

Proposed Land Use Ordinance Amendments for Public Hearing 4-28-26

Issue #1: Amending Affordable Housing Density Bonus Language

Rationale: Fayette's existing ordinance language does not quite meet the statutory requirements of 30-A §4364 so a minor adjustment is proposed. This only applies to long-term guaranteed affordable housing developments, unlikely to occur in Fayette. If we decline to approve the amendment, State Law will override our ordinance.

1. Amend Art IV, Section 3.5:

- A. Affordable Housing Development Density Bonus In the Village District, up to four (4) dwelling units may be allowed on a minimum sized lot, ~~and multifamily unit density reduced may be increased by 2.5 times that otherwise allowed, and no more than two (2) parking spaces for every three (3) units will be required, to as much as four and a half (4.5) units/acre on any sized lot~~ if the following requirements are met following Subdivision Review by the Planning Board:
- a. The proposal is an Affordable Housing Development as defined in this Ordinance, which includes the requirement that a majority of the total units on the lot are affordable.

Issue #2: Increase Threshold for Development Review to 100 trips/day.

Rationale: Based on the Planning Board's experience reviewing an application last year, our trips/day threshold for ramping up to the rigorous standards of Development Review is too low, causing an unreasonable burden on applicants, the Code Enforcement Officer and the Planning Board. Typical traffic concerns of neighbors may be addressed at the Land Use Permit level. We also realized that we use a "Development Area" term that has no definition and so are proposing to add one.

1. Amend Article II, Section E.4.A:

- A. Any new, repurposed, or expanded use that is expected to generate ~~over fifty one hundred (50100) one-way~~ vehicle trips per day

2. Amend Article IX, Section 2.A.1:

1. Any new, repurposed, or expanded use that is expected to generate more than ~~fifty one hundred (50100)~~ one-way vehicle trips/day

NOTE: ~~This is the MaineDOT standard for requiring a more involved entrance permit rather than driveway permit.~~ The latest edition of the *Trip Generation Manual* published by the Institute of Traffic Engineers will be used as a reference when needed to make this determination.

3. Amend Article XI to add definition referenced in Trip definition:

~~**Development Area** – all land and water included within the geographic boundary of a proposed land use~~

Issue #3: Performance Bond Language Consistency

Rationale: While considering a recent application, we realized we had some conflicting standards within the ordinance from combining several ordinances into one. We propose to improve the language and make it consistent across ordinance sections as follows:

1. Amend Article II, Section 3.C.10 to add missing word:

10. **Performance Bond** A performance bond may be required as a condition when the Planning Board finds any one or more of the following items included in the proposal:

- a. The project includes the construction of a public improvement such as a road or other structure that will be proposed for Town acceptance
- b. The project is adjacent to an environmentally sensitive area (such as a wetland or other resource) and the installation of erosion control measures or phosphorus control measures are critical to protecting the area
- c. The project will be expensive to decommission at the end of its useful life and will cause a public nuisance if not returned to natural conditions.

The performance bond, when required, shall be set at no less than an amount equal to the anticipated expense of installing the particular item and made payable to the Town, issued by a surety company. Details will be determined on a case-by-case basis using guidelines in applicable sections of this Ordinance with an eye toward future potential cost escalations.

The performance bond may be released after the Planning Board, or its designee, conducts an inspection of the project to determine if the construction and performance requirements of this Ordinance have been followed. Failure to conform to the conditions of the performance bond shall be deemed a violation of this Ordinance.

2. Amend Article IX, Section 7.C.2.h(4) as follows:

- (4) Demonstration in the form of a performance bond (with the Town named as an additional insured), surety bond, irrevocable letter of credit, or other form of financial assurance as may be acceptable to the Town of Fayette's Risk Management Insurer that upon decommissioning the Applicant will have the necessary financial assurance in place for 150% of the total cost of decommissioning, less salvage value. The financial assurance shall include a provision granting the Town the ability to access the funds and property and to perform the decommissioning if the communications facility is abandoned or the Applicant or subsequent responsible party fails to meet their obligations after reasonable notice, to be defined in the agreement and/or approved by the Planning Board.

