

Town of Arrowsic
Minutes of Planning Board Public Hearing Meeting
May 31, 2023 at ~ 6:30 PM
In Person and Video Conference via Zoom

Attending from the PB: Jennifer Geiger (PB Chair); Roger Heard (PB); Vicky Stoneman (PB); Joe Bonnett (PB); Chris Wilcoxson (CEO)

In person: Mike Kriendler, Barbara Boyce, Sukey Heard, Karin Sadtler, Eugenie Knowles, Lisa Stuart, Will Neilson, Denise Parker, Dee Dee Jorgenson, Nick Stoneman, Ken Hnottavange-Telleen, Mary Hnottavange-Telleen

Via Zoom: Paul Burgess, Jeremy Blaiklock, Matt Caras, Paul Schlein, Bill Savedoff, Tina Stafford, Lisa Johnson, Amy Smith, Jon Biehler (and possibly others that were missed due to computer screen issues).

Introduction

The Chair introduced the attending Planning Board (PB) members and the CEO to the attendees.

The Chair mentioned that this hearing was to be on Zoom only but found this was no longer possible as the video conference attendance only rule ended with the end of the Covid Public Health Emergency Declaration on May 11th, 2023. She then put forth a Proposed Remote Meeting Policy for the PB which read:

Remote meetings of Arrowsic Planning Board shall be held in accordance with the requirements of 1 M.R.S. §403-B, Remote Participation in Meetings, as the same shall be amended from time to time, including, without limitation, that a location equipped with audio and video technology be provided for members of the public to attend and participate in person in this body's meetings. In addition, with permission of the chair, a member of the board may participate in a meeting that is held in person by appearing by remote means, provided that if a board member is permitted to attend by remote means, the public must be permitted to do so as well. Notice of any meeting to include remote participation shall include the means by which members of the public may attend remotely, and the location at which they may attend in person.

Upon motion made by Roger Heard, which was seconded by Joe Bonnett, the Planning Board approved the Proposed Remote Meeting Policy, (all voted in favor, to wit: Geiger, Heard, Stoneman and Bonnett).

Two Proposed Warrant-Articles

The Chair told attendees that the Arrowsic Planning Board has proposed two amendments to the town ordinances, which will be included in the warrant articles to be voted on at the 2023 Arrowsic Town Meeting on June 15. (Link to the Arrowsic Zoning Ordinance: https://arrowsic.org/codes/zoning_ordinance_2021.pdf) These amendments are in regards to Accessory Dwelling Units (ADU's) and to Short Term Rentals STRs).

1. Proposed ADU Warrant Article

The Proposed ADU Warrant Article has been drafted by the PB in response to a state mandate: "An Act To Implement the Recommendations of the Commission To Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions", generally referred to by its legislative tracking name of **LD 2003**, which was signed into law by Governor Mills on April 27, 2022. The law is designed to remove unnecessary regulatory

barriers to housing production in Maine, while preserving local ability to create land use plans and protect sensitive environmental resources. It goes into effect July 1, 2023.

Section 6 of LD 2003 relating to ADU's is relevant to the municipality of Arrowsic. This section essentially allows a lot with a single family dwelling in an area where housing is permitted to have one accessory dwelling unit (ADU) as well, effective July 1, 2023. That ADU can be within the existing home, attached to it, or in a new structure.

To comply with this requirement, the PB has proposed adding Accessory Dwelling Units to the ordinance **Definitions** section, and a section under **3.6.2 Construction Standards** that spells out requirements for building an ADU in Arrowsic as allowed under the state law. The PB proposes providing a maximum size limitation of 850 sq ft within the definition of an ADU in Arrowsic's ordinances. It was mentioned that the ADUs must meet all current town ordinance dimensional requirements (setbacks, road frontage etc...) except lot acreage. This along with the requirements listed under the construction standards are designed to comply with the letter and spirit of the law while staying true to the Town Zoning Ordinances and minimizing adverse environmental impacts, including stressors to Arrowsic's groundwater supply, which is primarily located in reservoirs formed by fissures in the bedrock of the island, and not well-mapped.

