City Council Workshop | Agenda Item #1

July 25th , 2016 | Non-conforming Building Lots

The City Council has expressed a desire to look at the policy around the construction of homes on non-conforming building lots throughout the community. Since the early 1990's the City has allowed the construction of homes on 5,000 SF grandfathered lots of record. In 2007, the Ordinance was amended to allow for sub-5,000 SF lots to be built on contingent upon approval by the Planning Board. Periodically the City Council hears of complaints around the construction of homes on these non-conforming house lots.

Planning & Development staff have spent a considerable amount of time researching and providing the City Council information on the 102 parcels under 10,000 SF that have been built on since 2007. Of the 102 parcels, 22 parcels were under the 5,000 SF threshold and required either Planning Board or Board of Appeal approval.

Planning & Development staff will present the item and be available for questions on Monday evening.

Assistant City Manager

**Planning & Development Department**

**Tex Haeuser**
**Planning Director**

**To:** James H. Gailey, City Manager
City Council Members

**From:** Tex Haeuser, Planning Director

**Cc**: Patricia Doucette, Deputy Planning & Development Director and Code Enforcement Officer
Sally J. Daggett, Esq.

**Date:** May 18, 2016

**Re:** **Policies Related to the Treatment of Single-Family Residential Parcels that are Nonconforming with Respect to Lot Size**

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## Introduction

South Portland has a relatively long history, and since its original settlement there has been a wide variation in both the size of lots created for single-family homes and in the policies regarding how to treat lots smaller than the zoning minimum lot size requirements. This memo will attempt to review some of these changes in zoning policy, look at the current situation, and make a few recommendations for improvements. The general staff recommendation is that we maintain the current policy structure but make several changes.

## Previous Nonconforming Lot Size Provisions

South Portland has had varying rules for nonconforming lots. Initially there were no nonconforming lots. Then, when zoning and minimum lot sizes were adopted and nonconforming lots were created, the rule was that abutting nonconforming undersized lots in the same ownership needed to be treated as if they were merged. As an example, if a person owned two vacant lots side by side, and they each were less than the minimum lot size but when added together would meet the minimum lot size standard, the two lots needed to be considered combined and only one home could be constructed. (However, if the lots were part of a Planning Board approved subdivision, they would not be considered merged.)

In the mid-1970's the nonconformance regulations were changed so that unimproved legally recorded lots of record could be built on depending on the lot size and the date the lot was created:

- Lots recorded prior to 1943 in the Residential AA, A, G, and RF zones could be built on (with a single-family home) if they were at least 5,000 sq. ft. in area and had a minimum of 50' of street frontage.
- Lots recorded between 1943 and 1963 in the AA and RF zones had to be at least 7,500 sq. ft. with 75' of frontage; and lots in the A and G zones again could be 5,000 sq. ft. or more and have at least 50' of frontage.

- Lots recorded between 1963 and 1971 in the AA zone had to be at least 10,000 sq. ft. and have a minimum of 100' of frontage; in the A and G zones it was 7,500 sq. ft. with 75' of frontage; and in the RF the requirement was 30,000 sq. ft. with 150' of frontage.
- Lots recorded between 1971 and 1973 in the Residential A district needed to be a minimum of 12,500 sq. ft. in area with 75' of street frontage.

In 1990 the City Council amended the nonconformance provisions to create an exception to the merger clause to allow undersized lots in the four residential zones (AA, A, G, RF) to be used for single family residences if certain conditions were met. These conditions were:

- It had to be for a single-family detached dwelling.
- There was a height limit of 28 feet.
- Building coverage could not exceed 25% of the lot.
- Each building had to comply with the setbacks of the zoning district in which it was located, except that in the G zone the principal building could comply with the A zone side yard setback requirement or be a minimum of 12 feet from any existing principal building on an abutting lot, whichever was greater.
- Each building had to comply with the space and bulk regulations of the zoning district in which the lot was located not otherwise established by the subsection.
- The principal building had to be connected to a public sewer system.
- The lot had to have frontage on a City-accepted street.
- Building plans had to include pre- and post-construction grading contours and a description of stormwater drainage plans approved by the City Engineer and Building Inspector as satisfactory to prevent soil erosion and stormwater runoff onto public and private property.

