



## Planning & Code Enforcement

2 York Street  
Westbrook, Maine 04092  
Phone: 207-854-0638  
Fax: 866-559-0642

### PLANNING & CODE ENFORCEMENT

DATE: September 1, 2023

TO: Planning Board  
FROM: Jennie P. Franceschi, City Planner & Rebecca Spitella, Senior Planner  
Cc: Plan Review Team

RE: September 5, 2023, Planning Board Meeting

- 
1. **2023.21 – Site Plan Approval Extension Request – Stacy Symbol Apartments - Westbrook Development Corporation**
  2. **2023.20 – Site Plan Amendment - 619 Bridgton Road – 619 Bridgton, LLC**
  3. **2023.22 - Community Green Space Designated Parcels - City of Westbrook – Westbrook Recreation and Conservation Commission**
  4. **2023.23 - Introduction to Requirements of State Law LD 2003 Housing Bill and Amendment to Chapter 10 of the 2012 Comprehensive Plan - Growth Areas Map**

- 
1. **2023.21 – Site Plan Approval Extension Request – Stacy Symbol Apartments - Westbrook Development Corporation – 68 Nicklaus Lane**

#### **REGULAR BUSINESS**

Tax Map: 037 Lot: 001

Zone: Residential Growth Area 1; Residential Growth Area 1 Lincoln Street Overlay

Use: Dwelling, Multiple-Family

#### **Project Description**

The applicant is requesting a 6-month extension to the completion date for the Stacy Symbol Apartments at 68 Nicklaus Lane approved August 2, 2022, to allow time for project completion by February 2, 2025.

#### **Project History**

October 27, 2021 – Neighborhood Meeting

November 2, 2021 – Planning Board Workshop

August 2, 2022 – Public Hearing

September 5, 2023 – Extension request for project completion date

#### **Staff Comments**

Due to the time needed to secure Maine Housing funding the project did not commence until July 2023 and is therefore requesting a 6-month extension of the completion date. Per the Ordinance, Site Plan approval expires if work is not substantially completed within 2-years of project approval.

Staff take no issue with the applicant's request.

**Motion**

Motion to approve the request from Westbrook Development Corporation for a 6-month extension on the completion date of the Stacy M. Symbol apartments project at 68 Nicklaus Lane approved August 2, 2022. Tax Map: 037 Lot: 001 Zone: Residential Growth Area 1; Residential Growth Area 1 Lincoln Street Overlay District.

## 2. 2023.20 – Site Plan Amendment – 619 Bridgton Road – 619 Bridgton, LLC

### **PUBLIC HEARING**

Tax Map: 018 Lot: 029B  
Zone: Prides Corner Smart Growth Area

### **Project Description**

The applicant is requesting a 10,000-sf expansion to the equipment and material storage area and associated stormwater facilities.

### **Project History**

October 3, 2020 – Neighborhood Meeting  
October 6, 2020 – Planning Board Workshop  
March 16, 2021 – Public Hearing & Approval  
September 5, 2023 – Public Hearing – Site Plan Amendment

### **Staff Comments:**

1. Revise Title Block to read "Site Plan Amendment"
2. A new performance guarantee will be required and should include the cost of outstanding items from initial approval (as-built plans; final stabilization of landscaping/site).
3. Reclaim storage area only permitted for material storage. If utilized by equipment pavement will be required to protect adjacent wetland resources from oil. Staff recommends this as a condition of approval to the site plan amendment.
4. Provide cleanouts at ends of underdrains
5. Show double erosion control barrier at areas adjacent to wetlands

### **Motion:**

That the Planning Board approves the Site Plan Amendment application for 619 Bridgton, LLC for a 10,000-sf expansion to the material storage area and associated stormwater facilities. Tax Map: 018 Lot: 029B Zone: Prides Corner Smart Growth Area. Approval includes the following findings of fact, conclusions, and conditions as stated on pages 3 through 5 of this Staff Memo dated September 1, 2023, which are adopted in support of this approval.

