strip of land at least 40' wide is provided to allow permanent access from a public street to the back lot.
3. The driveway is shared with the front lot or if a new driveway is proposed it meets the spacing requirements of Section 60-800.
4. The proposed use of each lot is permitted in the district or has received Special Exception approval from the Planning Board as required by ordinance.
5. The proposed access drive meets the standards of NFPA 101.
6. The lot existing as of April 1, 2020 has not previously used this provision.

Secs. 60-~~5453~~—60-77. - Reserved.

Planning Board Meeting Notes (2/11/2020)
Back Lots

Comments/Questions Posed by the Board –

The Planning Board will have to be specific about where back lots should or should not be permitted.

For example, the Planning Board can look at allowing back lots in specific zones if they meet a certain density and can meet all the setback/frontage requirements.

Are there other solutions that can be employed to avoid having to create a back-lot provision? A back lot provision seems like a small solution to permit an increase in single-family home density where single-family homes already exist. Should parcels just be zoned differently to increase single-family home density? How would this look?

The discussion should go hand in hand with a discussion of current zoning. Density standards could be amended to allow densities at equal to or less than half of the abutting properties (for example). Or densities compatible with the surrounding neighborhood.

A good Neighborhood example (Lake, Park, Hotel) where the land is bounded, and the larger lots are not zoned to allow for more than one unit/lot. *The Planning Board would like a couple real world examples of where a back lot provision could be beneficial.*

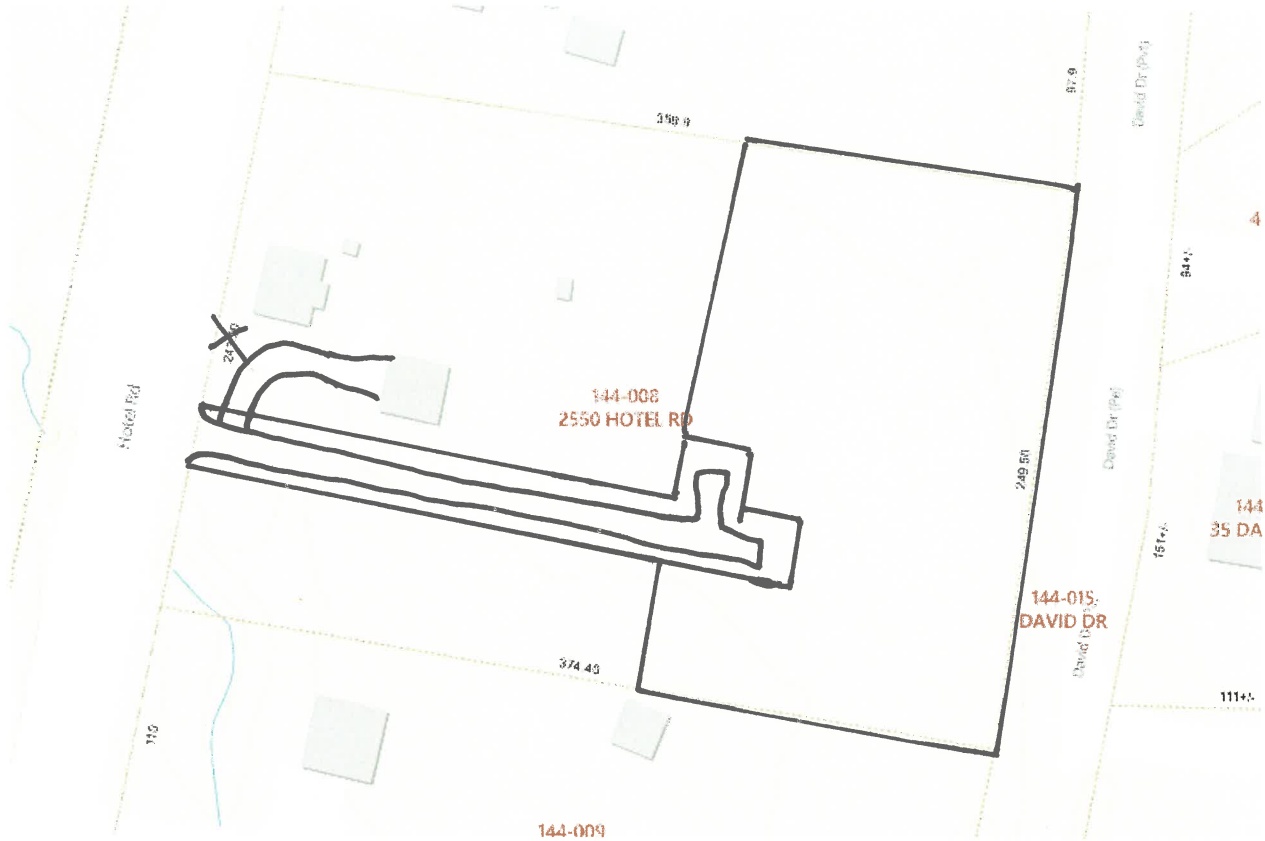
One example is the Disc. Golf Course on Witham Road. They need to separate the commercial from residential use for financing purposes and without a back-lot provision, they cannot do that.