As time went on after the enactment of these rules it became evident that contradictions in the way the Zoning Ordinance was written, as well as property takings legal concerns, were allowing owners of lots that did not meet the size limits to go to the Board of Appeals to request lot size variances. The Board of Appeals did grant such variances in approximately half of the cases. This undermined the credibility of the Zoning Ordinance, and, as the Board of Appeals did not have any ability to require design standards, the end result was the construction of a number of homes that were incompatible with the surrounding neighborhood. This gave rise to a certain amount of community concern and consequently was brought to the attention of a group working at that time on a number of zoning changes—the Zoning Improvements Committee.

The Zoning Improvements Committee included:

- Councilor Maxine Beecher, Chairwoman
- Michael Eastman
- Ralph Sama
- Michael Vaillancourt
- Barbara Dee
- Rob Schreiber
- William Arnold
- Gerard Jalbert
- Tex Haeuser, Planning Director
- Pat Doucette, Code Enforcement Officer
- Pat Cloutier, Water Resource Protection Director
- Mark Eyerman, Consultant

The recommendations brought forward by the Committee, which the City Council adopted on 10/1/07, included a variety of changes to the Nonconformance article in the Zoning Ordinance. One of these deals with how porches, decks, and similar building parts that encroach into a setback may be improved. Another adds limits for the voluntary tear-down and reconstruction of a nonconforming building. There are a number of other similar changes. But the Committee's work also included provisions revising the merger and de-merger of non-conforming lots. It essentially did away with tying minimum lot sizes to the period in which a lot was created and said that a lot of record with more than 5,000 sq. ft. and 50 feet of street frontage is considered to be a separate, developable lot that can be built on as long it conforms to the setback, coverage, height, and similar space and bulk requirements of the zone and a set of standards. The standards to be met are the same as the previous ones listed above—e.g., 28' building height, 25% lot coverage, etc.—except a more thorough Drainage Plan is spelled out and the treatment of lots in the Shoreland Zone and flood zones is set forth.

The new (2007) provisions also state that the division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which they are located.

In addition, the new rules for unimproved lots of record allow a lot with <u>less</u> than 5,000 SF to be developed with the approval of the Planning Board based upon a mini-site plan process to demonstrate that the building will conform to the neighborhood. In addition to a review of potential stormwater runoff impacts, the Planning Board evaluates applications based on any predominant pattern in the neighborhood relative to: the relationship of the principal building to the street; width of buildings in relation to width of lots; roof style and orientation; building height and number of stories; appearance of the wall of the building facing the street; and

exterior building materials. There also is a requirement 25% of the area of the lot must be landscaped open space.

**Experience with the 2007 Provisions**

An inventory of the single-family homes built on lots less than the minimum lot size for the zoning district in which the lot is located[1] came up with approximately 120 such homes having been built in South Portland since the current nonconformance provisions went into effect in 2007 (there are 102 properties in the previously distributed binders as we did not include lots 10,000 sq. ft. or larger). Of these, 19 were on lots less than 5,000 sq. ft. in area and succeeded in obtaining Planning Board approval. Three other sub-5,000 sq. ft. lot homes were built but did not go to the Planning Board because they had obtained Board of Appeals variances prior to enactment of the 2007 provisions. A number of other applicants for sub-5,000 sq. ft. lot homes withdrew their requests when staff could not support their projects due to water conditions, lack of street frontage, or other difficulties.

Some general observations about the homes built on nonconforming lots based on compiling the inventory include:

- In looking at the location maps, the size of the lots do not appear to be substantially different than those around them in the neighborhood. This in part is due to the fact that the minimum lot sizes imposed on the existing neighborhoods in the eastern part of the City in the 1960's, and still in place today, are substantially larger than the average existing lot sizes.
- The value of the homes appear to range from fairly modest, mostly on the smaller lots, to a number of relatively expensive properties.