### **Site Plan – Finding of Fact**

<b>Standard</b>	<b>Finding</b>
Utilization of the site	Considering the land conveyance from the southerly abutter, the material storage area is located within the limits of the parcel. Stormwater management is provided to address the disturbance to existing drainage patterns
Handicap Access	ADA access is provided to the front of the site as part of the 2021 site plan approval. The proposed expansion does not require additional ADA measures.
Appearance Assessment	The expansion does not impact existing site access or egress. Additional landscaping is shown along the rear of the new area of disturbance to provide a buffer along the rear of the site. No new lighting or signage is required as part of this expansion.
Landscape Plan	Additional landscaping is shown along the rear of the new area of disturbance to provide a buffer along the rear of the site.
Odors	The expansion will be utilized in the same manner as the existing commercial operation on the site. No adverse impact known or anticipated.

Noise	The expansion will be utilized in the same manner as the existing commercial operation on the site. No adverse impact known or anticipated.
Technical and Financial Capacity	Included with the application is a letter from Bangor Savings Bank dated July 27, 2023
Solid Waste	A dumpster is located on site to manage waste removal.
Historic, Archaeological and Botanical Resources or Unique Features	N/a
Hazardous Matter	No hazardous material will be handled or stored on site.
Vibrations	The expansion will be utilized in the same manner as the existing commercial operation on the site. No adverse impact known or anticipated.
Parking & Loading Design and Site Circulation	No additional parking need is generated by the expansion. Site circulation is not impacted by the proposed expansion.
Adequacy of Road System	No additional traffic will be generated by the proposed development.
Vehicular Access	Existing site ingress/egress is not impacted by the proposed development.
Pedestrian and Other Modes of Transportation	No impact.
Utility Capacity	No additional utilities are required for the proposed expansion.
Stormwater Management, Groundwater Pollution	Additional stormwater measures are shown on the plan to reroute impacted existing drainage paths
Erosion and sedimentation Control	With consideration of Staff comments, sufficient erosion and sedimentation control measures are shown on the plan.

## Conclusions

1. The proposed site plan **will not** result in undue water or air pollution.
2. The proposed site plan **has** sufficient water available for the reasonably foreseeable needs of the site plan.
3. The proposed site plan **will not** cause an unreasonable burden on an existing water supply.
4. The proposed site plan **will not** cause unreasonable soil erosion or a reduction in the land's capacity to hold water so that a dangerous or unhealthy condition results.
5. The proposed site plan **will not** cause unreasonable highway or public road congestion or unsafe conditions with respect to the use of the highways or public roads existing or proposed.
6. The proposed site plan **will** provide for adequate sewage waste disposal.
7. The proposed site plan **will not** cause an unreasonable burden on the municipality's ability to dispose of solid waste.
8. The proposed site plan **will not** have an undue adverse effect on the scenic or natural beauty of the area, aesthetics, historic sites, significant wildlife habitat identified by the Department of Inland Fisheries and Wildlife or the municipality, or rare and irreplaceable natural areas or any public rights for physical or visual access to the shoreline.
9. The proposed site plan **conforms** with a duly adopted site plan regulation or ordinance, comprehensive plan, development plan, or land use plan.
10. The developer **has** adequate financial and technical capacity to meet standards of this section.
11. The proposed site plan **is not** situated entirely or partially within the watershed of any pond or lake or within 250 feet of any wetland, great pond or river as defined in Title 38, Chapter 3, subchapter I, article 2-B M.R.S.A.
12. The proposed site plan **will not** alone or in conjunction with existing activities, adversely affect the quality or quantity of ground water.
13. The proposed site **is not** situated entirely or partially within a floodplain.
14. All freshwater wetlands **have** been shown on the site plan.

15. Any river, stream, or brook within or abutting the site plan **has** been identified on any maps submitted as part of the application.
16. The proposed site plan **will** provide for adequate storm water management.
17. The proposed plan **will not** negatively impact the ability of the City to provide public safety services.

**Conclusions:**

1. All conditions of the March 16, 2021 approval are conditions of this approval.
2. The expanded storage area shall be utilized for material storage only. Any use of this area for vehicular storage will require the area to be paved.

