

February 4, 2016

TO: Gray Town Council
Gray Planning Board

FROM: Doug Webster, Community Development

RE: Proposed Amendments to Zoning and Shoreland Zoning Ordinances

Changes to Article 2 (Definitions) of Chapter 402 (Zoning): Section 402.2.2:

~~Accessory Apartment: A housing unit that is self-contained, but is incorporated within, and is accessory to, an existing structure that was originally designed for a single family. The criterion for defining the accessory unit shall be the existence of separate cooking facilities. Accessory apartments shall be subject to the provisions of Section 402.7.9 of this Ordinance.~~

New Definition:

Accessory Apartment: A subordinate residential use that requires 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 shall not be considered a separate dwelling unit when calculating lot area per dwelling unit for this Ordinance, but must comply with all other applicable requirements of law including the State Minimum Lot Size statute and the State of Maine Subsurface Wastewater Disposal rules.

Table of Land Uses (Table 402.5.3); adjust as follows (underline is new language):

TABLE 402.5.3 TABLE OF PERMITTED USES AND CONDITIONAL PERMITTED USES												
		RRA	LD	MD	BD	C	VC	VCP	BT-1	BT-2	WH 1	WH 2
			*				*	*	*	*	*	*
1.	Accessory Apartment ‡	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>	<u>P/C</u>		<u>P/C</u>
2.	<u>In-Home Offices†</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>	<u>P</u>

Delete Current 402.7.6 in entirety:

402.7.6 CLUSTER DEVELOPMENT

A. Purposes of Cluster Development

~~The purposes of this provision are to allow greater flexibility and more innovative approaches to housing and environmental design for the development of single-family and two-family residential areas than may be possible under a strict application of the space standards of this Ordinance. This provision is intended to encourage the use of planning and siting techniques for residential development which will result in:~~

- ~~1. Choices in the type of environment and type of dwelling unit, which will be a long-term asset to Gray.~~
- ~~2. Construction of affordable housing through an incentive to lower development costs by advocating an economic building arrangement, traffic circulation and utility construction.~~
- ~~3. The preservation, to the greatest extent possible, of the existing landscape features and the utilization of such features in a harmonious fashion.~~
- ~~4. Recreation facilities which may be better located and used than might otherwise be provided under more conventional land development.~~
- ~~5. Planned variety and coordination in the location of structures, architectural styles, and building forms and relationships.~~

B. Provisions for Cluster Development

~~The provisions for cluster single-family and two-family development are contained in the Chapter 401 Subdivision Ordinance (Section 401.13.13).~~

C. Provisions for Multi-Family Housing Development

~~The provisions for multi-family development are contained in Section 402.10.14 of Site Plan Review. For the purposes of this Ordinance, multi-family development is not considered to be cluster development.~~

402.7.9 Accessory Apartments

Delete current 402.7.9:

~~Accessory apartments are Conditional Permitted Uses in the RRA, LD, WH 2, BT 2, and MD districts, subject to Planning Board approval and in the BD, C, VC, VCP, and BT 1 districts are Permitted Uses subject to the approval of the Code Enforcement Officer, and adherence to the following standards:~~

- ~~A. The owner of the principal structure must reside in the principal structure of the accessory unit.~~
- ~~B. The occupant of the accessory unit must be a member of the immediate family of the owner of the principal structure. Immediate family shall include father, mother, son, daughter, sister and brother.~~
- ~~C. The number of occupants of the accessory unit is limited to two.~~
- ~~D. The accessory unit shall contain a maximum of six hundred and sixty (660) square feet of living space.~~

- ~~E. The septic system on the property in question shall be functioning properly at the time of application for site plan use permit approval. In addition, the applicant shall submit a new HHE 200 form as documentation that another area of suitable soil exists on the property to be used for septic system repair in the event of failure of the original system.~~
- ~~F. The parking requirements of the Gray Zoning Ordinance shall be adhered to.~~
- ~~G. Proper ingress and egress shall be provided to the accessory unit.~~
- ~~H. Upon approval of the addition of an accessory unit by the Planning Board or Code Enforcement Officer, whichever the case may be, a deed restriction shall be placed on the property in question, limiting the approval of the accessory unit as a non-market rental subject to the standards of A through G.~~
- ~~I. Should the owners of the principal structure be found in noncompliance of the standards contained in this section, the accessory unit shall be discontinued, and the structure shall revert to single family use.~~

New 402.7.9:

An Accessory Apartment is a permitted use subject to the following standards:

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.
2. Accessory Apartments 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;
 - c. any duplex 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;
 - g. 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.
3. Only one accessory apartment is allowed on per lot and only on a lot that the CEO has determined the primary use to be a SFD.

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 maximum square footage of finished living area for 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 Apartment, no portion of an 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 Apartments must comply with applicable building and fire safety codes.
11. Accessory Apartments must have shared common utilities, such as water, electricity, etc.

