

TOWN OF GRAY
ORDINANCE ADVISORY COMMITTEE
AGENDA • MARCH 9, 2023

**Ordinance
Advisory
Committee
Regular Meeting**

Henry Pennell Municipal Complex
24 Main Street
Gray, ME 04039

4:00 PM

Also available on Zoom:
<https://us06web.zoom.us/j/86897865913>

I. Call to Order

II. New Business

Review/input on new State legislation (LD 2003) & draft language for Accessory Dwelling Units

Multi-family Developments in village areas-Input on building setbacks and buffering/screening

III. Adjournment

** The Town of Gray is an equal opportunity employer and complies with all applicable equal access to public accommodations law. If you are planning to attend a Town Council or Town committee or board meeting and need assistance with a physical disability, please contact the Town Manager's office at least 48 hours in advance of the meeting to have the Town assist you. 657-3339. TTY 657-3931.*

MEMO

Tuesday, March 8, 2023

TO: Gray Town Council

Nate Rudy, Town Manager

FROM: Planning Staff

RE: Amendments to Zoning and Subdivision ordinances to comply with 30-A 4364-B “Accessory Dwelling Units”

ENCL: 30-A MRSA Section 4364-B; Amended 402.7.9; Amended 401.13.13; Zoning Ordinance use table and parking table

Introduction

As you know, the new housing law, LD2003 “An Act to Implement the Recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions,” became chaptered law in April 2022. Several elements of the law become effective as of July 1, 2023. As with all municipalities in Maine, this law requires updates to those sections of our Town ordinance that reference housing density, affordable housing, and accessory dwelling units.

At this time, we are presenting the changes related specifically to the section of the law that address accessory dwelling units, **30-A MRSA Section 4364-B**. Compliance requires updates to the following land use regulations in the Town of Gray:

- Zoning Ordinance, Chapter 402, specifically the “Accessory Apartments” section, 402.7.9; as well as the associated zoning use table and updates to the term “accessory apartment” references throughout; and the
- Subdivision Ordinance, Chapter 401, specifically the “Residential Open Space Subdivisions” section, 401.13.13 Section D General Requirements, due to the current standards with regards to accessory apartments within residential open space subdivisions.

Background

Currently, the Town of Gray allows “accessory apartments” only as an attached use to a single-family home that is owner-occupied, and prohibits them in Residential Open Space subdivisions.

The new law requires, among other provisions, that at least one Accessory Dwelling Unit be allowed on any lot where housing is permitted and a single-family dwelling exists. No additional parking can be required, setbacks must remain the same as for other structures, and any ADU in a Shoreland Zoning district must comply with the lot size and frontage requirements therein.

Of particular note for council policy input are the following:

1. Whether to include the provisions of 402.7.9 A2 regarding allowing ADUs in *existing* detached structures
2. Specifying that ADUs can be located in new structures built for other primary purposes.
3. Limiting eligible properties to one ADU

Timeline

Staff is proposing first read of these ordinance changes at the **April 4 council meeting** followed by the statutory public hearing at the Planning Board meeting on **April 13**.

Due to our public notice and agenda packet posting requirements, planning staff is requesting Town Council input **no later than March 22**, to allow us to finalize the proposed ordinance language by the deadline of March 27.

With a second read/final adoption at the April 18 council meeting, the ordinance changes will become effective in May, well in advance of the July 1, 2023 effective date of the law.

It is noteworthy that the draft rulemaking for this new legislation was released in mid-February, with the public comment period open through March 13.

As those rules are finalized, our goal is to get the ADU standards on the books and work on additional ordinance updates to comply with the density and affordable housing aspects of the new law, in consultation with our town land use attorney. We will present these changes to you separately at a later date.

Proposed Zoning Ordinance Amendment #1:

Clerical edit to update all references to “Accessory Apartment” throughout the Zoning Ordinance to “Accessory Dwelling Unit” to comply with the language of *30-A MRSA Section 4364-B*.

Proposed Zoning Ordinance Amendment #2:

Update the Table of Permitted Uses and Conditional Permitted Uses, 402.5.3 (See attached)

Proposed Zoning Ordinance Amendment #3:

Add a reference in 402.6.9 – Parking Requirements, to reference the exception for ADUs, as per below:

402.6.9 Parking Requirements

All uses of land and development of property shall be provided with parking and loading facilities meeting the standards of Section 402.10.11 B under Site Plan Review. *In accordance with Title 30-A Section 4364-B “Accessory Dwelling Units,” Subsection 4.C, an Accessory Dwelling Unit (ADU), is not subject to any additional parking requirements, as established in 402.10.11 B in this ordinance, beyond the parking requirements of the single-family dwelling unit of the lot upon which the ADU is located.*

Proposed Zoning Ordinance Amendment #4:

Move the reference to home occupation use within an ADU, currently in 402.7.9 A, to the Home Occupations section, 402.7.2 as per below:

402.7.2 Home Occupations

A. Intent and Purpose

B. Home Occupations when managed conscientiously and with respect for the neighborhood in which they are situated can offer benefits to both the proprietors and the community, and a productive alternative to the formally structured traditional workplace. Consequently, it is the intent and purpose of this Ordinance to produce liberal, flexible standards for the establishment and maintenance of home occupations, while simultaneously providing the town with a mechanism in which to monitor and regulate their use.