The Planning Board would prefer to not have long private drives and instead have single-family homes fronted by public ways. How would a Right-of-Way be carved out to get to a back lot? How would the ownership look of a shared Right-of-Way?

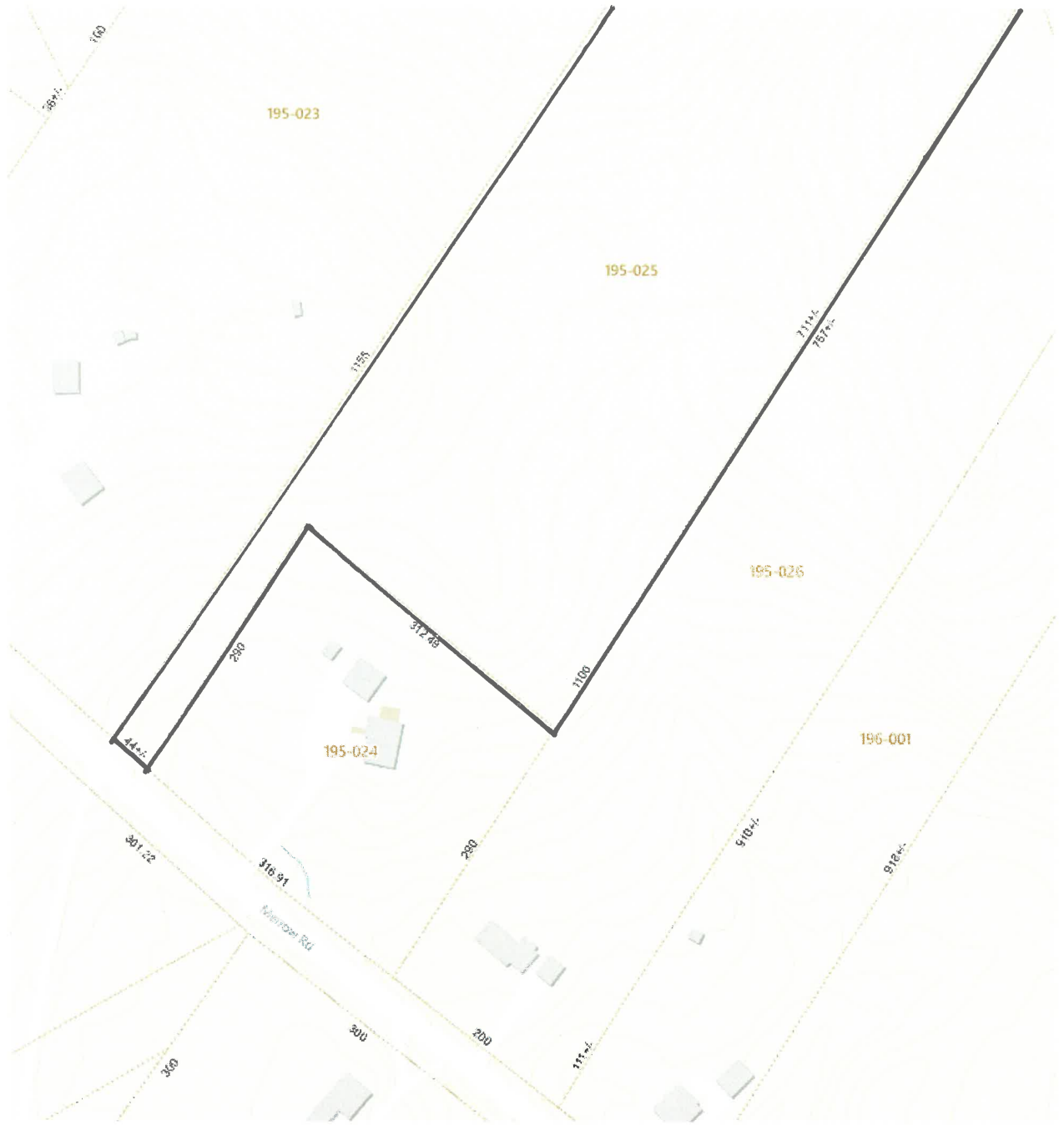
Right-of-Ways should not be counted towards the frontage of the front lot. For example, with the Self-Storage proposal on Washington St. the close curb-cuts seem dangerous.

Right-of-Ways should be shared between the 2 lots, unless a lot of space is provided. No waivers/Special Exceptions for back lots should be allowed. Adequate sight distance should be provided.

The Planning Board wants to ensure a Subdivision cannot be created on a back lot. A provision could stipulate the parcel must be owned for a 5-year period before the back lot can be created. An example standard could allow each existing lot to be eligible for 1 back lot but cannot be used for more than one.



Shared R.O.W. Too close for separate driveways. Would need to combine Access at one curb cut.



Back Lot Owned R.O.W - Fee ownership of Access



Shared Driveway Residential + Recreational Uses