B. Ownership Standards:

1. Ownership of the existing SFD and the Accessory Apartment must be held by the same person(s).

2. Either the existing SFD or the Accessory Apartment must be owner-occupied. "Owner-occupied" means that either the existing SFD or the 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 Apartments shall retain and respect the existing streetscape, character of the neighborhood, and preserve the SFD appearance, architectural style, and character of the dwelling.
2. Any exterior modifications to the SFD associated with the construction or installation of the Accessory Apartment must be consistent with architectural style and character of the SFD in terms of exterior materials, roof pitch/form, and window type/spacing.
3. Any exterior alteration of the SFD must preserve the formal, front entrance of the building in order to maintain the SFD appearance and architectural style of the building.
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 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.
6. In the event that the Code Enforcement Officer and the applicant for the Accessory Apartment cannot agree on the aesthetic standards contained in this Section 402.7.9.C, the applicant may appeal tho the Planning Board within thirty (30) days of the CEO's written decision.

D. Wastewater Disposal:

1. An Accessory Apartment may be served by one of the following subsurface wastewater disposal (SSWD) systems: (a) an existing SSWD system, (b) an upgraded SSWD system, or (c) a new SSWD system, all as otherwise allowed by law.
2. In all cases, the SSWD system serving the 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 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 Apartment, the 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.

E. Discontinuance:

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

Add New Performance Standards for In-Home Offices and Boat Storage:

New Standard for In-Home Office (New 402.7.17):

In any district, the Code Enforcement Officer may issue a permit for the operation of an in-home office by one or more residents of a dwelling unit as an accessory use to the dwelling unit. An in-home office shall not be considered a home occupation if the following conditions are met:

- a. customers or clients do not come to the dwelling to receive goods or services;
- b. communication with customers, clients and business associates is principally by mail, electronic mail, telephone or other telecommunication device, and deliveries or pick-ups by truck, if any, occur at an average frequency not substantially greater than the ordinary frequency of delivery truck traffic at a single family residence.
- c. there are no signs or any other exterior indications of the in-home office activity;
- d. the activities conducted within the in-home office are limited to processes, such as data processing, word processing, desktop publishing and electronic research, which do not create noise, pollution or nuisance conditions detectable outside the dwelling;
- e. the in-home office does not employ any persons who are not residents of the dwelling unit; and
- f. there are no signs (other than a name on a mail box which complies with U.S. Postal Service regulations), exterior exhibits, exterior storage of materials or any other exterior indications of the in-home office.

New Standard for Boat Storage (New 402.7.18):

Boat Storage: No vessel exceeding twenty-four (24) feet in length shall be stored or parked on any residential property unless the vessel is stored or parked so as to not violate the minimum front, rear, or side yards for structures. For the purposes of measuring vessel length, any permanently attached element of the vessel shall be included specifically including a bowsprit and/or stern step(s).

New Minor SPR/Staff Review Committee (SRC) authority changes:

New Section 402.10.5.C: Authority of the Staff Review Committee: In addition to reviewing Minor Developments for Site Plan Review projects as authorized in Section 402.10.4, the Staff Review Committee is also authorized to review the establishment of or expanding a new use(s) that requires Staff Review Committee approval as expressly stated in this Ordinance within the thresholds for a minor development.

New Section 402.10.6.A.7: Establishing or expanding a new use(s) that requires Staff Review Committee approval as expressly provided in this Ordinance within the thresholds for a minor development.

Replace Language in Article 10 (Site Plan Review), Section 402.10.8.B:

Delete current language:

~~B. Information Required for Pre-application Conferences~~

~~There are no formal submission requirements for a pre-application conference. However, the applicant should be prepared to discuss the following with the Planning Board:~~

- ~~1. The proposed site, including its location, size, and general characteristics,~~
- ~~2. The nature of the proposed use and potential development,~~
- ~~3. Any issues or questions about existing municipal regulations and their applicability to the project,~~
- ~~4. Any requests for waivers from the submission requirements, and~~
- ~~5. Any potential problem(s) the project may experience in meeting the criteria of Section 402.9.3 G if the proposed use requires Conditional Permitted Use approval by the Planning Board.~~

~~The applicant's oral presentation and written materials about the scope and nature of the project must provide adequate information to allow the Planning Board to understand the project and provide meaningful input.~~

~~Although it is not required for a pre-application conference, applicants are encouraged to complete the site inventory and analysis indicated in Section 402.10.10 A and B in order to fully explore issues that may arise when formal site plans for the property are submitted.~~

~~Applicants are also strongly encouraged to contact the Maine Department of Environmental Protection about their permitting requirements for wetland alternations, stream crossings, stormwater treatment, critical wildlife habitat, and vernal pool habitat impacts before investing in the design of their projects.~~

B. Procedure and Information Required for Pre-Application Conferences

Applicants for site plan review of a major development are required to provide fourteen (14) copies of a packet ready for distribution to the Planning Board containing the submittals detailed in this section. The Town Planner shall have the authority to determine if the pre-application submittal is complete to place the item on the next Planning Board agenda.

The applicant's oral presentation and submitted materials regarding the present conditions and scope and nature of the project must provide adequate information to allow the Planning Board to understand the project, identify possible concerns, provide meaningful input and to determine whether the approval standards have been met.