That being said, there have been a number of issues with the 2007 provisions, such as:

- Some residents wonder why the careful scrutiny that gets applied to sub-5,000 sq. ft. lots—as a function of going through Planning Board review, having a Planning Board hearing, and having to meet neighborhood compatibility design standards—isn't also applied to the nonconforming lots 5,000 sq. ft. and larger.
- There have been some drainage problems. Early experience with the sub-5,000 sq. ft. lots showed that extra care was needed in areas without separated storm sewers. Residents' drainage systems are not allowed to connect directly to combined sewer lines, so if something goes wrong, like the foundation tapping into a high water table causing a sump pump to run constantly, it's difficult to accommodate the water all on-site. Staff and the Planning Board have made adjustments as a result. One builder, for example, was required to extend a storm line a fair distance to the home site.

[1] Current minimum lot sizes: AA = 20,000 sq. ft; A = 12,500 sq. ft; and G = 7,500 sq. ft.

- While homes on nonconforming lots of any size are required to meet the setbacks of the pertinent zones, there is no provision, except in the G zone, for maintaining a minimum distance from a home on an abutting lot. In some non-Planning Board review cases this has resulted in the new building being uncomfortably close to an existing home.

**Staff Recommendations**

In general, allowing infill, small-lot residential development, if done with appropriate limits, is part of South Portland's leadership in promoting smart growth and sustainability. By accommodating home development in the City with existing streets and other infrastructure and impervious surfaces, a certain amount of land in outlying communities is left undeveloped (longer) and people are creating less greenhouse gas emissions by driving shorter trips, having fewer new roads built, and so on. Other reasons, like providing a niche in the housing market, ensuring an influx of younger families, and enhancing the tax base can also be considered. In a recent Portland Press Herald op-ed piece, for example, a Stony Brook University professor makes an economic argument for increasing density in urban areas. He says,

> But there is a general realization that local regulations can prevent cities from attaining their full potential. For example, ...with too much regulation, cities fragment, disperse and sprawl into units that are too small to be economically efficient. ...land use obstructionism by NIMBY's...is probably keeping America's flagship cities from realizing their true potential. ... So if the U.S, is going to jump-start an era of infill—a new frontier of urban productivity—government needs to do several things. First, federal and state governments should roll back overly restrictive land-use regulations. ... [Noah Smith, PPH 5/8/16]

Note that the Comprehensive Plan goes so far as to recommend that not only should recorded lots of record be allowed to be developed with single-family homes, but that the minimum lot sizes in the residential neighborhoods should be decreased from the quarter-acre and half-acre minimum lot sizes to lot sizes based on taking an average of the sizes of the lots in the neighborhood. This would turn many lots that currently are nonconforming with respect to lot size into conforming lots, and it would give owners of larger lots—lots that were created larger to begin with—the same ability to split off and sell a lot as their neighbors who are able to do so by demerging smaller unimproved abutting lots.

In conclusion, while generally supporting the existing policies for allowing lots less than the minimum lot size to be improved with single-family homes, the Planning, Code, and Legal staff members do recommend several changes:

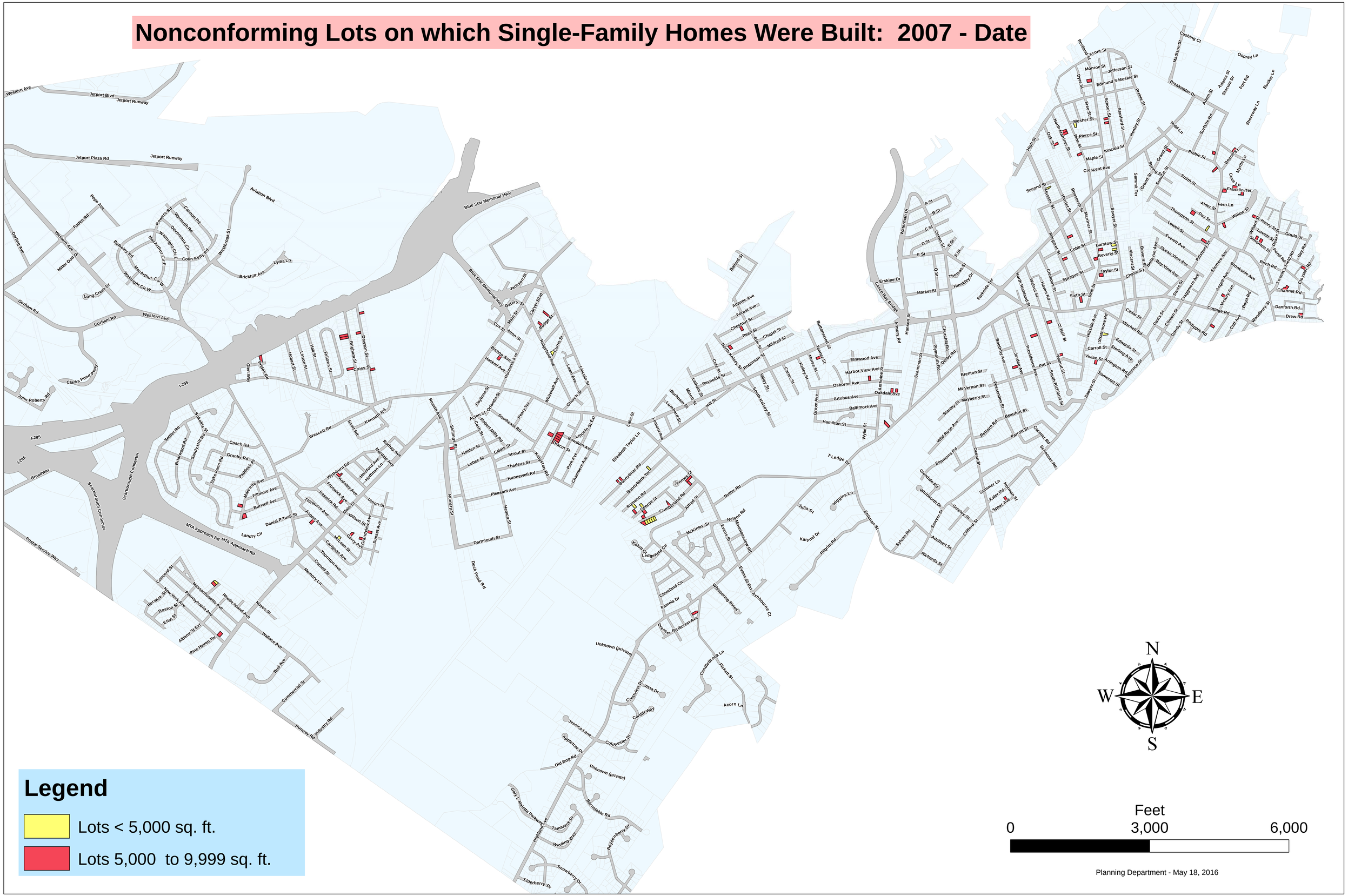
1. Extend the requirements for Planning Board review to all single-family homes on lots less than 10,000 sq. ft. in the A and AA zoning districts and to those on lots less than 7,500 sq. ft. in the G district. This will bring greater scrutiny to bear on stormwater runoff, compatibility with the surrounding neighborhood, and similar matters. It also will

ensure that residents in the neighborhood get a chance to come to a public hearing to air their views and help educate the Board about the neighborhood.

