Town of Topsham **Planning & Codes Office**
100 Main Street
Topsham, Maine 04086
Planning Office: (207) 725-1724
Codes Office: (207)725-1723

MEMORANDUM

To: Don Spann, Chair
Planning Board Members
From: Julie Erdman, Director of Planning
Date: April 13, 2023
Re: 2023 Zoning Ordinance Amendments Public Hearing

The Planning Board has held workshops on the attached zoning amendments on March 9th and March 23rd. The items attached and listed below for today's public hearing are the same as what was reviewed at the March 23rd workshop with two exceptions. The first is that the definition of "Dwelling Unit" has been modified to include the newly defined "Accessory Dwelling Unit". The second is in §225-60.6.D(1), where the word "rented" has been added per Planning Board discussion at the previous workshop. Red lined versions of the amendments listed below are attached for your review.

The first of the amendments is a change to **§225-27.G(4) Off-street Parking and Loading.** The Select Board requested that the in-lieu sidewalk construction fee for the MUL and MUC be removed from the ordinance. The Planning Board has removed the fee as an option but chose to add the in-lieu fee back in as a requirement if a project is deemed eligible for a sidewalk waiver. The waiver criteria are borrowed from Portland's sidewalk ordinance regarding installation and waivers.

> ***Suggested Motion:*** *I hereby move that the Planning Board forward the Sidewalk Zoning Amendment to §225-27.G(4) to the Select Board for addition to the Town Warrant with the recommendation "Ought to Pass".*

The next several amendments are the result of the adoption of LD2003 and they center on affordable housing and accessory dwelling units. LD2003 goes into effect on July 1st of this year and these changes are required to bring Topsham into compliance with state statute.

Modifications to **§225-60.6 Affordable housing developments** include increasing bonus density to match the state requirement of 2.5 times base density; and preserving affordability for 30 years as opposed to 15. The definition of affordable housing has been revised in **§225-6 Definitions** to match the state's definition. Affordable housing developments have been added to the parking table, **§225-27.C-1 Off-street vehicle parking space requirements. §225-60.6E** has been removed from the affordable housing section, revised and added as a footnote in the **Table of Dimensional**

Requirements. The dimensional table has also been modified to remove the increased side setback for multi-family dwellings in R1 and R2.

> ***Suggested Motion:*** *I hereby move that the Planning Board forward the Affordable Housing Development Zoning Amendments to sections: §225-6, §225-60.6, §225-27.C-1 and the Table of Dimensional Requirements, to the Select Board for addition to the Town Warrant with the recommendation "Ought to Pass".*

Revisions to **§225-54 Renting rooms and apartments** adds language to allow for one accessory dwelling per lot regardless of the density requirements and removes the limit on the size of new construction. Accessory Dwelling Unit (ADU) is newly defined in **§225-6 Definitions,** and the definition of Dwelling Unit has also been modified to reflect the new addition. A footnote to the **Table of Dimensional Requirements** has been amended to allow dwelling units/ADUs to be as small as 500 sq ft, attached or detached from the principal structure.

> ***Suggested Motion:*** *I hereby move that the Planning Board forward the Accessory Dwelling Unit Zoning Amendments to sections: §225-6, §225-54 and the Table of Dimensional Requirements; to the Select Board for addition to the Town Warrant with the recommendation "Ought to Pass".*

§225-27 Off Street Parking and Loading

G. Additional requirements for Mixed-Use Limited (MUL) and Mixed-Use Commercial (MUC) Zones:

(1) Driveways are not permitted within the setback areas of a lot except for access drives which are perpendicular to the setback for access to parking areas.

(2) All parking in the Mixed-Use Limited Zone must be located to one side and/or the rear of buildings.

(3) Side yard driveways serving commercial properties and multifamily developments must have a planting strip and sidewalk which leads from the parking area to the street.

(4) Sidewalks shall comply with the following requirements:

(a) A sidewalk with a minimum width of ~~six~~five feet, not including curbing, must be constructed ~~the width of the front property line~~ along all public frontages of each developed property.

~~**(a)** When the Planning Board finds that a sidewalk is not appropriate, the applicant may pay an in-lieu fee equal to the cost of providing one upon his or her own frontage. The calculated costs must be reviewed and approved by the Planning Board and a payment must be made prior to any construction.~~

(b) Where sidewalks exist but are in substandard condition, they shall be repaired or replaced.