The submittal shall consist of following three components:

1. Narrative and site photographs

The applicant shall provide an accurate narrative outlining the present on-site conditions as well as the nature of the proposed development. In addition to aerial and/or on-site photographs (color 11" x 17") that accurately depict present on-site conditions, the narrative must include the following:

- a. Description of existing development constraints and implications on the proposed development;
- b. The proposed use of the parcel including conceptual zoning use classification(s);
- c. Initial estimate of the traffic generation for the proposed use;
- d. Estimates of water use and wastewater generation;
- e. Initial input, as appropriate, from State of Maine regulatory agencies, such as the DEP, DOT and the Department of Public Safety;
- f. List of ordinance waivers (as opposed to Zoning Ordinance variances) requested;
- g. Any unusual or hidden site characteristics that relate to the approval standards; and
- h. Any other matters with regard to which the applicant seeks comments from the Planning Board.

2. Initial Site Inventory Plan

The applicant shall provide one or more scaled plans containing readily available information including the following:

- a. Basic parcel information, i.e., boundaries, size, zoning district(s), north arrow, etc.;
- b. Surrounding land uses and accesses to street;
- c. Significant site features, both natural and developed, including significant trees, rock outcroppings, any developed portions;
- d. Estimated sight distance in both directions entering the street;
- e. Readily available soils information, such as the 1974 Cumberland County Medium Intensity Soils maps and soil descriptions for the requisite site;

- f. Topographic information, such as USGS maps delineating site;
- g. Wetland information that is readily apparent on-site or available through National Wetland Inventory Maps;
- h. Location and size/extent of any stormwater measures on site, such as culverts; and
- i. Location and features on site that may be subject to State regulatory agency review.

3. Conceptual Site Development Plan

The applicant shall provide a plan, to a readable scale, containing the following information:

- a. Overall site layout including access in, out, and within the parcel;
- b. Approximate location of water supply and wastewater disposal;
- c. Estimate of the size, extent, and location of impervious surfaces;
- d. Anticipated stormwater measures and their location;
- e. Buffering and screening that is proposed to be retained and/or added;
- f. Site elements to be retained; and
- g. Location and size of anticipated structures.

Two Amendments to Chapter 403 (Shoreland Zoning Ordinance):

Change #1 to Chapter 403: (three part change)

- Renumber current section 403.16.H.2.d to 403.16.H.2.e (same language)
- Renumber current section 403.16.H.2.d to 403.16.H.2.f (same language)
- New language below to replace section 403.16.H.2.d:

New language for 403: (see 30-A, M.R.S. Section 4353, subsection 4-B)

403.16.H.2.d: Set-back variance for single family dwelling:

The Board may grant a variance from a set-back requirement for a single family dwelling under this section only when the strict application of the zoning ordinance to the petitioner and the petitioner's property would cause undue hardship. The term "undue hardship" as used in this subsection means:

- A. The need for the variance is due to the unique circumstances of the property and not the general conditions of the neighborhood;
- B. The granting of the variance will not alter the essential character of the locality;
- C. The hardship is not the result of action taken by the applicant or prior owner;
- D. The granting of the variance will not substantially reduce or impair the use of abutting property; and
- E. That the granting of the variance is based upon demonstrated need, not convenience, and no other feasible alternative is available.

This ordinance provision is strictly limited to permitting a variance from a set-back requirement for a single-family dwelling that is the primary year-round residence of the petitioner. A variance under this subsection may not exceed 20% of a set-back requirement and may not be granted if the variance would cause the area of the dwelling to exceed the maximum permissible lot coverage. For lots lawfully existing non-conforming lots of record recorded at the Registry of Deeds prior to January 1, 1989, a variance under this subsection may exceed 20% of the setback requirement, except for minimum setbacks from a wetland or water body required within shoreland zones by rules adopted pursuant to Title 38, chapter 3, subchapter I, article 2-B, if the petitioner meets all of the above standards and the relief requested is the least necessary to relieve the hardship

Change #2 to Chapter 403:

- 403.16.H.4. Disability Variance Appeals (retain same title as existing)
- a. Dwelling Accessibility (retain same language as existing)
- Add new Section 403.16.H.4.b

New Section 403.16.H.4.b. Vehicle Storage

- (1) The Board may grant a variance to an owner-occupant who is a person with a permanent disability for the construction of a place of storage and parking for a noncommercial vehicle owned by that person and for no other purpose. The width and length of the structure may not be larger than 2 times the width and length of the noncommercial vehicle. The owner shall submit proposed plans for the structure with the request for the variance pursuant to this paragraph to the Board.
- (2) The person with the permanent disability shall prove such status.
- (3) For purposes of this paragraph, "noncommercial vehicle" means a motor vehicle as defined in Title 29-A, Maine Revised Statutes, section 101, subsection 42 with a gross vehicle weight of no more than 6,000 pounds, bearing a disability registration plate (or placard) issued pursuant to Title 29-A, section 521 and owned by the person with the disability.
- (4) The Board may impose conditions on the variance granted pursuant to this subsection.
- (5) For the purposes of this subsection, "disability" has the same meaning as a physical or mental disability under Title 5, section 4553-A.
