

TOWN OF KENNEBUNKPORT
PROPOSED CODE AMENDMENTS
TO COMPLY WITH NEW STATE HOUSING LAW

The Code of the Town of Kennebunkport is proposed to be amended by adding the words shown in underline and removing the words shown in strikethrough, as follows:

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Chapter 129 Short-Term Rentals

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§ 129-2 Applicability.

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- B.** Prohibited short-term rentals. No person may offer for rent, operate, or otherwise use any dwelling unit in the Town of Kennebunkport for short-term rentals if:
- (1) Such person has not secured or maintained a valid short-term rental license for the premises; ~~or~~
 - (2) The accommodations are an accessory apartment constructed or permitted after November 3, 2009, or a recreational vehicle, trailer or tent; ~~or~~
 - (3) The units (whether designated as affordable or not) are within an affordable housing development constructed or permitted after July 1, 2024. This prohibition applies during the duration of the long-term affordability restriction applicable to the affordable housing development set forth in § 240-7.15.

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Chapter 240 Land Use

Article 1 General

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§ 240-1.2 Purposes.

This chapter and its regulations are designed for all the purposes of zoning embraced in Maine Revised Statutes, among other things: to promote and conserve the health, safety, convenience, and welfare of the inhabitants; to encourage the most appropriate interrelationships of land uses and groups of land uses in the various parts of the Town; to secure safety from fire, panic, epidemics, flooding and other dangers; to provide adequate access of light and air; to prevent overcrowding of real estate; to lessen congestion in the streets; to facilitate the adequate provision of transportation, water, sanitary facilities, schools, parks and other public requirements, and to preserve and increase amenities throughout the Town of Kennebunkport. This chapter has been amended to comply with the Mandatory Shoreland Zoning Act^[1] and DEP Minimum Shoreland Zoning Guidelines to prevent and control water pollution; to protect fish spawning grounds, aquatic life, bird and other wildlife habitat; to protect buildings and lands from flooding and accelerated erosion; to protect archaeological and historic resources; to protect commercial fishing and maritime industries; to protect freshwater and coastal wetlands, and visual as well as actual points of access to inland and coastal waters; to conserve natural beauty and open space; and to anticipate and respond to the impacts of development in shoreland areas. This chapter has been further amended, consistent with the State Housing Law^[2], to affirmatively further the purposes of the Federal Fair Housing Act, 42 U.S.C. ch. 45, as amended, and the Maine Human Rights Act, 5 M.R.S.A. ch. 337, to achieve the

applicable statewide or regional housing production goal established by the Maine Department of Economic and Community Development.

[1] *Editor's Note: See 38 M.R.S.A. § 435 et seq.*

[2] *Editor's Note: See 30-A M.R.S.A. § 4364 et seq.*

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§ 240-1.9 **When effective.**

This chapter shall become effective as soon as it receives a favorable vote of the voters of the Town.

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Article 2 **Terminology**

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§ 240-2.2 **Definitions.**

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ACCESSORY DWELLING UNIT

See "apartment, accessory."

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APARTMENT, ACCESSORY

~~A separate self-contained dwelling unit which may be located within a single-family dwelling, attached to or sharing a wall with detached from a single-family dwelling unit that is located on the same parcel of land, or a detached accessory structure as permitted under § 240-7.1 of this chapter. An accessory apartment is an extension of use and may not be independently conveyed except to the extent permitted by law. An accessory apartment may be considered an accessory dwelling unit under 30 A M.R.S.A. § 4364 B or an additional dwelling unit under 30 A M.R.S.A. § 4364 A, as determined by the municipal reviewing authority.~~

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AFFORDABLE HOUSING or AFFORDABLE HOUSING DEVELOPMENT

A development composed of single-family dwelling, two-family dwellings, or multiplex dwellings, or any combination thereof, in which a household whose income does not exceed 80% (for rental housing) or 120% (for owned housing) of the area median income can afford a majority (51%) or more of the units in the development without spending more than 30% of the household's monthly income on housing costs. For 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 homeowners' association fees.