C. Home Occupation Requirements:

1. A home occupation shall conform to the following requirements:
2. The home occupation shall be carried on primarily within the principal structure or accessory structures.
3. The home occupation shall be carried on by a member or members of the family residing in the dwelling unit. One employee, who is not part of the family residing in the dwelling unit, shall be permitted. Chapter 402 Gray Zoning Ordinance
4. The home occupation is clearly incidental and secondary to the use of the dwelling unit for residential purposes.
5. There shall be no exterior storage of materials and no other exterior indication of the home occupation or variation from the residential character of the principal building, except such signs as are permitted.
6. There shall be no more than two (2) commercial vehicles kept outside the garage overnight.
7. Objectionable conditions such as noise, vibration, smoke, dust, electrical disturbance, hazardous materials, odors, heat, or glare shall not be generated.
8. Hours of operation shall be reasonable and normal for residential areas.
9. No traffic shall be generated by such home occupation in greater volumes than would normally be expected in the neighborhood.
10. In addition to the off-street parking provided to meet the normal requirements of the dwelling, adequate off-street parking shall be provided for the vehicle of each employee and the vehicles of the maximum number of users the home occupation may attract during peak operation hours.
11. No more than fifty (50%) percent of the floor area of a residence and an accessory building shall be used for a home occupation.
12. Retail sales are limited to the sale of products or goods produced, fabricated or substantially altered on the premises as a result of the home occupation. This may include products that are not fabricated on the premises as defined above, but which are customarily incidental to the product created by the home occupation.
13. Retail businesses such as restaurants, new or used car sales, auto repair garages, auto body shops, and auto service stations shall not be considered home occupations.

14. The size and number of signs used in connection with a home occupation shall be determined by the sign ordinance.

15. One Home Occupation use may be conducted, as otherwise allowed under the Ordinance, as an accessory use to either an Accessory Dwelling Unit or an existing single-family dwelling, but not both. Solely for the purposes of this paragraph, In-Home offices are not considered a Home Occupation.

Proposed Zoning Ordinance Amendment #5:

Update the definition of Accessory Apartments, as below:

Definitions 402.2.2

Accessory Dwelling Unit ~~Accessory Apartment~~: A subordinate residential use that requires a permit issued by approval from the Code Enforcement Officer that conforms to the performance standards in this Ordinance. ~~including being owner-occupied, a maximum of 660 sq. ft., and is incorporated within a single-family dwelling.~~ An accessory ~~apartment~~dwelling unit, whether located within or attached to a single-family dwelling, shall not be considered a separate dwelling unit when calculating lot area per dwelling unit for this Ordinance. All accessory dwelling units, ~~but~~ must comply with all other applicable requirements of law including, but not limited to, building codes, life safety, and ~~the State Minimum Lot Size statute and~~ the State of Maine Subsurface Wastewater Disposal rules.

Proposed Zoning Ordinance Amendment #6:

Amend 402.10.11 Table 3 regarding parking for ADUs (See attached)

Proposed Zoning Ordinance Amendment #7:

Update 402.7.9 Accessory Apartments. (See attached)

Proposed Subdivision Ordinance Amendment #1: (See attached)

Update 401.13.13 Section D

-End-

TABLE 402.5.3 TABLE OF PERMITTED USES AND CONDITIONAL PERMITTED USES

	RRA	LD *	MD	BD-1	BD-2	C	VC *	VCP *	BT-1 *	BT-2 *	WH-1 *	WH-2 *	LMOD	CSES OD
1 Accessory Dwelling Unit Apartment ‡	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P/C	P	P/C		
2 Accessory Uses and Structures	P	P	P	P	P	P	P	P	P	P	P	P		
3 Adult Business*						C								
4 Agritourism Center*	C													
5 Agritourism Facility*	C													
6 Animal Husbandry	P	P		C	C	C				C		C		
7 Auto Body Shop				C	C	C								
8 Auto Repair Garage						C								
9 Auto Service Station				C	C									
1 Bed and Breakfast ‡	C	C	C	P	P	P	P	P	P	C		C		
1 Building Trades Occupations – 1	P	P	P	P	P	P	P	P	P	P	C	P		
1 Campground ‡	C	C												
1 Cemetery	P					C								
1 Church	P	P	P	P	P		C	C		C		C		
1 Commercial Recreation - Indoor or Outdoor	C	C		C	C	C	C	C	C	C		C		
1 Community Living Arrangement	P	P	P	P	P	P	P	P	P	P	P	P		
1 Construction Services				P	P					C		C		
1 Day Care Facility for Five (5) or fewer clients.	P	P	P	P	P	P	P	P	P	P		P		
1 Day Care Facility for Six (6) or more	C	C	C	C	C	C			C	C		C		
2 Drive Through and Drive in Facility					C	C			C	C		C		