2. Prohibit homes being proposed for nonconforming lots in combined sewer areas from having basements. As described above, the safety valve of tying into the City's stormwater system doesn't exist in combined sewer areas, so preventing homes in these areas from needing sump pumps that potentially could tap into the water table can be accomplished by having the homes be built on slabs without basements. Alternatively, allow basements but require soil investigations of sufficient thoroughness as to provide overwhelming evidence that the foundation will remain above the water table.
3. Add the 12' minimum distance between new and existing principal buildings that currently applies in the G zone to the A and AA zones as well.
4. In cases where the owner of an existing house creates an abutting house lot by adjusting lot lines so that the lots are less nonconforming than before, require that the existing house lot property, if less than the minimum lot size, be included in the Planning Board review and that it meet all the setbacks of the zoning district.
5. Relative to the standard carried over from 1990 that requires homes built on recorded lots less than the minimum lot size to meet the space and bulk requirements of the zone in which the property is located, confirm that residential density is exempt from these requirements.

Thank you for your consideration of these proposals.

# Nonconforming Lots on which Single-Family Homes Were Built:  2007 - Date



# Additional Information on the 2007 - 2016 New Single-Family Homes Built on Less than 10,000 Sq. Ft. Lots

NC TYPE: S = Separate Unimproved Lot of Record A = Abutting Unimproved Lot(s) of Record ADL = Unimproved Lot(s) of Record Abutting a Developed Lot