### 3. 2023.22 - Community Green Space Designated Parcels – City of Westbrook – Westbrook Recreation and Conservation Commission

Section §295-Article II (“Forest”) of the Ordinance charges The Recreation & Conservation Commission with the task of inventorying City owned property to recommend parcels to be dedicated as “City Forest”. It appears this Ordinance was never enacted and there has been some confusion as to what areas are meant to be included under the ordinance. A common thought was that this was referring specifically (and only) to what is commonly referred to as The City Forest (approximately 75 acres located behind the Community Center – Map/Lot 010/029 & 011/005B) however, the ordinance states that the purpose is “to provide open space areas in the City for recreation, timber harvesting, wildlife, watershed protection, scenic beauty and affiliated educational uses” and that land shall be formally dedicated through a collaborative process with the Recreation and Conservation Commission, Planning Board and City Council. While this certainly could apply to City Forest, it does not appear to be limited to that. That the Ordinance and City Forest share a name appears to be coincidental.

Therefore, to avoid confusion Staff is seeking an amendment to §295-Article II to revise the Ordinance Title from “Forest” to “Community Green Space” and clarify the intent of the Ordinance.

*The ordinance amendment has been provided to the Planning Board for reference, as the Planning Board does not make a recommendation on this ordinance as it is not part of the Land Use Ordinance, and therefore not within the purview of the Planning Board.*

General summary of amendment to §295-Article II:

- Rename section to “Community Green Space” (CGS)
- Reorganize layout
- Clarify implication of CGS designation
- Remove outdated/unnecessary language

Essentially, this Ordinance provides an extra layer of protection for lands that the City deems as valuable for the purpose of recreation and/or environmental protection/conservation. The primary implications of CGS designation area as follows:

General Summary of CGS Designation

- Rec and Con may (but are not required to) develop management plans for parcels holding CGS designation.
- Except for general maintenance/repair of existing structures/facilities and except for any subsurface utility work, Rec & Con review/recommendation required for the development of parcels with CGS designation to ensure development is in line with intent of the Ordinance.
- Land with CGS designation cannot be conveyed out of public ownership unless/until CGS designation is removed.
  - o Removal of CGS designation requires a 2/3 vote of Rec & Con, Planning Board **and** City Council. (This standard currently exists (§295-19) – Staff is not proposing this as a new policy)

Per the existing (and amended) Ordinance, land proposed to be designated as CGS shall be presented to the Planning Board by recommendation of the Recreation and Conservation Commission. After review, the Planning Board then provides a recommendation to the City Council who ultimately determines the designation. Therefore, beginning in January 2022 Rec and Con, in conjunction with Staff, began an extensive review of all City owned parcels to provide a recommendation for parcels that they found met the criteria of the Ordinance.

Recreation and Conservation Commission inventoried each parcel with the following criteria:

- Recreation (hunting, fishing, trails, ballfields, playgrounds, etc.)
- Trail Connectivity
- Water Quality Protection
- Water Recreation (boat launch & swimming access)

- Habitat Protection
- Scenic Beauty
- Timber Management
- Educational Use (non-school use)

The inventoried parcels were presented to a Staff group that included the Administration, Economic Development, Planning, Public Services & Community Services for review. Staff supports the CDS designation on parcels that do/are not:

- Located in the City Center Heart District
- Have existing surface utility functions (i.e., pumpstation)
- Lots that demonstrate high value for future development potential (and do not include resource protection or other high value habitat)
- Parcels significantly encumbered by subsurface private utility services.

This collaborative review resulted in a recommendation of 36 parcels, approximately 350 acres, of public land to be included with this Community Green Space designation. If approved, this will nearly double the level of protected land area within the City.

Included with your Board packets is a map created by our Rec & Con Chair that shows all 36 parcels recommended for designation. Recommended parcels are identified as yellow and are numbered with hatching. Parcels that are yellow without hatching are City owned parcels that are not recommended for designation and parcels that are yellow and dotted are educational facilities. Only those parcels that are **numbered** are recommended for designation.

Staff are in support of the designation of the 36 parcels as recommended by Rec and Con.