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		RRA	LD*	MD	BD-1	BD-2	C	VC*	VCP*	BT-1*	BT-2*	WH-1*	WH-2*	LMOD	CSES OD	
2	Expansion of Nonconforming Uses	C	C	C	C	C	C	C	C	C	C	C	C			
2	Farm Stand ‡	P	P	P	P	P	P	P	P	P	P		P			
2	Farmers' Market ++	P	P	P	P	P	P	P	P	P	P		P			
2	Flea Market, Open Air Market ‡	C	C	C	C		C	P	P							
2	Garage Sale	P	P	P	P	P	P	P	P	P	P	P	P			
2	General Agriculture	P		P	P	P	P				C		C			
2	Headquarters for a Contracting Business	C	C	C	P	P					C		C			
2	Heliport	C	C		C	C										
2	Home Occupation ‡	P	P	P	P	P	P	P	P	P	P	C	P			
3	Hotel and Motel				C	C	C			C						
3	In-Home Offices‡	P	P	P	P	P	P	P	P	P	P	P	P			
3	Kennels	C	C				C						C			
3	Light Manufacturing				P	P								P/C		
3	Manufacturing and Processing				C	C										
3	Mechanical Repair Garages	C			P	P	C									
3	Medium and Large-scale Solar Energy Systems														C	
3	Medical Facility	C	C	C		C	C	C	C	C						
3	Mineral Excavation	P	P	P	P	P	P									
3	Mineral Exploration	C			P	P		P	P		P	P	P			
4	Mobile Vendor	P	P	P	P	P	P	P	P	P						
4	Motel (< 11 rooms)	C	C			C										
4	Multi-family Development			C	C	C	C	C	C	C						

4	Municipal Uses	C	C		C	C	C	C	C	C	C		C		
4	Nursing and Convalescent Home	C	C	C	C	C	C			C					
4	Office			C	P	P	P	P	P	C	C		C		

++ Subject to performance standards in Article 7

TABLE 3 – MINIMUM NUMBER OF OFF-STREET PARKING SPACES	
Residential	
Dwelling: Single Family, Duplex	2 per dwelling unit
Multifamily:	
Studio	1.25 per dwelling unit
One Bedroom	1.5 per dwelling unit
Two or More Bedrooms	2 per dwelling unit
Accessory/In Law Dwelling Unit	1 per dwelling unit
Hotel/Motel	1.25 per guest room, plus 10 per 1000 sq. ft. restaurant/lounge, plus 30 per 1000 sq. ft. meeting/banquet room.
Senior Citizen Housing, Independent Living	0.6 per dwelling unit
Senior Citizen Housing, Assisted Living	0.4 per dwelling unit
Boarding Homes for Sheltered Care and Nursing Homes	1 per room
Rooming House:	
Single-Occupancy Unit	1 per dwelling unit
Double-Occupancy Unit	2 per dwelling unit
Employees	1 per employee
Visitors	As needed
Day Care, Facility (any type)	.35 per client of licensed capacity plus staff
Hospital/Medical Center	0.4 per employee, plus 1 per 3 beds, plus 1 per 5 average daily outpatient visits, plus 1 per 4 medical staff, plus 1 per student/faculty/staff
Retail/Service	
Retail Sales (not in shopping center)	3.5 per 1000 sq. ft. of gross floor area (GFA)
Supermarket (Freestanding)	4.5 per 1000 sq. ft. of GFA
Discount Superstore/Clubs	3.5 per 1000 sq. ft. of GFA
Home Improvement Superstore	2.5 per 1000 sq. ft. of GFA
Other Heavy/Hard Goods (Furniture, Appliances, Buildings Materials, etc.)	3.0 per 1000 sq. ft. of GFA
Shopping Centers	4.0 per 1000 sq. ft. of GFA,
Service Business, Personal	
Beauty Shops/Barber Shops	2 per treatment station, but not less than 4.3 per 1000 sq. ft. customer service area.
Coin-Operated Laundry/Dry Cleaning Services	3.5 per 1000 sq. ft. of GFA
Other	3.5 per 1000 sq. ft. of GFA