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AREA MEDIAN INCOME

The Area Median Income (AMI) describes the midpoint of an area's income distribution, where 50 percent of households earn above the median figure while 50 percent earn less than the median. As required by the United States Housing Act of 1937, Public Law 75-412, 50 Stat. 888, Section 8, as

Commented [GW1]: This is a requirement of the housing law and legal recommends provision to be added to the purpose statement.

Commented [AD2]: I recommend using the ADU definition in the DECD rule. The standards in the strikeout have been moved to Section 240-7.1

Commented [GW3R2]: Reason rulemaking was not complete for Maine DECD when the town adopted in 2023.

Commented [AD4]: This and the subsequent definitions derive from the amended state law and DECD rule definitions. I've added the first clause to make clear that AHDs can come in many forms.

Commented [AD5]: I advise against defining "household," as its only purpose is with reference to area median income, which HUD establishes. Also, your definition of "family" covers this ground adequately.

amended, the Department of Housing and Urban Development (HUD) calculates AMI for U.S. metropolitan areas on an annual basis.

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BASE DENSITY

See "net residential density."

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CENTRALLY MANAGED WATER SYSTEM

A water system that provides water for human consumption through pipes or other constructed conveyances to at least 15 service connections or serves an average of at least 25 people for at least 60 days a year as regulated by 10-144 C.M.R. Ch. 231, *Rules Relating to Drinking Water*. This water system may be privately owned.

Commented [GW6]: Missing definition defined by state law

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COMPARABLE SEWER SYSTEM

Any subsurface wastewater disposal system that discharges over 2,000 gallons of wastewater per day as regulated by 10-144 C.M.R. Ch. 241, *Subsurface Wastewater Disposal Rules*.

Commented [GW7]: Missing definition to comply with state law

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DESIGNATED GROWTH AREA

Any land identified as the "growth area" on the Town of Kennebunkport Growth Areas map (revised March 2021).

Commented [GW8]: Missing definition noticed by the town attorney

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MULTI-FAMILY DWELLING

See "multiplex" or "dwelling," Subsection C.

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POTABLE

"Potable" as that term is defined the Maine Department of Economic and Community Development (DECD) Municipal Land Use and Zoning Ordinance Rule, codified at 19-100 C.M.R. ch. 5, § 1(B), as amended.

Commented [GW9]: Attorney noticed definition is missing for compliance with the state law

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Article 4 Zone Regulations

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§ 240-4.3 Village Residential Zone.

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Commented [AD10]: Because AHDs can take the form of single-family dwellings, duplexes, multiplexes, or any combination of these, I recommend including them in the tables of permitted uses as a separate land use.

Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
	Affordable housing development	

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§ 240-4.4 Village Residential East Zone.

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Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
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	<u>Affordable housing development</u>	
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§ 240-4.5 Dock Square Zone.

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Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
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	<u>Affordable housing development</u>	
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§ 240-4.6 Riverfront Zone.

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Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
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	<u>Affordable housing development</u>	
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§ 240-4.10 Cape Porpoise Square Zone.

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Permitted Uses	Conditional Uses Subject to Site Plan Review	Conditional Uses Subject to Zoning Board of Appeals Review
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	<u>Affordable housing development</u>	
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Article 6 Town-Wide Regulations

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§ 240-6.10 Residential parking standards.

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G. An affordable housing development must provide a minimum of 2 off-street parking spaces per 3 dwelling units. If fractional results occur, the minimum number of off-street parking spaces are rounded up to the nearest whole number.

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§ 240-6.11 Sanitary and potability provisions.

A. Connection to public facilities. All plumbing shall be connected to public collection and treatment facilities when required by other ordinances.

B. Subsurface sewage disposal. No plumbing permit shall be issued for a subsurface disposal system unless:

- (1) The system meets the requirements of the State of Maine Subsurface Wastewater Disposal Rules, 10-144 CMR Chapter 241; a second disposal site that meets the state rules is not required unless mandated by other law. Any such site shall be shown on the permit application as a reserve area and be set aside on the plot plan for possible future use as a disposal site; and
- (2) Any other optional provisions adopted by the Town have been complied with.