#### 4. 2023.23 - Requirements of State Law LD 2003 Housing Bill and Amendment to Chapter 10 of the 2012 Comprehensive Plan - Growth Areas

##### *L.D. 2003 – State Housing Bill and the Ordinance Changes we need to implement to be in Compliance.*

Before we can get into the details of implementing the standards required by LD 2003, it is important to explain the intent of LD 2003 & why we are looking at a comprehensive map amendment.

The State of Maine has taken substantive steps to address the housing shortage. In 2022 the State Legislature passed a law commonly known as L.D. 2003, which mandates state-wide legislation on various land use standards. With the adoption of this law, municipalities are now required to amend local land use ordinances to be in compliance with this State Law. Further discussion on the implications of each of these standards will follow, but in summary every municipality is required to:

1. Allow multiple dwelling units on lots where housing is allowed.
2. Allow an accessory dwelling unit on any lot where a single-family dwelling unit is allowed.
3. Allow a density bonus for certain affordable housing developments.

The standards of LD 2003 are an effort at the State level to remove barriers to development that were previously under the jurisdiction of local zoning regulations possibly in response to efforts of some communities to limit growth and prohibit multifamily development. Municipalities are expected to amend all applicable local land use ordinances by January 1, 2024 when the state law goes into effect.

Westbrook's Land Use Ordinance is (and has been) housing progressive and already includes multiple strategies to encourage growth. In a recent study of communities located in the Southern Maine area by the Greater Portland Council of Governments (GPCOG) on "Barriers to Housing Development", Westbrook's Ordinances have the least amount of barriers to development (Multifamily Housing and Land Use Regulation Report by Jeff Levine, 2021) and as such, based on the 2020 Census Data, Westbrook as a community has grown at a faster rate than our surrounding communities (16% increase in population from 2010 to 2020). Accordingly, Westbrook has already been doing the work that was intended to come out of the LD2003 process.

In response to the intent of LD 2003 Westbrook's Ordinances are ahead of the curve:

1. Westbrook permits multi-family dwelling units in all districts where residential use is permitted and where public sewer is available.
2. Westbrook does not limit any conforming parcels to a single primary structure (aka, "single-family only zoning") nor does the community set increased density standards for duplexes or multifamily structure (which incentivizes single-family only development).
3. Westbrook already allows for Accessory Dwelling Units in all residential districts.
4. Westbrook has increased density in the Downtown District.
5. Westbrook has already implemented increased densities in residential districts to encourage further growth in our sewer areas which provides the ability to construct affordable housing.
6. Westbrook has memorialized Lots of Record to create infill opportunities for old, recorded subdivisions.

For communities that are on the other end of the regulations spectrum where they have standards that create barriers or limit growth in their communities, these barriers raise the cost of the available housing stock and furthers housing inequities. The strategies implemented in Westbrook's Land Use Ordinances are intentional to promote equitable growth and due to these efforts, most of the requirements of LD 2003 have minimal to no impact on Westbrook because our ordinances are already compliant with the newly formed State statute. Although we have a very progressive ordinance and we had hoped through the Legislative process that we could be provided an exemption from the standards on that basis, there are some elements of LD2003 that do need to be



added into Westbrook's Ordinance & Comprehensive Plan, the most notable being the affordable housing development density bonus.

With the passing of L.D. 2003, the State Statute designated all areas labeled as "Growth Area" within a municipality's comprehensive plan as eligible for a density bonus for projects defined as "Affordable Housing projects". An Affordable Housing project is defined as a project where at least 51% of the units provided are rented at 80% AMI or sold at 120% AMI. This program affords an affordable housing development a density bonus of 2.5x the base density and further *limits* the parking requirement a municipality may impose to no more than 0.67 spaces/unit. This density bonus thereby incentivizes denser growth and results in an increase in **both** the total number of market rate and affordable units. The intent of attaching a density bonus to a designated growth area identified in a municipality's comprehensive plan was to require the permitted higher density growth in areas that the municipality has already determined growth is *desired and expected*.