Fitness Center/Health Club	1 per 3 persons of permitted capacity
Retail Sales, Automobile Sales	2.7 per 1000 sq. ft. of interior sales area GFA, plus 1.5 per 1000 sq. ft. of interior area
Automobile Repair Services, Major or Minor	4 per service bay
Convenience Store	.25 per pump plus 1 per employee plus 4 per 1000 sq. ft.
Food and Beverage	
Restaurant	1 per 3 seats
Office and Business Services	
Business and Professional Office	4.5 per 1000 sq. ft. of GFA
Service Business, Commercial	4 per 1000 sq. ft. of GFA
Medical Office Building	5.5 per 1000 sq. ft. of GFA
Bank	5.5 per 1000 sq. ft. of GFA
Industry, Heavy	2 per 1000 sq. ft. of GFA
Industry, Light	1.5 per 1000 sq. ft.
Warehouse	0.7 per 1000 sq. ft. of GFA
Other Retail, Commercial or Business	4 per 1000 sq. ft. of GFA
Education	
Preschool/Nursery Schools	.35 per student plus 1 per employee
Elementary and Middle Schools	Per parking study specific to institution
High Schools	Per parking study specific to institution
College and University	Per parking study specific to institution
Cultural/Recreational/Entertainment	
Convention Center	0.25 per person of permitted capacity
Library	4.5 per 1000 sq. ft. of GFA
Place of Worship	1 for every 3 seats
Theater	1 for every 3 seats

402.7.9 Accessory ~~Apartments~~ Dwelling Units

A. General Standards:

~~1. Accessory Apartments shall only be located within a single family dwelling (SFD) or a structure permanently attached to the SFD by common walls and a permanent roof meeting the aesthetic standards below in Section 402.7.9.C.~~

1. For any lot located fully or partially in a Shoreland Zoning district, Accessory Dwelling Units must independently comply with all Shoreland Zoning requirements.

2. Except as established above in this section for lots partially or fully in the Shoreland Zoning District, Accessory Dwelling Units shall be permitted in all zoning districts where ~~housing~~ single-family housing is permitted, on the same lot as a single-family dwelling, constructed only:

- ~~• Within an existing single-family dwelling unit on the lot;~~
- ~~• Attached to, or sharing a wall with, a single-family dwelling unit;~~
- ~~• As a new structure on a lot for the primary purpose of creating an Accessory Dwelling Unit;~~
- Within an existing detached accessory structure on the same lot as a single-family dwelling
- Within a new structure built on the same lot as a single-family dwelling

Commented [KM1]: These are direct from the law

Commented [KM2]: This is not currently allowed and is not explicitly required per the law. If we include this, lot owners can add an ADU to an existing detached structure. If not, they would be able to do so only in a new structure. I am checking with Natalie on the legality of disallowing new ADUs in existing buildings.

~~23. Accessory ~~Apartments~~ Dwelling Units are specifically prohibited in, on, or within any of the following:~~

- ~~a. any detached accessory structure such as a separate garage;~~
- ~~b. any structure or parcel located in the Shoreland Zone;~~
- ~~ea. any duplex two-family or multi-family dwelling;~~
- ~~d. any SFD located on a back lot that utilizes a right of way less than fifty (50) feet wide;~~
- ~~e. any individually owned lot in a Cluster/Open Space subdivision that contains less than 75% of the minimum lot size for the zoning district in which the property is located;~~
- ~~f. any lot that contains less than 75% of the minimum lot size for the zoning district in which the property is located, existing non-conforming lots of record;~~
- ~~gb. any lot that contains one or more principal commercial use(s) either on the parcel or in any structure located on such lot; or~~
- ~~h. any lot than contains less than 20,000 square feet.~~
- c. any lot that does not have a single-family dwelling as its principal use

Commented [KM3]: This would explicitly allow an accessory dwelling unit within a new structure that is built for a different *primary* purpose (such as a storage garage). It is not required to be included per the language of the law. Natalie advised: You can add that, although I would think that the language that says “new structure on a lot for the primary purpose of creating an accessory dwelling unit” would include something that was built as a combined garage/adu.

~~34. Only one (1) accessory apartment Accessory Dwelling Unit is allowed per lot, and only on a lot that on which the CEO has determined the primary use to be a SFD single-family dwelling.~~

~~5. 4. Accessory Apartments are permitted uses, on lots which meet the minimum required lot area and street frontage for the zoning district in which the lot is located. For lots in Cluster/Open Space subdivisions with commonly owned area, only the lot that is individually owned may be used for the purposes of this determination; fractional ownership of Open Space or other land may not be counted for this purpose.~~

~~5. Accessory Apartments are conditionally allowed, subject to Planning Board approval, on lawfully existing non-conforming lots of record provided that the lot size is at least 75% of the minimum lot size for the zoning district in which the lot is located. For example, a lot in a zoning district that requires 80,000 square feet for the minimum lot size must contain at least 60,000 sq. ft. For lots in Cluster/Open Space subdivisions with commonly owned area, only the lot that is individually owned shall be used for the purposes of this determination; fractional ownership of Open Space or other land may not be counted for this purpose.~~

~~6. The minimum square footage of finished living area for Accessory Dwelling Units is one-hundred-and-ninety (190) square feet. The maximum square footage of finished living area for Accessory Dwelling Units ~~accessory apartments~~ is six-hundred and sixty (660) square feet. The Zoning Board of Appeals shall not have the authority to increase this maximum finished living area by variance or otherwise.~~