Link to guidance on LD2003: https://www.maine.gov/decd/sites/maine.gov/decd/files/inline-files/DECD_LD%202003_digital-%20Feb%202023%20update%20website_0.pdf

Members of the PB consulted with the State Housing Program Coordinators and the town legal counsel to make sure the Proposed ADU Warrant Article is in compliance with LD 2003 and the state's intent. The Proposed ADU Warrant Article was then read to the attendees. See Appendix

The Chair then entertained questions: (questions in italics, answers follow)

- 1) *Can an ADU have a separate owner from the primary dwelling unit?* No, because there is only one owner of a lot and the lot would contain both structures.
- 2) *Is the state's allowing regulation of the length of rental of an ADU mean that it thinks STRs are a bad thing?* The intent of the legislation is to promote additional longer term housing.
- 3) *Has anyone heard where current legislation to delay the implementation of LD2003 or exempt smaller size towns from the mandate stand?* There have been no final decisions yet made. The CEO has heard that it was not approved in Committee but is going to a full vote of the House, which seems not to bode well for it. The Chair mentioned that even if the town is exempted, this is a good process to get the pulse of the town on this issue, especially in light of the fact that the Town's Comprehensive Plan is over 30 years and not to be updated in the near future. 30 years ago short term rentals were not even in existence in the universal way they are now.
- 4) *What are the implications for increased road traffic and are private roads still responsible for taking care of the roads with this increased traffic?* There could be increased traffic, hard to know how much. Yes, the private road associations will still be responsible for their roads.
- 5) *Will there be an additional broadband charge for hooking up ADUs?* Seems to be a moot point as there are no ADUs currently since under current ordinances, they are not allowed. In the future, as they are built, there are likely better options (repeaters etc...) to connect an ADU to the internet in the main dwelling, but this is all speculative at this point.
- 6) *Does the impetus for this warrant come from the state mandate or the wish to change town zoning in response to the need for housing and state of the STR market?* Both. *Can the town delay the decision on this warrant to have more time to think on and get input on it?* The PB would like more input but the short timeframe

for implementation does not allow much time for it. This hearing is an effort to obtain town input. If the town does not approve this warrant (in some form) and the July 1, 2023 implementation date stays firm, the Town will have to abide by the state mandate and won't have input into refining it to align with the spirit of the current zoning ordinances. As a side note, Roger Heard mentioned Bath implemented an ADU policy about a year ago and not many ADUs have been built to date.

- 7) *Will/can an ADU have a separate address from the primary dwelling?* It is thought that there is current precedence for this but the Chair will check on this.
- 8) *How does LD2003 relate to subdivisions?* Are Home Association Bylaws preempted by the State Law? It was thought this is the case, but the Chair will doublecheck with the State. It was later mentioned that provision j) of the Proposed Warrant: *An Accessory Dwelling Unit shall be in conformity with applicable Federal, State, and local laws, ordinances and regulations* seems to answer this question in the affirmative, but the Chair will still check with the State on it. It was also mentioned that no determination is ever final until has been taken to court and a ruling made.
- 9) *Will ADUs have tax implications and increase property taxes?* They will most likely if property values increase except for seniors over age 65 who are eligible under LD290. Eligible LD290 seniors have no additional taxes added to their current taxes even if they build on their property.
- 10) It was mentioned by Vicky Stoneman that it appears that this lot acreage exemption mandate for ADUs does not apply to lots in the Shoreland Zone. Even so, it was recommended for Shoreland Zone property owners to review their individual situation with the Town CEO in terms of building/creating an ADU.

2. Proposed Short Term Rental Warrant Article

This amendment is in response to the evolving character of the use of Short-term Rentals (STR). In recent years, online platforms have contributed to the growth of this use of residences in a way that has potential to become a commercial use. The PB proposed ordinance amendment defines when an STR is considered a Commercial Use, and therefore prohibited under Arrowsic Zoning, and clarifies how an existing STR is treated. This amendment is permissible under Home Rule but is not a State requirement.