(c) All new or repaired sidewalks shall be constructed in conformance with §185-7 Street design and pedestrian ways, and §185-8 Minimum construction standards for public streets, sidewalks and utilities

(d) An applicant may request a waiver from sidewalk installation requirements if they meet two or more of the following applicable waiver criteria:

i. There is no reasonable expectation for pedestrian usage coming from, going to, and traversing the site.

ii. There is no sidewalk in existence or expected within 1,000 feet and the construction of sidewalks does not contribute to the development of pedestrian oriented infrastructure.

iii. A safe alternative walking route is reasonably available, for example, by way of a sidewalk on the other side of the street that is lightly traveled.

iv. The reconstruction of the street is specifically identified and approved in the first or second year of the current Capital Improvement Plan (CIP) or has been funded through an earlier CIP or through other sources.

v. The street has been constructed or reconstructed without sidewalks within the last 24 months.

vi. Strict adherence to the sidewalk requirement would result in the loss of significant site features related to landscaping or topography that are deemed to be of greater public value.

vii. Topography or other site features limit the constructability of a sidewalk.

(e) Applicants that receive Planning Board approval for a sidewalk waiver shall pay an in-lieu fee equal to the cost of providing a sidewalk upon his or her own frontage. The calculated costs must be reviewed and approved by Town staff and a payment must be made prior to the start of project construction.

§225-6. Definitions

AFFORDABLE HOUSING DEVELOPMENT

~~Any housing unit/lot which is designed with the express intent of providing decent, safe, and sanitary living accommodations that are affordable to lower income households and moderate income households, in accordance with the following definitions:~~

~~**[Added 5-24-2006 STM, Art. 16]**~~

~~Very low income household is a household with a gross income less than or equal to 50% of the applicable Sagadahoc County median income.~~

~~Low income household is a household with a gross income over 50%, but less than or equal to 80%, of the applicable Sagadahoc County median income.~~

~~Moderate income household is a household with a gross income more than 80%, but less than or equal to 100%, of the applicable Sagadahoc County median income.~~

~~Sagadahoc County median income is the median family income most recently published by the U.S. Department of Housing and Urban Development for Sagadahoc County. Where appropriate to use this definition, median family income may be adjusted for family size.~~

~~Gross income includes the income of all household members from all sources.~~

~~Equity recapture. In order to maintain affordability of "affordable housing," developers/applicants are required to put in place some kind of equity recapture mechanism to discourage speculation, and encourage reasonable long term equity gains to the buyers.~~

For rental housing, a development in which a household whose income does not exceed 80% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat.888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs; and

For owner housing, a development in which a household whose income does not exceed 120% of the median income for the area as defined by the United States Department of Housing and Urban Development under the United States Housing Act of 1937, Public Law 75-412, 50 Stat.888, Section 8, as amended, can afford a majority of the units that the developer designates as affordable without spending more than 30% of the household's monthly income on housing costs.

For purposes of this definition, "majority" means more than half.

For the purposes of this definition, "housing costs" means:

a) For a rental unit, the cost of rent and any utilities (electric, heat, water, sewer, and/or trash) that the household pays separately from the rent; and

b) For an ownership unit, the cost of mortgage principal and interest, real estate taxes (including assessments), private mortgage insurance, homeowner's insurance, condominium fees, and homeowner's association fees.

§ 225-60.6 **Affordable housing developments.**
[Added 5-24-2006 STM, Art. 16]

A. Purpose. The Topsham Comprehensive Plan discusses the need for the availability of housing for all income levels. Because housing costs in the Town of Topsham continue to increase and outpace the area incomes, it adversely affects the ability of low to moderate-income ~~families~~households~~,~~ ~~families~~ that live and work in Topsham, to affordably accommodate their housing needs. Therefore, the Town of Topsham has determined that the incentives provided below are justified and beneficial in order to construct affordable homes.

B. Applicability. The following standards shall apply to all major subdivisions as defined in Chapter **191** of the Topsham Town Code.