~~7. Although an existing single-family dwelling may be expanded or utilized for the purposes of creating an Accessory Dwelling Units Accessory Apartment, no portion of an Accessory Dwelling Units Accessory Apartment shall be located within minimum lot line setbacks, including non-conforming structures of record.~~

~~8. In addition to any off-street parking required for the SFD, there must be at least one year-round off-street parking space for use by the Accessory Apartment occupant(s). There must also be sufficient space on the site for vehicular turn-arounds without having to back out onto the street.~~

~~9. One Home Occupation use may be conducted, as otherwise allowed under the Ordinance, as an accessory use to either an Accessory Apartment or an existing SFD, but not both. Solely for the purposes of this paragraph 9, In-Home offices are not considered a Home Occupation.~~

~~10. Accessory Dwelling Units Accessory Apartments must comply with applicable building and fire safety codes, and the State of Maine subsurface wastewater disposal (SSWD) rules.~~

~~11. Accessory Dwelling Units Accessory Apartments must have shared common utilities, such as water, electricity, etc. with the single-family dwelling, except as required by applicable codes.~~

~~11. Accessory Dwelling Units must be allowed on a lot regardless of whether the lot conforms to existing current dimensional requirements as established in this ordinance. Any new structure constructed on the lot to be an Accessory Dwelling Unit must meet the current applicable dimensional requirements for a structure.~~

B. Ownership Standards:

1. Ownership of the existing ~~SFD single-family dwelling~~ and the Accessory Dwelling Unit ~~Accessory Apartment~~ must be held by the same person(s).
2. Either the existing single-family dwelling ~~SFD~~ or the Accessory Dwelling Unit ~~Accessory Apartment~~ must be owner-occupied. "Owner-occupied" means that either the existing single-family dwelling ~~SFD~~ or the Accessory Dwelling Unit ~~Accessory Apartment~~ must be occupied by a person(s) who has a legal ownership and bears risk of decline in value of the property and who receives any payment from the lease or rental of the property.

C. Aesthetics:

1. Accessory Dwelling Units ~~Accessory Apartments~~ shall retain and respect the existing streetscape, character of the neighborhood, and preserve the single-family dwelling ~~SFD~~ appearance, architectural style, and character of the dwelling.
2. Any exterior modifications to the single-family dwelling ~~SFD~~ associated with the construction or installation of ~~the an Accessory Dwelling Unit~~ ~~Accessory Apartment~~ must be consistent with architectural style and character of the single-family dwelling ~~SFD~~ in terms of exterior materials, roof pitch/form, and window type/spacing.
3. Any exterior alteration of the single-family dwelling ~~SFD~~ ~~associated with the construction or installation of an Accessory Dwelling Unit~~ must preserve the formal, front entrance of the building in order to maintain the single-family dwelling ~~SFD~~ appearance and architectural style of the building, as determined by the Code Enforcement Officer with input from the Town Planner as appropriate.
4. Exterior stairs more than five (5) feet above final finished grade shall be enclosed and are restricted to the rear and sides of the single-family dwelling ~~SFD~~ wherever practicable provided that that they are integrated into and consistent with the architecture of the building.
- ~~5. Accessory Apartments shall have a full common wall with the principal dwelling.~~
56. In the event that the Code Enforcement Officer and the applicant for the Accessory Dwelling Unit ~~Accessory Apartment~~ cannot agree on the aesthetic standards contained in this Section 402.7.9.C, the applicant may appeal to the Planning Board within thirty (30) days of the CEO's written decision.

D. Wastewater Disposal:

1. An Accessory Dwelling Unit ~~Accessory Apartment~~ may be served by one of the following subsurface wastewater disposal (SSWD) systems that maintain standards established in the Maine Subsurface Wastewater Disposal rules:

(a) an existing SSWD system,

(b) an upgraded SSWD system, or

~~(c)~~ a new SSWD system, designed by a licensed site evaluator, all as otherwise allowed by law.

2. In all cases, the SSWD system serving the Accessory Dwelling Unit ~~Accessory Apartment~~ must meet First Time System criteria as established in the Maine SSWD Rules. Utilizing Replacement System or Expanded System criteria per 10-144 CMR 241 is prohibited.

3. If an existing SSWD system is proposed to serve the Accessory Dwelling Unit ~~Accessory Apartment~~ without being upgraded, the LPI shall require the applicant to submit sufficient documentation from a Maine licensed site evaluator showing the SSWD system meets First Time System criteria.

4. If a new SSWD system is proposed to serve the Accessory Dwelling Unit ~~Accessory Apartment~~, the local plumbing inspector (LPI) shall have the authority to require the design be recorded at the CCRD if it does not need to be installed as may be allowed in the Maine SSWD Rules.