C. State housing law wastewater disposal and potable water requirements. Prior to issuing a certificate of occupancy pursuant to § 240-11.8 of this chapter, the owner of a dwelling unit, accessory apartment, or unit within an affordable housing development must provide written verification to the Code Enforcement Officer that the unit is connected to adequate water and wastewater services, as required by the Maine Department of Economic and Community Development (DECD) Municipal Land Use and Zoning Ordinance Rule, codified at 19-100 C.M.R. ch. 5, as amended. Any tests of an existing well or proposed well must indicate that the water supply is potable and acceptable for domestic use. The written verification required by this subsection C shall apply only to the extent such written verification is required by 30-A M.R.S.A. §§ 4364(5), 4364 A(4), or 4364-B(7). The Code Enforcement Officer and Planning Board may condition any permits or approvals on such written verification.

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Article 7 Performance Standards for Specific Activities, Land Uses and Zones

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§ 240-7.1 Accessory apartments.

An accessory apartment that complies with the following standards is exempt from the minimum lot area, minimum lot width, and minimum net residential area per dwelling unit requirements applicable to the zone in which the accessory apartment is constructed. An accessory apartment is not considered a two-family dwelling or a multiplex, and is not considered a dwelling unit for purposes of (1) applying the residential parking standards in § 240-6.10, (2) applying the road construction, filling and grading standards in § 240-6.14, (3) applying the growth management permit requirements in § 240-11.12, (4) counting the number of dwelling units when applying the subdivision definition in 30-A M.R.S.A. § 4401, as amended, and (5) calculating the net residential area pursuant to § 415-11.17. An accessory apartment that does not comply with the following standards is considered a dwelling unit and must comply with all applicable standards for a dwelling unit. An accessory apartment may only be located on a lot containing one or more in, attached to, or detached from a single-family dwellings, shall not be defined as a two family or a

Commented [GW11]: Town attorney verified with the state that the town can allow for a round up of number of spaces required when fractional.

Commented [AD12]: These requirements are from the DECD rule.

Commented [AD13]: The code includes numerous references to single-family dwelling units. The DECD definition of an AA deems it a dwelling unit. This list excludes AAs from common situations where AAs should not be considered a dwelling unit.

Note that the sections that are not affected include:

- 183-64 (sewer charges -- i.e., an AA would be a single-family dwelling unit for purposes of calculating sewer unit charges).
- 240-7.6 (home occupations - AA's are already addressed here)
- 240-9.2 (setback variances -- i.e., an AA could obtain a setback variance)
- 240-7.14 (residential rental accommodations -- i.e, an AA could be use to accommodate roomers) – note the suggested edit to 7.14 to prohibit this.

Commented [GW14]: Town Attorney reformatted Accessory Apartment language to exempt from parking, road construction, filling/grading, growth permits and subdivision trigger.

Commented [GW15]: This language clarifies only Accessory Apartments moving forward can only be located on a lot with only single family dwellings. Any lot that contains a mixture of residential building types would not be allowed to have an accessory apartment.

~~plex, are allowed as a permitted use in all zones, except where otherwise noted in Subsection D, and are subject to the limitations below:~~