C. Bonus density. All affordable housing developments reviewed by the Planning Board are eligible for dwelling unit density of 2.5 times the base density allowed in the development's zoning district. Note that fractional results that occur from density calculations must be rounded down to the nearest whole number. ~~The Planning Board shall be given the authority to grant unit bonuses to the maximum number of allowable units for subdivisions that provide affordable units as provided for in this subsection.~~

~~(1) Maximum bonus units shall be determined by Table 1.1 and are dependent on the amount of affordable units in a development and the income level of the households that are able to rent or buy the units.~~

~~(2) Developments that receive a unit bonus based upon affordability shall use Table 1.1 to determine total bonus units. Dimensional standards of § **225-17** shall apply unless otherwise stated in Table 1.2.~~

~~**Table 1.1**~~

~~**Units that are affordable based on percentage of their median income**~~

	~~**80-100% of Median Income**~~	~~**50 – 80% of Median Income**~~	~~**Less than 50% of Median Income**~~
~~Bonus Units per Applicable Unit~~	~~.50 unit bonus~~	~~.75 unit bonus~~	~~1.0 unit bonus~~

~~**Table 1.2**~~

~~**Dimensional standards based on percentage of affordable units per development**~~

	~~**10% or Less Affordable Units**~~	~~**11% – 50% Affordable Units**~~	~~**50% or More Affordable Units**~~
~~Floor Area Ratio~~	~~10% increase~~	~~20% increase~~	~~30% increase~~
~~Maximum Building Height~~	~~5% increase~~	~~10% increase~~	~~15% increase~~
~~Setback Reductions~~	~~20% reduction~~	~~35% reduction~~	~~50% reduction~~

D. Standards.

(1) Qualified ~~homebuyers~~applicants. Affordable housing lots/units shall be rented/sold to qualified ~~low and moderate income~~ renters and buyers whose income is within the limits set forth ~~as defined~~ in § **225-6** Definitions, and any additional criteria adopted by the Town.

(2) Non-segregation. Affordable housing lots/units shall be geographically dispersed throughout the development where feasible.

(3) Design. The dwellings on affordable housing lots/units shall be compatible and comparable with the design of the dwellings on the remainder of the development in terms of appearance, materials, finished quality and level of finish. The Planning Board shall review developments based upon the standards set forth in Chapter **175** of the Topsham Town Code.

(4) Maintaining affordability. The applicant shall submit for review and acceptance to the Topsham Housing Authority an agreement, which preserves the long-term affordability of the lots/units to low and moderate income households. The agreement shall be a ~~either a third party agreement of graduated equity recapture (i.e., Maine State Housing Authority),~~ deed restriction, recorded in the Sagadahoc County Registry of Deeds and ~~administered through~~enforced by the Topsham Housing Authority~~, or a combination of the two~~. The applicant may use an agreement provided by the Topsham Housing Authority or may present a comparable instrument for review. Agreements must include but not be limited to:

(a) A proven method to preserve long-term (~~15~~ 30 years) affordability to low and moderate income buyers;

(b) A formula for accruing limited equity to the buyer which includes any physical improvements to the property;

(c) The option to return housing to market rates only if there are no qualified buyers within one hundred eighty (180) days of the property being on the market;

(d) An option to the Topsham Housing Authority to purchase the affordable lots/units if no qualified buyers apply at the "affordable" price;

(e) The enforceability of the mechanism;

(f) The amount of administrative costs to the Town; and

(g) The supervision of the agreement.

(5) Proportionality. Affordable housing lots/units shall be constructed and completed at least concurrently with the remainder of the project. In developments where the applicant or its agents, or its successors or assigns, shall construct at least fifty percent (50%) of the units, the approved affordable housing units shall be constructed in proportion to the market rate units. Proportionality shall be determined by dividing the total number of units in the development by the total number of affordable units. No building permit shall be issued for a market rate unit in excess of the proportion of affordable housing units for which a certificate of occupancy has been issued.