5. The owner of the Accessory Dwelling Unit must provide written verification that the unit is connected to adequate wastewater services prior to receiving a Certificate of Occupancy. Written verification must include the following:

a. If an Accessory Dwelling Unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector, based on sufficient information provided to the LPI by the applicant or their consultant, pursuant to 30-A M.R.S. § 4221. Plans for a subsurface wastewater disposal system must be prepared by a licensed site evaluator in accordance with 10-144 C.M.R. ch. 241, Subsurface Wastewater Disposal Rules; 19-100 Chapter 5 page 10

E. Potable Water Supply Standards

1. The owner of the Accessory Dwelling Unit must provide written verification that the unit is connected to adequate potable water services prior to receiving a Certificate of Occupancy. Written verification must include the following:

a. If an Accessory Dwelling Unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the unit, proof of payment for the connection and the volume and supply of water required for the unit; and

b. If an Accessory Dwelling Unit is connected to a well, proof of access to potable water, including the standards outlined in 01-672 C.M.R. ch. 10, section 10.25(J), Land Use Districts

and Standards. Any test of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

EF. Discontinuance:

1. If any of the applicable ordinance standards are no longer being met, use of the Accessory Dwelling Unit ~~Accessory Apartment~~ must be discontinued, and the single-family dwelling ~~SFD~~ must revert to single-family use by removing the eating and cooking facilities/equipment support system(s) from the Accessory Dwelling Unit ~~Accessory Apartment~~ as established in the definition of "Dwelling Unit" contained in the version of the International Residential Building Code most recently in effect.

We are proposing the following changes to the Subdivision Ordinance, Chapter 401, to comply with the provisions of 30-A MRS Section 4364-B "Accessory Dwelling Units.":

401.13.13 – RESIDENTIAL OPEN SPACE SUBDIVISIONS

A. Purpose:

1. The purpose of these Residential Open Space Subdivision standards is to encourage greater flexibility and more creative design for the development of single-family projects. It is intended to encourage a pattern of residential development which will result in the following attributes:

- a. Preservation of Gray's rural character by retention of open space and its natural resource values as determined by the Planning Board with input from appropriate organizations, other Town staff, and State departments.
- b. To the greatest practical extent, preservation of existing landscape features and the utilization of such features in a harmonious fashion.
- c. Protection of environmentally sensitive areas.
- d. Economical and efficient building arrangement, traffic circulation, and utility construction.
- e. Outdoor recreational facilities that may be better utilized and located than would otherwise be provided under more conventional land development.

2. Section 401.13.13.I establishes the purposes of locating individually owned lots in relation to the configuration of the open space. Parties must pay particular attention to this section to ensure that the overall layout of land development is consistent with these standards.

B. Dimensional Standards:

1. Table 401.13.13.B.1 entitled "Residential Open Space Subdivision Dimensional Standards Table" is hereby incorporated into this Ordinance (please see appendix __ of this Ordinance).

2. The Planning Board shall have the authority to reduce setbacks to those stated in Table 401.13.13.B.1.

3. Neither the Planning Board nor the Zoning Board of Appeals shall have the authority to further reduce the setbacks for the entirety of a project.

4. The Planning Board's ability to change setbacks within the project as detailed in Table 401.13.13.B.1 shall not be construed as granting variances to relieve hardship, and the action of the Zoning Board of Appeals shall not be required.

5. All other space standards except those specifically allowed in Table 401.13.13.B.1 for the respective district shall apply to the Residential Open Space Subdivision.

6. Notwithstanding Section 401.13.1.B.4 of this Subdivision Ordinance specifying the maximum ratio of lot length to width, the Planning Board shall have the authority to adjust lot

configurations consistent with these standards including the Residential Open Space Dimensional Standards Table (Section 401.13.13.B.1) of this Ordinance.

7. Notwithstanding standards regarding open space, common land, facilities and services established in Section 401.13.16.E of this Ordinance, all open space areas in Residential Open Space Subdivisions shall meet and maintain standards in this Section 401.13.13.

C. Lot Density Calculations and Density Bonuses:

1. In no case shall the maximum number of lots exceed the gross density specified for the respective zoning district established in Table 402.5.4.A of the Zoning Ordinance. In all cases where the number lots permitted equals a decimal number, the number shall be rounded to the nearest whole number.

2. The maximum number of lots shall be calculated by using the Net Residential Density calculations contained in Section 401.13.18 of this Subdivision Ordinance and may be adjusted in accordance with this Section 401.13.13.C.

3. The Planning Board shall approve a density bonus that increases the number of lots if the project meets any one or more of the criteria established in this Section 401.13.13.C of the Subdivision Ordinance. The allowance for increased density may be cumulative up the maximum gross density for the respective Zoning District.

4. As determined by the Planning Board as an integral part of the review of the project, subdivisions that meet one or more of the following shall be eligible for a five percent (5%) increased number of lots for each of the following:

a. Developed trail network in commonly owned open space.

b. Links to trails outside the perimeter of the project.

c. A contiguous area of land larger than five (5) acres that is permanently protected by a recorded easement for agricultural purposes.

d. A contiguous area of land larger than five (5) acres containing mature growth forest that is permanently protected from timber harvesting by a recorded easement.

e. Two (2) or more acres of land, which is not otherwise required to be protected, of valuable wildlife and/or environmentally sensitive areas that is permanently protected from development, other than walking trails.

f. Each 10% of additional deeded common open space, above the minimum required in Table 401.13.13.B.1.