As part of the Future Land Use Plan (chapter 10) of the 2012 Comprehensive Plan, the City split the community into two districts, Growth and Rural. A Growth Area, by definition, is meant to represent the area within a community where the majority of the expected growth over the next 10 years would occur. This is to represent where growth within a community is "desired and expected". The City of Westbrook's 2012 Comprehensive Plan called out "All but those areas planned and zoned Rural, or within the Shoreland Zone, are designated as Growth Areas". As performance standards within the Rural district are growth limiting, and there are not as many permitted/conditional uses allowed, this action at the time met the standard of "placing the portion of the community where the majority of growth is desired and expected within a growth area".

However, the entirety of the City's land area, exclusive of the land zoned Rural/within the Shoreland Overlay Zone, does not all meet the threshold of "desired and expected" for most of the growth as currently defined in the Comprehensive Plan.

For example, infill developments within existing neighborhoods exist and are permitted, however these projects do not contribute to where dense developments are expected. Most of the vacant parcels within existing neighborhoods are smaller, which would lend themselves to a smaller scale development as compared to the 100 – 200-unit projects that require larger parcels, preferably with direct access to a major connector road. Similarly, development in the areas of the community that do not have public sewer is still permitted and does occur, but these areas are not "expected" in the same scale that the development of a 50-acre parcel with access and frontage on Spring Street would, for example. **In short, the City's Growth Area Map was not laid out in 2012 with the intent of using it in the way that the 2022 LD 2003 State Statute now requires.**

Another component of LD 2003 that we would need to incorporate into our ordinance is the parking standard of no more than 0.67 space per unit can be required of any affordable housing project (51% min affordable housing). Although this parking ratio can work in dense urban areas where transit is available, or for senior housing where parking needs have been demonstrated to be less, Staff sees significant concern in the placement of this standard City wide where there isn't the off-site infrastructure (i.e., public parking lots, transit, etc.) to address a project's true parking need. This piece will be discussed later in the rationale for the proposed locations of the density bonus.

To provide the Board and the public with a means of understanding the implications of LD 2003's density bonus, the following table has been assembled. The table shows all residential projects approved in 2023\* to demonstrate what was approved, vs what could be approved under the L.D. 2003 State Law if these projects had proceeded as an Affordable Housing project (minimum of 51% affordable units required):

\*For the purpose of this exercise we have omitted recently approved projects located in the City Center District – Downtown District has the density overlay in this location already provides a density bonus greater than 2.5x the base density.

Project Name/Address	Number of units approved	Number of units permitted on lot based on current density requirements (Gross Density).	Required parking spaces for Approved Units	Number of units that would be permitted for an Affordable Housing Project at 2.5 times the base density	Required parking spaces for an Affordable Housing project at 2.5x Base Density
Conant Street	9	9	14	22	15
185 Park Road	11	20	22	50	33
40 Bell Street	10	10	15	25	17
41 Arlington Avenue	3	3	6	7	5
984 Spring Street	204	230	306	575	386

Given the success seen in the City’s growth and development trends, Staff is concerned with inserting a density bonus of this scale (essentially) throughout the entire community, as would be required with our current Growth Area Map per LD 2003, because this could substantially alter Westbrook’s current growth patterns as established in the Comp Plan. The density requirement of the RGA1 District (our most dense of the “Residential Districts”), for example, is 1 unit per 5,000 sf. With the affordable housing density bonus this would result in a density of 1 unit per 2,000 sf which is among the highest densities of our Commercial Districts that allow for residential use (City Center, Gateway Commercial and Highway Services Districts (where sewered)). Also, development could be approved with a drastically reduced parking requirement causing overflow parking onto adjacent streets on existing narrower, residential roads which may not have adequate width to support regular parking use. If the development is outside of transit routes, the residents couldn’t rely on public transportation to address their transportation needs.

It is with these thoughts in mind and the progressive nature of our current ordinances that we are proposing the density bonus be afforded in our more urban, dense areas and along major corridors. Our ordinances already provide for density levels that allow affordable housing projects to be financially viable. In order to achieve the goal of placing the density bonus appropriately in Westbrook, the Comp Plan Growth Map needs to be amended to add a new term which is allowed under State law, “Transitional Areas”.