3. Delete Article IX, Section 7.C.4:

~~4. **Performance Guarantee** An applicant for a permit under this Section shall post a performance guarantee with the town prior to obtaining a permit that is equal to 125% of the cost of removing the structure. The performance guarantee covering such removal shall be for a minimum term of 5 years. It must contain a mechanism, satisfactory to the town, for review of the cost of removal every 5 years, and a mechanism for increasing the amount of the guarantee should the revised cost estimate show it necessary.~~

4. Amend Article IX, Section 7.D.2.q(5) as follows:

- (5) Demonstration in the form of a performance bond (with the Town named as an additional insured), surety bond, irrevocable letter of credit, or other form of financial assurance as may be acceptable to the Town of Fayette's Risk Management Insurer that upon decommissioning the Applicant will have the necessary financial assurance in place for 150% of the total cost of decommissioning, less salvage value. The financial assurance shall include a provision granting the Town the ability to access the funds and property and to perform the decommissioning if the USSF is abandoned or the Applicant or subsequent responsible party fails to meet their obligations after reasonable notice, to be defined in the agreement and/or approved by the Planning Board.

Issue #4: Add Electromagnetic Pollution to List of Regulated Nuisance Impacts

Rationale: While reviewing the cell tower expansion application last year, a town resident educated the Planning Board regarding the dangers of electromagnetic pollution to the general public and exponentially to sensitive persons. This hazard is downplayed by the telecommunications industry and is often overlooked. Without placing judgment on the outcome, the Planning Board feels it belongs on the list of potential nuisances regulated in the ordinance. We propose adding electromagnetic pollution (as defined) to the specific list of potential nuisances requiring data to be submitted and a potential mitigation plan to protect neighbors from harmful impact .

1. Amend Article II, Section 2.E.L as follows:

L. Any new or expanded land use activity that has the potential to emit more than a background level of noise, odor, smoke, fumes, electromagnetic energy emissions, or other possible nuisance to neighbors without targeted mitigation in place.

2. Amend Article IX, Section 2.A.11 as follows:

11. Any new or expanded land use activity that has the potential to emit more than a background level of noise, odor, smoke, fumes, electromagnetic energy emissions, or other possible nuisance to neighbors without targeted mitigation in place.

3. Amend Article IX, Section 5.E.1 as follows:

E. NUISANCE AND AESTHETIC STANDARDS

- 1. Nuisance Containment The development or activity shall be designed so as to incur no off-site adverse impacts, including but not limited to glare, dust, smoke, fumes, energy emissions, noise and odor, beyond those consistent with existing background levels.

4. Amend Article XI to add definition for Electromagnetic Pollution:

Electromagnetic - the artificial electromagnetic fields (EMFs) generated by modern technologies, including telecommunications, wireless networks and electrical devices.

Issue #5: Land Use Table Multi-Unit Residential and Subdivision)

Rationale: State Law now requires all municipalities to allow up to 3 housing units on any lot where residential uses are allowed. If not a subdivision, a third dwelling unit could be approved by the CEO. Therefore, we propose amending the Land Use Table as follows:

1. Amend Article IV, Section 3.D as follows:

Subdivisions and 3 rd dwelling unit on a lot	PB	PB	PB	PB	PB	PB
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Issue #6: Development Review Procedure at Concept Plan Level:

Rationale: We had our first experience using this system last year and realized the ordinance needs more clarity and depth describing the initial process of determining the path forward of a proposal at the juncture of Land Use and Development Review standards.

Proposed Amendments:

SECTION 4. DEVELOPMENT REVIEW PROCEDURE

A. CONCEPT PLAN REVIEW

The applicant shall submit to the CEO, at least 14 calendar days prior to the Planning Board’s scheduled monthly meeting, 10 copies of a Concept Plan showing the proposed layout of the development or the commercial activity in relation to existing conditions and a brief narrative containing the following information:

- 1. Concept Plan Narrative (10 copies)
 - a. Names, addresses and phone numbers of property owner(s), applicant(s), and all consultants working on the project
 - b. Name and description of the proposed development and desired timeframe
 - c. Description of planned activities at the site, including estimated number of customers, employees, hours of operation and any nuisances that may impact neighbors or the traveling public without proper management
 - d. Description of site opportunities (e.g. road access, good soils, existing buildings) and constraints (e.g. wetlands, streams)
 - e. Identification of any other relevant studies that are available or will be commissioned during project development

2. Concept Plan Graphic (10 copies) The Concept Plan shall be drawn roughly to scale, preferably superimposed over an aerial photograph (copies may be made of the Town's aerial photos at the Town Office). Outlines of proposed buildings, roads and other aspects of the development shall be included in the sketch. Existing natural and built features, including streams, wetlands and existing buildings should be clearly identifiable on the sketch.
3. Combined Concept Plan and Site Inventory and Analysis Allowed at Applicant's Option An applicant who does not wish to have any Site Inventory and Analysis requirements waived, may present a Concept Plan with the Site Inventory and Analysis at the initial meeting. The CEO shall provide one copy to each Planning Board member for their review prior to the meeting, post one copy for public inspection in the Town Office, keep a copy for the CEO's use, and file the other copy.
4. Presentation and Discussion At the meeting, the applicant will be asked to present their proposal and the Board will ask clarifying questions to gain a sufficient understanding of the application to determine next steps. At the discretion of the chair, questions and concerns from members of the public may be heard and discussed.
- 4.5. Planning Board Action ~~In addition to the relevant steps listed within Section 3.C.2 above, Following discussion,~~ the Board shall:
 - a. ~~Determine that the Concept Plan is complete, or table the Plan pending further clarification prior to moving to the Site Inventory and Analysis.~~
 - b. ~~If finding the Concept Plan complete, determine requirements for the Site Inventory and Analysis, including issuing waivers for unnecessary information~~
5. ~~b-~~ Indicate whether a performance bond, monitoring process or other requirement with a fiscal impact is likely to be required as a condition of approving the Final Development Review Application Applicant Decision Based upon this information, the Applicant may decide to proceed with the Site Inventory and Analysis or withdraw the application.

Issue #7: Land Use Permit Approval Criteria

Rationale: Many of these criteria were developed from a generic statewide list when Shoreland Zoning was the only land use regulation in Fayette. The Planning Board reviewed the list and proposes to strike nonapplicable and redundant criteria to focus attention on those criteria that matter.

SECTION 7. APPROVAL CRITERIA

The CEO or Planning Board, as applicable, shall approve an application, with or without conditions, if it makes finding of facts that the proposed use will satisfy the following requirements:

- A. The application is complete, and the applicable permit fee has been paid.
- B. The applicant has the legal authority to conduct the proposed activity on the site.
- C. The proposal conforms to all applicable provisions of this Ordinance.
- D. The proposal will not result in water pollution, erosion, or sedimentation to surface waters.
- E. All wastewater will be properly disposed of by the use of an approved treatment method.
- F. The proposal will not have an adverse impact upon spawning grounds, fish, aquatic life, bird, or other wildlife.
- G. The proposal will conserve shore cover, vegetation, and visual quality, as well as actual points of access to inland waters.
- H. Archeological and historic resources as designated in the Town of Fayette Comprehensive Plan will be protected.
- I. The proposal will avoid problems associated with floodplain development and use.
- J. The proposal will maintain safe and healthful conditions.
- K. The proposed use will be established and maintained in accordance with an approved erosion and sediment control plan.
- L. Access to the site from existing or proposed roads will be safe and adequate.
- M. The proposed use will not cause or aggravate undue traffic conditions.
- N. The proposed use will have adequate water supplies to meet the demands of the proposed use and for fire protection.
- O. The proposed use will provide for adequate management of stormwater runoff without adverse impact on the site, adjacent land, or water bodies.
- P. The proposed use will not decrease the quality, or significantly decrease the quantity, of groundwater.
- Q. The proposed site design provides adequate buffer space and on-site drainage and landscaping to protect neighboring property from detrimental factors of the proposed use.
- R. Proposed activities will be managed to sufficiently protect neighboring property from detrimental impacts of the proposed use.
- S. Any other approval criteria specific to the proposed land use or development are met.