5. As determined by the Planning Board as an integral part of the review of the project, subdivisions that meet one or more of the following shall be eligible for a ten percent (10%) increased number of lots for each of the following:

- a. A recorded easement granting the public rights to utilize trails in the common open space portion of the project.
- b. Each 10% of sustainable affordable single-family housing units permanently protected by recorded deed covenants which establish fixed maximum sale prices regarding the fee transfer of title; each 10% of such permanent affordable single family dwelling housing unit is allowed a 10% density bonus increase.
- c. Providing public water throughout the project for properties not otherwise required to be served by public water, such as properties in the McKin Superfund area.

6. As determined by the Planning Board as an integral part of the review of the subdivision, projects designed, constructed, and memorialized in recorded deed covenants approved by the Planning Board to be occupied by persons at least 55 years of age shall be eligible for a fifteen percent (15%) increased number of lots.

D. General Requirements:

1. Residential Open Space Subdivisions are allowed in the Rural Residential & Agricultural, Lake District, Medium Density, and Well Head-2 Zoning Districts in accordance with applicable standards.

~~2. Only single family dwellings shall be permitted in Residential Open Space Subdivisions. Only one single family dwelling shall be permitted on each individually owned lot. Accessory Apartments are specifically prohibited in Residential Open Space Subdivisions. A note on the face of the final signed recorded plan and/or included in deeds for each individually owned parcel shall memorialize these use limitations.~~

3. Accessory residential uses ~~other than Accessory Apartments~~ that are permitted in the respective Zoning District may be permitted unless specifically disallowed as part of the Planning Board's approval. In such cases, the use parameters shall be memorialized on the face of the final signed recorded plan and a clear note in the deeds for each lot. Accessory Dwelling Units must be permitted, subject to performance standards in the Zoning Ordinance, Chapter 402, entitled "Accessory Dwelling Units."

4. All deeds for individually owned lots in the project as well as the face of the final recorded subdivision plan shall contain the following language; "Lot uses in this Residential Open Space Subdivision are limited to those single-family and Accessory Dwelling Unit residential uses that are permitted in the Zoning Ordinance."

5. Except for standards specifically established in this Section 401.13.13 of this Subdivision Ordinance, Residential Open Space Subdivisions shall meet all other applicable requirements of the Subdivision Ordinance and the Zoning Ordinance.

6. In accordance with Section 401.13.15.C.1 of this Subdivision Ordinance, the Planning Board shall have the right to require that reserve rights-of-way be established and clearly shown on the

face of the recorded plan if adjacent properties may be suitable for future development as determined by the Board. In such cases, lots and building envelopes shall be established and shown on the face of the final signed recorded plan to allow the construction of this future access with respect to applicable setbacks and standards.

7. Open space shall be shown on the subdivision plan, and with appropriate notation on the face of the final signed recorded plan, that it shall not be further divided for any other use.

8. An Open Space Subdivision located on a lot that is in more than one Zoning District shall be subject to all applicable provisions for each respective District.

9. All recreation areas in the project, including trails, and any limitations on their use shall be shown on the face of the final recorded plan. The Planning Board may require that the homeowner's association documents and/or deeds for individual lots include provisions that ensure that the potential buyers are aware of the use and limitations of the recreational areas.

10. The Town of Gray will not be responsible for enforcement of the use of any open space or recreational areas including trails.

11. No individual lot or dwelling unit shall have direct vehicular access onto a public road existing at the time of development specifically including a Town or State road.

12. In order to achieve maximum efficiency of lot layout, up to two (2) lots accessed by back lot development easements shall be permitted in an Open Space Subdivision.

13. Shore frontage for each lot shall not be reduced below the minimum normally required by the Shoreland Zoning Ordinance.

14. Underground utilities shall be required.

*Excerpt of LD 2003/Chaptered Law 672
regarding Accessory Dwelling Units, MRSA
4364-B:*

§4364-B. Accessory dwelling units

1. Use permitted. Except as provided in Title 12, chapter 423-A, a municipality shall allow an accessory dwelling unit to be located on the same lot as a single-family dwelling unit in any area in which housing is permitted.

2. Restrictions. An accessory dwelling unit may be constructed only:

A. Within an existing dwelling unit on the lot;

B. Attached to or sharing a wall with a single-family dwelling unit; or

C. As a new structure on the lot for the primary purpose of creating an accessory dwelling unit.

This subsection does not restrict the construction or permitting of accessory dwelling units constructed and certified for occupancy prior to July 1, 2023.