Several points were noted:

- 1) All zoning in Arrowsic is residential. Arrowsic does not have commercial zoning.
- 2) The Arrowsic PB proposes to add a definition of Commercial Use to the town ordinances that clarifies the circumstances in which the short-term rental of a residence crosses the line to become a Commercial Use.
- 3) Where a residence was rented on a short-term basis during the 12 months preceding the effective date of this definition, the rental shall be considered a nonconforming use. This means it can continue in existence under the nonconforming use ordinance with provisions (see Ord Sec 1.3):
 - Non-conforming use is defined in the Arrowsic Zoning Ordinance as: *use of buildings, structures, premises, land or parts thereof which is not allowed in the district in which it is situated, but which is allowed to remain solely because it was in lawful existence at the time this Ordinance or subsequent amendments took effect.*
- 4) The PB also proposes adding language to the Definition and ordinance language regarding Home Businesses to clarify what type of short-term rental of a property does not fit the definition of a home business.

The Chair read the Proposed STR Warrant (see Appendix) and then entertained questions:

- 1) *Why would existing STRs be grandfathered (under nonconforming use) if prohibited because they are commercial use?* It is not currently clear under the ordinances that STRs would be prohibited. Someone could think they were a home business. So it is only fair to have them grandfathered in. To be grandfathered, they would 1) need to

have rented in the prior 12 months to adoption of the warrant at the June 15 town meeting and 2) continue to rent at least once each successive year. It was also noted that there is no proposed change to the town's nonconforming ordinance. It is only being applied to the STR situation as currently stands. If grandfathered STRs discontinue renting for more than a year, they lose their nonconforming status and would revert to being a commercial use and therefore, not allowed.

- 2) *In terms of the definition of commercial use provided at the start of the warrant, would it rule out a nonprofit entity in Arrowsic from generating income?* It is believed that this rule on generating income would apply to individuals, businesses and nonprofit organizations in determining commercial use.
- 3) It was asked if a link to both proposed warrant articles could be put on the town website and this link emailed to the Town email list. The Chair will talk to the webmaster and have it posted.
- 4) *Does a subdivision have to abide by town STR rules or can it be more restrictive and not allow them at all?* It was said that a Housing Association can make more restrictive rules if it so desires.
- 5) *Why in the proposed warrants are ADUs restricted to 90 day STRs but that is not applied generally to all STRs?* The goal of the state mandate on ADUs is to facilitate longer term housing, so this restriction on ADU rental periods is in keeping with that.
- 6) *Will the Town institute a process to establish what current STRs are in existence and so grandfathered?* Yes, there will be some type of record made, but the format has not been determined yet. Enforcement is the responsibility of the Select Board and CEO though not the PB.
- 7) It was noted that the PB made the minimum changes to its ordinances to comply with the state ADU law, only changing what it had to. Therefore, many restrictions remain in place. The law will likely be challenged in the future (in regards to many of these restrictions, setbacks most likely). This is all new so there will be challenges and tweaks in the years ahead.
- 8) *The law and proposed warrants raise questions for subdivisions and their bylaws/covenants. How does this work?* The required PB and CEO review of permits is to help owners so each project can be approached individually to see if it meets requirements. The CEO also has information he can share with Homeowner Associations on how subdivisions should think about and approach LD2003.

Adjourned at approximately 8:05 PM

Appendix

Warrant Article

Proposed Amendments to Arrowsic Zoning Ordinance re: ADUs (underline signifies proposed text)

DEFINITIONS ACCOMPANYING TOWN OF ARROWSIC ZONING AND SUBDIVISION ORDINANCES

Accessory Dwelling Unit: A self-contained dwelling unit located within, attached, or detached from a single-family unit located on the same parcel of land. An accessory dwelling unit must have a floor area of no less than 190 square feet and no greater than 850 square feet.