~~E. R4 Zone. Housing developed in the R4 Zone shall achieve a standard of 10% of all units being classified as affordable, with no density bonuses. Affordable housing units shall meet the development standards in § 225-60.6D.(1) through (4), including qualified buyers/renters, non-segregation, design, and maintenance of affordability. Housing developments in the R4 Zone are not eligible for the affordable housing density bonuses.~~ ~~**[Added 11-13-2008 STM, Art. 8; amended 5-20-2009 STM, Art. 15]**~~

~~23. The minimum side yard setback for a multifamily dwelling in the R-1 District is 15 feet.~~

~~24. The minimum side yard setback for a multifamily dwelling in the R-2 District is 25 feet.~~

~~E.~~28 R4 Zone. Housing developed in the R4 Zone shall achieve a standard of 10% of all units being classified as affordable~~, with no density bonuses~~. Affordable housing units shall meet the development standards in § 225-60.6D.(1) through (4), including qualified buyers/renters, non-segregation, design, and maintenance of affordability. ~~Housing developments in the R4 Zone are not eligible for the affordable housing density bonuses.~~

Table 225-27C(1)

Off-Street Vehicle Parking Space Requirements

Principal Use	Minimum Number of Parking Spaces
Residential Use	
Per dwelling unit	1 per unit
Affordable housing developments	2 per every 3 units
Group Living	
Per facility	1 per 5 beds
Addiction treatment facility	
Nursing home/congregate care	
Public, Institutional, Civic Uses	
Facility	
Church	1 per 5 seats
Club	1 per 125 square feet of assembly space
Day care/Preschool	1 per 6 children
Hospital	1 per 6 inpatient beds
Medical clinic	3 per doctor
Library/museum	1 per 500 square feet
School	
Primary	1 per classroom
Secondary	4 per classroom
Post-secondary	4 per classroom

§ 225-54 Renting rooms and apartments.
[Amended 6-1-1993 STM, Art. 23]

As an accessory use ~~in~~ on a lot containing ~~a~~ no more than one single-family dwelling as the principal use, the renting of rooms ~~or~~, the addition of a single apartment in a dwelling, or the placement of a single detached accessory dwelling unit on the lot shall be permitted, provided that the following conditions are all satisfied:

~~A. New external construction shall not exceed 50% of the existing floor space or 500 square feet, whichever is less.~~

~~B.~~A. The water and sewage facilities meet all existing laws and codes.

~~C.~~B. ~~The building~~ One of the units is owner-occupied.

~~D.~~C. One sign, no larger than two square feet in area, without artificial lighting may be erected on the premises, only during times when a vacancy exists.

~~E. Any apartment created under this section need not meet the requirements for multifamily housing contained elsewhere in this chapter.~~

~~F.~~D. A permit for such use shall be obtained from the Code Enforcement Officer prior to construction and/or occupancy of such dwelling unit.

§ 225-6 Definitions

ACCESSORY DWELLING UNIT
"Accessory Dwelling Unit" means a self-contained dwelling unit located within, attached to or detached from a single-family dwelling unit located on the same parcel of land.

DWELLING UNIT
A room or suite of rooms designed and equipped exclusively for use by one family as a habitation and which contains independent living, cooking, sleeping, bathing, and sanitary facilities. The term includes accessory dwelling units and manufactured housing, but not recreational vehicles.

Chapter 225 *Attachment 2*; **Town of Topsham; Table of Dimensional Requirements**

D. Individual dwelling units shall have a minimum of 500 ~~750~~ square feet of living space. ~~in detached units and 500 square feet in attached units.~~

225 Attachment 2

Town of Topsham

Table of Dimensional Requirements

[Amended 7-31-2000 STM, Art. 5; 5-16-2001 STM, Art. 28; 5-20-2004 STM, Art. 18; 9-8-2005 STM, Art. 3; 5-24-2006 STM, Art. 15; 5-24-2007 STM, Art. 15; 11-13-2008 STM, Art. 8; 5-20-2009 STM, Art. 15; 5-19-2010 STM, Art. 13; 5-16-2012 STM, Art. 11; 5-18-2016 STM, Art. 12; 5-17-2017 STM, Art. 11]