3. Zoning requirements. With respect to accessory dwelling units, municipal zoning ordinances must comply with the following conditions:

A. At least one accessory dwelling unit must be allowed on any lot where a single-family dwelling unit is the principal structure; and

B. If more than one accessory dwelling unit has been constructed on a lot as a result of the allowance under this section or section 4364-A, the lot is not eligible for any additional increases in density except as allowed by the municipality.

4. General requirements. With respect to accessory dwelling units, municipalities shall comply with the following conditions.

A. A municipality shall exempt an accessory dwelling unit from any density requirements or calculations related to the area in which the accessory dwelling unit is constructed.

B. For an accessory dwelling unit located within the same structure as a single-family dwelling unit or attached to or sharing a wall with a single-family dwelling unit, the setback requirements and dimensional requirements must be the same as the setback requirements and dimensional requirements of the single-family dwelling unit, except for an accessory dwelling unit permitted in an existing accessory building or secondary building or garage as of July 1, 2023, in which case the requisite setback requirements for such a structure apply. A municipality may establish more permissive dimensional and set back requirements for an accessory dwelling unit.

C. An accessory dwelling unit may not be subject to any additional parking requirements beyond the parking requirements of the single-family dwelling unit on the lot where the accessory dwelling unit is located.

5. Shoreland zoning. An accessory dwelling unit must comply with shoreland zoning requirements established by the Department of Environmental Protection under Title 38, chapter 3 and municipal shoreland zoning ordinances.

6. Size requirements. An accessory dwelling unit must meet a minimum size of 190 square feet. If the Technical Building Codes and Standards Board under Title 10, section 9722 adopts a different minimum size, that standard applies. A municipality may impose a maximum size for an accessory dwelling unit.

7. Water and wastewater. The owner of an accessory dwelling unit must provide written verification to the municipality that the accessory dwelling unit is connected to adequate water and wastewater services before the municipality may certify the accessory dwelling unit for occupancy. Written verification under this subsection must include:

A. If an accessory dwelling unit is connected to a public, special district or other comparable sewer system, proof of adequate service to support any additional flow created by the accessory dwelling unit and proof of payment for the connection to the sewer system;

B. If an accessory dwelling unit is connected to a septic system, proof of adequate sewage disposal for subsurface wastewater. The septic system must be verified as adequate by a local plumbing inspector under section 4221. Plans for subsurface wastewater disposal must be prepared by a licensed site evaluator in accordance with subsurface wastewater disposal rules adopted under Title 22, section 42;

C. If an accessory dwelling unit is connected to a public, special district or other centrally managed water system, proof of adequate service to support any additional flow created by the accessory dwelling unit, proof of payment for the connection and the volume and supply of water required for the accessory dwelling unit; and

D. If an accessory dwelling unit is connected to a well, proof of access to potable water. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use.

8. Municipal implementation. In adopting an ordinance under this section, a municipality may:

- A. Establish an application and permitting process for accessory dwelling units;
- B. Impose fines for violations of building, zoning and utility requirements for accessory dwelling units; and
- C. Establish alternative criteria that are less restrictive than the requirements of subsections 4, 5, 6 and 7 for the approval of an accessory dwelling unit only in circumstances in which the municipality would be able to provide a variance under section 4353, subsection 4, 4-A, 4-B or 4-C.

9. Rate of growth ordinance. A permit issued by a municipality for an accessory dwelling unit does not count as a permit issued toward a municipality's rate of growth ordinance as described in section 4360.

10. Subdivision requirements. This section may not be construed to exempt a subdivider from the requirements for division of a tract or parcel of land in accordance with subchapter 4.

11. Restrictive covenants. This section may not be construed to interfere with, abrogate or annul the validity or enforceability of any valid or enforceable easement, covenant, deed restriction or other agreement or instrument between private parties that imposes greater restrictions than those provided in this section, as long as the agreement does not abrogate rights under the United States Constitution or the Constitution of Maine.

12. Rules. The Department of Economic and Community Development may adopt rules to administer and enforce this section. The department shall consult with the Department of Agriculture, Conservation and Forestry in adopting rules pursuant to this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

13. Implementation. A municipality is not required to implement the requirements of this section until July 1, 2023.

Sec. 7. 30-A MRSA §4364-C is enacted to read:

§4364-C. Municipal role in statewide housing production goals

This section governs the responsibilities and roles of municipalities in achieving the statewide and regional housing production goals set by the Department of Economic and Community Development in Title 5, section 13056, subsection 9.

1. Fair housing and nondiscrimination. A municipality shall ensure that ordinances and regulations are designed to affirmatively further the purposes of the federal Fair Housing Act, 42 United States Code, Chapter 45, as amended, and the Maine Human Rights Act to achieve the statewide or regional housing production goal.

2. Municipalities may regulate short-term rentals. A municipality may establish and enforce regulations regarding short-term rental units in order to achieve the statewide or regional housing production goal. For the purposes of this subsection, "short-term rental unit" means living quarters offered for rental through a transient rental platform as defined by Title 36, section 1752, subsection 20-C.