- A. A request for an accessory apartment requires submittal of a site plan that shall include the property owner with deed reference, lot boundaries and dimensions to scale and the location and setbacks of all buildings and parking areas.
- B. A request for an accessory apartment shall include a plan of the entire building showing a separate floor layout of all finished levels identifying the use of all rooms and the location of all entrances/exits.
- C. ~~For an accessory apartment located within or attached to a single-family dwelling, t~~The dwelling shall have only one front entrance and all other entrances shall be either on the side or in the rear of the dwelling ~~or accessory apartment~~. An entrance leading to a foyer with interior entrances leading from the foyer to the ~~two~~ accessory apartment and the single-family dwelling units is permitted.
- D. The living area of an accessory apartment shall be a minimum of 190 square feet, and a maximum of 800 square feet. An accessory apartment may not have any living space on a third story unless it meets the minimum life safety requirements as defined in the Building Code.
- ~~ED.~~ ~~An a~~Accessory apartments ~~are is~~ not permitted in the Shoreland Zone unless the lot on which it will be located has at least double the required minimum lot size and shore frontage for that zone, double the minimum lot size, and double the shore frontage for that zone.
- FE. ~~Only~~ ~~No more than one~~ accessory apartment shall be permitted on a lot containing one or more per single-family dwellings.
- GF. An accessory apartment shall be occupied as a primary residence. ("Primary residence" shall be defined as more than six months per year.) An accessory apartment is not eligible to operate as a short-term rental.
- HG. ~~An a~~Accessory apartment located on properties connected to the Town's wastewater collection system must be approved by the Sewer Department. Properties utilizing subsurface waste system and private wells must meet the standards required in the Maine Subsurface Wastewater Disposal Rules. In addition:
 - (1) ~~Existing~~ septic systems must be evaluated for condition and capacity by a licensed site evaluator. A reserve is required for existing and new systems in the event that replacement is necessary. Biannual pump-outs of septic systems servicing the property are required and documentation must be provided to the Town upon request.
 - (2) ~~Properties serviced by private wells must provide to the Code Enforcement Office a water quality test to ensure adequate water quality prior to issuance of a certificate of occupancy.~~
- I. For an accessory apartment that is a separate structure or attached to a single-family dwelling, the proposal must comply with best management practices in managing stormwater for low-impact development, in accordance with the *LID Guidance Manual for Maine Communities* (Maine Department of Environmental Protection, Sep. 21, 2007).
- J. An accessory apartment is an extension of a residential use and may not be independently conveyed except to the extent permitted by law.
- K. Except as expressly provided in this section, an accessory apartment must comply with all other requirements of this Code, including but not limited to Article 6 and any shoreland zoning requirements.

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Commented [GW16]: Clarifies intent of Accessory Apartments for one Accessory Apartment per lot. This addresses GPC concerns of work around provision for condo conversion.

Commented [GW17]: Attorney recommended strikethrough as this language is addressed in 6.11 above.

§ 240-7.14 Residential rental accommodations.

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B. Performance standards. Residential rental accommodations are prohibited in accessory apartments.
No more than two rooms in a residential rental accommodation may be let out to roomers, provided that:

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§ 240-7.15 Affordable housing.

An affordable housing development that complies with the requirements of this section is eligible for a dwelling unit density bonus of 2 ½ times the base density that is otherwise allowed on the lot proposed for affordable housing development. If fractional results occur when calculating the density bonus, the maximum number of allowed units shall be rounded down to the nearest whole number.

A. Location. The affordable housing development must be either (1) located in a designated growth area or (2) served by a public, special district, or other centrally managed water system and a public, special district, or other comparable sewer system.

B. Long-term affordability.

(1) More than half (51%) of the total dwelling units in the affordable housing development must be designated as affordable rental units or affordable homeownership units.

(2) Prior to the issuance of a certificate of occupancy for a structure to be used for an affordable housing development, the owner of the affordable housing development must execute a restrictive covenant recorded in the York County Registry of Deeds and enforceable by a third party acceptable to the Planning Board, to ensure that for at least thirty (30) years after completion of construction occupancy of all units designated affordable in the development will remain limited to households at or below 80% (for rental housing) or 120% (for owned housing) of the local area median income at the time of initial occupancy. The restrictive covenant must run with the land and encumber the affordable housing development, be binding upon the developer (for rental housing) or the unit owners (for owned housing) and their successors and assigns, and inure to the benefit of and be enforceable by the Town a third party acceptable to the Planning Board.

C. Water and wastewater.

(1) The sanitary and potability standards in § 240-6.11 shall apply to each unit within the affordable housing development.