Requirements	R-1	R-2	R-3[2,35]	CC	R4[28]	RCU	MUL	MUC	MUC-1	BP2	BP[10]	CC196	LV	MV	VC	LI	I	R2B
Minimum lot size (sf)	20	30	1.5 acres	20	10	30	30[1]	20	30	10	10	10[11]	7.5	15	10	20[22]	40	3,000
Minimum frontage	100	125	150	100	75	200	200[1]	100	100	50[6]	50[6]	100[12]	50	100	50	100[17]	200	125[2,46]
Maximum frontage																	35	100
Minimum front setback	20	25	75	25	10	80[4]	20	25	25	15	25[7]	25	10[15]	25	10[15]	25[18, 19]	100	
Maximum front setback					25[2,6,8]								15[15]		25[15]			
Minimum side setback	10[2,3]	15[2,4]	35	15[3]	10	30[4]	20[1]	15[4]	15[4]	15[15]	15 [7, 8, 9]	15[13]	10[15]	15	10[15]	15[15]	25	
Minimum rear setback	25	25	50	25[3]	10	30[4]	20[1]	25[3]	25[3]	15	15 [7, 8, 9] 50[29]	15[13] 45[29]	25[3]	25	25	25	40	25[2,5,7]
Maximum building height	35	35	35	45[2,7,9]	45	35	50[2,7,9]	45[2,7,9]	45[2,7,9]	35[2,7,9]			45[2,7,9]	35	45[2,7,9]	45[2,7,9]	50	35
Minimum building height																		
Maximum structure height													35[21]	25[21]	35[21]			
Maximum building footprint (sf)	75[5]	75[5]	150[5]	75[5]	75[5]	100[5]	75[1,5]	100[5]	60	60	60	60	75[5]	75[5]	75[5]	75[5]	150[5]	75[5]
Minimum building footprint (sf)													15.0	5.0	15.0	70 [20]		
Minimum landscape (open space ratio)													2.5	1.0	2.5	2.0 [20]		
Floor area ratio	0.2[6]	0.2[6]	0.6	0.2	0.2[4]	0.3	0.3[1]	0.2	0.2	0.3	0.2	0.2	0.1	0.4[4]	0.1	0.2	0.1	0.26 0.2
	0.4	0.2	0.1	0.5	0.6	0.4	0.4[1]	0.5	0.5	1.0	1.0	0.5	0.6[16]	0.4	0.6[16]	1.0	1.0	

All dimensions are feet or square feet (sf) unless otherwise noted. Minimum and maximum building footprints and lot sizes are in thousands of square feet. Superscript numbers refer to the following footnotes.

NOTES:

A. The front setback may be reduced to the average of the front setbacks of existing structures on adjacent properties, however the front setback may not exceed the maximum allowable setback as specified in the Table of Dimensional Requirements.

B. Buildings and structures which are separated by less than 30 feet from abutting property buildings and structures or are less than 15 feet from a property line are recommended to utilize fire rated construction.

C. Residential subdivisions proposed to be located on open fields or pasture (whether or not they are actively used) shall be designed in accordance with the clustering approach described in § 225-43.

D. Individual dwelling units shall have a minimum of ~~750~~ 500 square feet of living space. ~~in detached units and 500 square feet in attached units.~~ Accessory Dwelling Units shall also have a minimum of 500 square feet of living space.

E. No building may be erected on any lot which does not abut a public way or a private way with the minimum length of frontage required for the particular zone. Any private way must connect directly to a public way.

F. Refer to overlay zone and specific use regulations for lot sizes which may pertain within those zones or for specific uses.

G. The dimensional requirements set forth in this § 225-17 shall not be applicable to any common plan development (§ 225-17D below) located within a commercial zone.

H. Within the MUC-1 District, a vegetated buffer must be maintained along the boundary with a residential zone in accordance with the buffer requirements of § 225-60.7 or 225-60.8, whichever is applicable.

FOOTNOTES:

[1] Residential development located in a subdivision approved by the Planning Board prior to April 1, 1999, may be amended and developed, without a variance or waiver, based on the dimensional requirements existing at the time of the original Planning Board approval of the subdivision, provided that building permits for the construction are issued by December 31, 2004.

[2] No parking shall be allowed in the front setback.

[3] Parking and drives shall be a minimum of 10 feet from property line except that parking and drives may not be located within a side or rear setback adjacent to a parcel in residential use.

[4] No parking shall be allowed in the setback in this district.

[5] Structures that have roofs or other means of overhead protection from the weather are subject to the same height limits as for buildings in this zone.

[6] Minimum landscape (open space ratio) will be 0.4 for clubs.

[7] No lot in the BP Zone may have its required frontage on Route 196.