3.0 Performance Standards (addition)

3.6.5 Accessory Dwelling Unit

- a) The creation, conversion to, or construction of a new accessory dwelling unit shall require a permit to be issued by the Planning Board.
- b) No more than one accessory dwelling unit shall be permitted per lot.
- c) Accessory dwelling units are not permitted on nonconforming lots of less than 2 acres
- d) An accessory dwelling unit shall contain a minimum of 190 square feet or such greater minimum square footage as adopted by Maine's Technical Standards Board.
- e) An accessory dwelling unit shall be limited to a maximum of two bedrooms.
- f) An accessory dwelling unit shall comply with all setback and dimensional requirements with the exception of lot size.
- g) An accessory dwelling unit may not be rented for periods of less than 90 days. Where an accessory dwelling existing as of the effective date of this section was rented on a short-term basis during the 12 months preceding the effective date, the rental shall be considered a nonconforming use.
- h) An accessory dwelling unit shall be permitted only where evidence is provided that the use is compliant with the Maine State Subsurface Wastewater Disposal Rules.
- i) An accessory dwelling unit shall be permitted only where evidence is provided that the accessory dwelling unit will have sufficient access to potable water.
- j) An accessory dwelling unit shall be in conformity with applicable federal, state and local laws, ordinances and regulations.
- k) An accessory dwelling unit shall conform with the Shoreland Zoning ordinances.

TABLE I: USES BY DISTRICT (add)

6. Structures

Accessory Dwelling Units (after residential dwelling units) - B&C/PB all four categories

Warrant Article

Proposed Amendments to Arrowsic Zoning Ordinance re: Commercial Use/Short-Term Rentals

DEFINITIONS ACCOMPANYING TOWN OF ARROWSIC ZONING AND SUBDIVISION ORDINANCES

Commercial Use: The use of lands, buildings or structures, the intent or result of which activity is

the production of income from the buying and selling of goods and/or services.

The rental of residential buildings and/or dwellings shall not be considered a commercial use,

except that short-term rentals (rental of a dwelling unit for periods of less than 28 days) shall be

considered a commercial use if:

- a) More than one dwelling unit on a single parcel of land, or on two commonly held parcels, is used for any portion of a calendar year as a short-term rental (property held by corporations, trusts

or estates with any degree of common ownership or common beneficiaries shall be considered

“commonly held.”); or

b) The owner of the short-term rental does not reside in the Town of Arrowsic for at least six months of each calendar year; or

c) The short-term rental is not located on the same parcel or abutting the parcel on which the owner resides.

Where a residence was rented on a short-term basis during the 12 months preceding the effective date of this definition, the rental shall be considered a nonconforming use.

Home Business: A home business is an occupation or business which is carried on within a dwelling or accessory structure to the dwelling by a member of the family residing therein; is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and does

not involve any exterior alteration which would change the residential character of the premises.

Permitted home businesses include: the production of goods, the sale of goods produced on site,

the provision of services performed on site, the provision of goods and services off site for which

the material and equipment are kept on site. A sales outlet is not a home business unless the

item sold is a product of the labor of a person working in the business (i.e., manufactured, produced, created, caught, grown by the owner or an employee of the business).

The rental of more than one dwelling unit on a single parcel of land, or on two or more commonly

held parcels, for periods of less than 28 days shall be considered a Commercial Use and not a

home business (property held by corporations, trusts or estates with any degree of common ownership or common beneficiaries shall be considered “commonly held.”). See the definition of

Commercial Use.

Ordinance Update

TABLE I: USES BY DISTRICT

Commercial Use – see definition

3.0 Performance Standards

3.7 Home Business

3.7.1

a) **Home Business:** A home business is an occupation or business which is carried on within a

dwelling or accessory structure to the dwelling by a member of the family residing therein; is clearly incidental and secondary to the use of the dwelling unit for residential purposes; and does

not involve any exterior alteration which would change the residential character of the premises.

Permitted home businesses include: the production of goods, the sale of goods produced on site,

the provision of services performed on site, the provision of goods and services off site for which

the material and equipment are kept on site. A sales outlet is not a home business unless the

item sold is a product of the labor of a person working in the business (i.e., manufactured, produced, created, caught, grown by the owner or an employee of the business).

The rental of more than one dwelling unit on a single parcel of land, or on two or more commonly held parcels, for periods of less than 28 days shall be considered a Commercial Use and not a home business (property held by corporations, trusts or estates with any degree of common ownership or common beneficiaries shall be considered "commonly held."). See the definition of Commercial Use.