(2) The developer of the affordable housing development must make adequate provision for the long-term maintenance, repair, and improvement of any (i) individual private septic system, (ii) comparable sewer systems, (iii) individual private wells, and (iv) public water systems proposed to serve the units within the affordable housing development, including a process of collection and enforcement to obtain capital improvement funds from the developer (for rental housing) or the unit owners (for owned housing).

D. Multiplex development. The provisions of § 240-7.11 shall apply to any affordable housing development that includes a multiplex building.

E. Short-term rental prohibition. No unit (whether designated as affordable or not) within an affordable housing development may be used for short-term rental pursuant to Chapter 129 of this Code during the duration of the long-term affordability restriction in subsection B(2), above.

Commented [GW18]: Town Attorney recommends adding language to clarify accessory apartments which are to be primary residences do not qualify for the Residential rental accommodation (Roomer License). This keeps with the town policy of preserving housing for full time residents.

Commented [AD19]: This is not a statutory requirement, but a recommended legal best practice.

Commented [AD20]: This is not a statutory requirement, but a recommended legal best practice.

Commented [AD21]: I recommend that you apply the STR prohibition to all units within an AHD, not just the ones designated as affordable.

F. Nothing in this Section exempts an affordable housing development from any other requirements of this Code, including but not limited to the growth management permit requirements in § 240-11.12, the subdivision regulations in Chapter 415 of this code, or any shoreland zoning requirements.

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Article 8 Nonconformance and Vested Rights

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§ 240-8.5 Nonconforming due to lack of required parking or loading space.

A building or structure, other than a single-family dwelling or an accessory apartment, which is nonconforming as to the requirements for off-street parking and/or loading space, shall not be extended or enlarged in any manner unless off-street parking and/or loading space is provided to bring parking and/or loading space into conformance with the requirements of this chapter for both the addition or alteration and for the original building or structure.

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§ 240-8.7 Nonconforming lots.

A. A nonconforming lot of record, not adjoined by any other lot in common ownership, may be built upon, as a matter of right for a single-family dwelling, an accessory apartment constructed in accordance with § 240-7.1, and permitted accessory uses, and without the need for a variance, subject to all the requirements of this chapter for the zone where located, except for those area and frontage requirements which made the lot nonconforming, provided that the owner can demonstrate that there is reasonable access to the site by emergency vehicles.

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§ 240-8.8 Nonconforming uses.

A. Expansions. Expansions of nonconforming uses are prohibited, except that nonconforming residential uses may, after obtaining a permit from the Planning Board, be expanded within existing residential structures or within expansion of such structures in Shoreland Zones as allowed in § 240-8.3B(1) above. For purposes of this section, an accessory apartment constructed in accordance with § 240-7.1 is not an expansion of a nonconforming use.

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Chapter 415 **Subdivision Regulations**

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Article 3 Terminology

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AFFORDABLE HOUSING

See "affordable housing," in § 240-2.2. (As defined by M.R.S.A.) Those housing units that will meet the sales price and/or rental targets established by the Comprehensive Plan and subsequent amendments or revisions for housing affordability.

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§ 415-5.1 Filing procedure.

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Commented [AD22]: These do not need to be included in the warrant. But I recommend that the Planning Board hold a public hearing and adopt the following amendments (effective July 1, 2024, and subject to voter approval of the above Code amendments).

(5) An evaluation of the potential of the site for a cluster development as well as "affordable housing" ~~as defined in the Kennebunkport Comprehensive Plan.~~

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§ 415-11.17 **Calculation of net residential area.**

A. The area or lot site available for development shall be determined by the Code Enforcement Officer by subtracting from the gross acreage of the lot the exclusions listed in the Kennebunkport Land Use Ordinance (LUO)^[1] definition of "net residential area" in addition to open land as required by § 415-11.8 that is not already included within the exclusions required by the LUO definition of "net residential area."

[1] *Editor's Note: See Ch. 240, Land Use.*

B. The maximum number of dwelling units, not including accessory apartments, permissible (maximum density) in any subdivision will be determined by dividing the net residential area as determined by § 415-11.17A above by the minimum lot size required by Chapter 240, Land Use.

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