**Transitional Areas**

Staff have been very engaged over the last two years with the legislative review of L.D. 2003, specifically as it pertains to the implementation of a flat density bonus to be applied within every community in the state. Staff provided significant testimony throughout the process on concerns we saw with the previous language potentially causing a negative impact on Westbrook and the region and were successful in working with legislative members during the review process. During some of these discussions, Staff were advised of the term “Transitional Areas” or areas of limited growth within a community. Most communities have a stepped approach in their Comprehensive Plans to have Growth, Limited Growth and Rural, which our plan is lacking the Limited Growth designation.

A Transitional Area, as it sounds, is the transition between a community’s Growth Area and Rural Area. While there is not a set standard, a good rule to use is that a Growth Area is where a community expects to see at least 60% of the growth over the next 10 years to occur, with 30% in the Transitional Area. Staff were advised that all areas within a Growth Area would be treated the same under the regulations of LD 2003 and, without the utilization of a “Transitional Area” in the comprehensive plan, all of the areas shown as Growth would be subject to the density bonus as defined, which was not the intent of the legislation as this would encourage sprawl vs smart growth. Adjusting our Growth Map to include Transitional Areas would be in keeping with the intent of LD 2003.

Therefore, Staff is recommending an amendment to the 2012 Comprehensive Plan Chapter 10 Future Land Use Plan and Proposed Growth Areas and Rural Areas map to introduce Transitional Areas to designate those areas that are not Rural or Growth.

### **Rural Areas**

Although the change in the Growth Area map may appear substantive, the amendment proposed **does not** change areas currently designated as Rural to a transitional or growth area with the exception of County Rd where an Industrial Zoned parcel is shown as Rural. The amendment actually expands the Rural Area to be in line with the definition of “Rural Areas” in the Comprehensive Plan (i.e., there are areas zoned Rural District on the current zoning map that were shown as Growth Areas in the 2012 Comprehensive Plan). Where we are seeing the current comp plan is nearing the end of its useful life, it was felt to have the Comp Plan Map be accurate of current zoning where we do not see significant changes to the Zoning Map until after future Comp Plan process.

### **Growth Areas**

The Growth Area that are being proposed for the updated map are following the district lines of Commercial-Based Districts (City Center, Gateway Commercial, Manufacturing, Industrial Park Districts, and the section of Highway Services located along Spring Street) which are on major road systems that can readily absorb dense development, are sewerred areas, and are within a reasonable walking distance to transit.

All other areas zoned Residential Growth Area 1, Residential Growth Area 2, Residential Growth Area 3, and the remaining Highway Services District parcels would then be deemed as Transitional Areas where growth is permitted as the base density allows. This would avoid drastic impacts within existing established neighborhoods where a 2.5 multiplier on the base zoning would substantially alter the growth patterns of these communities and was not the intent of the LD 2003 legislation.

The rationale of the split in Highway Services District is to include those Highway Services parcels that are adjacent to/surrounded by other Growth Areas in the Growth Area with the remaining Highway Services in the same Transitional Area as the adjacent parcels.

With these changes to the Comprehensive Plan Map and Growth area descriptions, we would then move forward with the ordinance amendments necessary to codify the language to incorporate the requirements of the LD 2003 Housing Bill.

### **How is this Process Proceeding?**

Goal is to be completed by January 1, 2024 – Deadline set by Legislature.

Comp Plan Discussion & General LD 2003 explanation

- Planning Board Workshop - September 5th
- City Council Workshop – Sept/Oct

Ordinance

- Planning Board Workshop – Ordinance Language– October 3

Comp Plan & Ordinance Public Hearings

- Planning Board Public Hearing – Nov 7th
- City Council – 2 Readings in Nov/Dec

### **Closing Thoughts**

- Comp Plan Map amendment does not change underlying zoning standards – Development can still continue to occur in any Transitional Area as currently allowed.
- Map provides the approach to use the density bonus to encourage development in the core of our community.

- Ordinance amendments are needed to complete the process for the density bonus. The Growth Map is step one.
- Future adjustments can always be made to expand these designations, especially if more zoning districts are created in future comprehensive plans.