[8] Any building or structure shall be set back a minimum of seventy-five (75) feet from the edge of the paved travelway of Route 196.

[9] Any building or structure other than public utility facilities shall be set back a minimum of seventy-five (75) feet from the property line of the Interstate 295 right-of-way.

[10] Any building or structure shall be set back a minimum of seventy-five (75) feet from the boundary of the BP Zone if the abutting zone is a residential zone, or from the property line of a parcel that is in residential use in any other zone. If any portion of this required setback from the zone boundary or residential property is located within a utility easement, road right-of-way, or other legally restricted area that limits its value as a buffer, the size of the required setback shall be increased by the width of easement, right-of-way, or other restriction.

[11] All required front yard, side yard, and rear yard setbacks, including required setbacks from Route 196, I-295, the boundary of the BP Zone, and adjacent residential properties, must be maintained as naturally vegetated and/or landscaped open space except for access drives that cross the setback from the adjacent street. No parking, service, or storage facilities may be located within the required setbacks.

[12] The required minimum lot size shall be 20,000 square feet for single-family dwellings that are not connected to the public sewer system.

[13] The minimum frontage shall be fifty (50) feet for lots that do not front on or have vehicle access to Route 196.

FOOTNOTES:

14 The required setback shall be increased to twenty-five (25) feet for new nonresidential buildings or structures that abut a residential use.

15 Front and side zero-foot (0) lot line developments are allowed with conditional review by the Planning Board. If the zero-foot (0) setback fronts a public right-of-way, a streetscape consisting of, at a minimum, a six-foot (6) wide sidewalk and a three-foot (3) wide esplanade within the public right-of way is required.

16 If a new building or renovation of an existing building includes two residential units or more on the second floor, the floor area ratio can be increased to 0.8.

17 In the LI Zone, lots fronting on Route 201 shall have a minimum of 100 linear feet of frontage. Lots without frontage on Route 201 shall have a minimum of 200 linear feet of frontage.

18 In the LI Zone, when a parcel includes Route 201 frontage, this frontage shall be the front property line and from which the front setback is measured.

19 Near-field buildings placed between Route 201 and larger buildings setback a minimum of 150 feet from the front property line shall have a maximum setback of 25 feet and a minimum setback of 10 feet.

20 Freestanding buildings directly fronting Route 201 shall not exceed 30,000 square feet and shall require conditional Planning Board review. Freestanding buildings directly fronting Route 201 exceeding 30,000 square feet shall be placed behind near-field buildings meeting the minimum building footprint for the zone. Minimum building footprints are only applicable to buildings fronting Route 201.

21 Only applies to buildings directly fronting Route 201.

22 Lots fronting on Route 201 shall have a minimum lot size of 10,000 square feet.

~~23 The minimum side yard setback for a multifamily dwelling in the R-1 District is 15 feet.~~

~~24 The minimum side yard setback for a multifamily dwelling in the R-2 District is 25 feet.~~

~~25~~23 A property owner or applicant may choose to develop a subdivision in the R-3 District in one of the following three ways or a combination thereof:

(a) As a conventional subdivision which conforms to the requirements for the R-3 District as set out in the Table of Dimensional Requirements; or

(b) As a large-lot subdivision meeting the requirements set forth in Subsection H; or

(c) As an open space subdivision meeting the requirements set forth in Subsection I.

~~26~~24 For any nonresidential use, frontage must be increased by 25 feet.

~~27~~25 For any nonresidential use, the rear setback is increased to 50 feet, where existing vegetation within the rear 35 foot setback is maintained and supplemented with 3 rows of 6 foot minimum height trees 10 to 15 feet on center.

~~28~~26 Twenty five foot maximum setback shall only apply to residential uses within the R4 Zoning District.

~~29~~27 Where a ground-level or below-grade parking area resides within the building footprint, 15 feet of height may be added to the maximum building height.

~~30~~28 Housing developments in the R4 Zone shall achieve a standard of 10% of all units being classified as affordable~~, with no density bonuses~~. Affordable housing units shall meet the development standards in § 225-60.6D.(1) through (4), including qualified buyers/renters, non-segregation, design, and maintenance of affordability. ~~Housing developments in the R4 Zone are not eligible for the affordable housing density bonuses.~~