| APP_REF | APPLICATION DATE | ST # | STREET NAME | MERGED LOTS? | REVISED BOUNDARIES? | NOTES | NC TYPE (see above) | PB REVIEW | LOT SQ FT | ZONE | DATE BLDG PERMIT ISSUED |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 20150056 | 01/29/2015 | 1 | SIMONTON ST | no | | | | | 5,214 | A | 2/24/2015 |
| 20080217 | 04/10/2008 | 2 | BLUFF RD | no | | | | | 5,665 | AA | 4/15/2008 |
| 20121060 | 12/04/2012 | 4 | TAYLOR ST | Yes | Yes | | ADL | | 6,870 | A | 12/18/2012 |
| 20130643 | 04/23/2012 | 5 | EVERGREEN RD EXT | no | | | | | 7,503 | A | 5/2/2012 |
| 20140332 | 04/15/2014 | 5 | LOWELL ST | no | | | | | 7,500 | A | 5/12/2014 |
| 20120358 | 07/31/2013 | 5 | SIMONTON ST | no | | | | | 5,983 | A | 8/7/2013 |
| 20090785 | 10/29/2009 | 8 | GERRY AV | no | | | | | 5,685 | G | 11/12/2009 |
| 20110434 | 06/08/2011 | 11 | CUMBERLAND RD | no | | | | | 5,012 | A | 4/20/2012 |
| 20141090 | 11/05/2014 | 12 | VIVIAN ST | no | | | | **Yes** | 4,891 | A | 11/6/2014 |
| 20110645 | 08/09/2011 | 13 | SPEAR AV | Yes | no | 2 - 25' | | | 5,000 | A | 8/31/2011 |
| 20110658 | 08/04/2011 | 13 | TANNER ST | no | | | | | 5,000 | G | 8/16/2011 |
| 20090195 | 04/08/2009 | 14 | FROSWICK AV | Yes | no | 2 - 25' | | | 5,000 | A | 4/14/2009 |
| 20090312 | 05/08/2009 | 14 | ROBERTS ST | Yes | no | 2 - 25' | | | 6,554 | A | 5/18/2009 |
| 20121073 | 02/20/2014 | 15 | BODGE ST | n/a | | rebuild after fire | | | 8,383 | A | 2/24/2014 |
| 20140150 | 12/06/2012 | 15 | NEW YORK AV | yes | no | 1 - 50' & 1/2 - 50' | ADL | | 7,500 | A | 12/26/2012 |
| 20120562 | 06/25/2012 | 16 | FRANKLIN TR | yes | yes | 2 (1 in rear) | ADL | | 5,001 | A | 6/27/2012 |
| 20100500 | 06/22/2010 | 16 | SIXTH ST | no | | | | | 6,300 | A | 6/29/2010 |
| 20130522 | 03/19/2012 | 17 | OSBORNE AV | n/a | | rebuild after fire | | | 5,000 | G | 4/24/2012 |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 20080322 | 08/21/2013 | 18 | GRAND ST | no | | | | | 5,000 | G | 9/3/2013 |
| 20130721 | 05/08/2008 | 18 | MCLEAN ST | no | | | | **Yes** | 4,500 | A | 5/12/2008 |
| 20120927 | 10/12/2012 | 20 | DAWSON ST | no | | | | **Yes** | 4,500 | A | 10/19/2012 |
| 20130120 | 02/19/2013 | 21 | BISHOP AV | yes | | 2 - 30' | | | 6,000 | A | 3/6/2013 |
| 20100097 | 02/26/2010 | 22 | AUGUSTA ST | no | | | | | 6,000 | A | 3/4/2010 |
| 20160128 | 02/26/2016 | 22 | TANNER ST | n/a | | remove from list? never built | | | 9,459 | G | 3/11/2016 |
| 20140938 | 09/17/2014 | 25 | DREW RD | no | | | | | 6,487 | AA | 10/14/2014 |
| 20110049 | 12/11/2012 | 26 | ASPEN AV | yes | | 2 - 30' | | | 5,837 | A | 12/26/2012 |
| 20100866 | 01/19/2011 | 26 | AUGUSTA ST | no | | | | **Yes** | 4,725 | A | 1/28/2011 |
| 20121080 | 10/12/2010 | 26 | VICTORY AV | no | | | | | 5,000 | A | 11/2/2010 |
| 20110888 | 10/21/2011 | 28 | EDGEWOOD RD | no | | | | **Yes** | 4,600 | A | 10/28/2011 |
| 20141008 | 10/10/2014 | 28 | THADEUS ST | yes | yes | | S | | 8,029 | A | 10/16/2014 |
| 20140257 | 04/03/2014 | 32 | THADEUS ST | yes | yes | | | | 7,777 | A | 4/15/2014 |
| 20080651 | 08/04/2008 | 33 | BODGE ST | no | | | | | 6,168 | A | 8/11/2008 |
| 20100657 | 08/10/2010 | 33 | FRANKLIN TR | yes | yes | 3 lots to 2 | ADL | | 8,422 | A | 9/30/2010 |
| 20100315 | 04/29/2010 | 34 | OAK ST | no | | | | | 5,000 | G | 5/6/2010 |
| 20130285 | 05/01/2013 | 34 | THADEUS ST | yes | yes | | S | | 5,987 | A | 5/14/2013 |
| 20140969 | 09/21/2012 | 36 | DAY ST | yes | yes | | ADL | | 7,132 | G | 6/20/2013 |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 20120737 | 09/24/2014 | 36 | NORTH MARRINER ST | no | | | | | 6,400 | G | 10/1/2014 |
| 20120861 | 08/13/2012 | 36 | THADEUS ST | yes | yes | | | | 6,578 | A | 8/21/2012 |
| 20140546 | 05/28/2014 | 37 | BARBERRY CREEK RD | no | | | | | 5,000 | G | 6/6/2014 |
| 20131008 | 11/15/2013 | 37 | CHANNEL RD | yes | ? | | | | 8,204 | AA | 12/11/2013 |
| 20130553 | 07/08/2013 | 37 | THADEUS ST | yes | yes | | S | | 8,400 | A | 7/18/2013 |
| 20121006 | 11/06/2012 | 38 | THADEUS ST | yes | yes | | S | | 6,578 | A | 12/13/2012 |
| 20121005 | 11/04/2014 | 40 | NORTH MARRINER ST | n/a | | demolished & rebuilt | | | 6,400 | G | 2/4/2015 |
| 20141088 | 11/06/2012 | 40 | THADEUS ST | yes | yes | | S | | 5,262 | A | 11/15/2012 |
| 20140791 | 08/05/2014 | 41 | BONNYBANK TERRACE | no | | | | **Yes** | 3,920 | A | 8/15/2014 |
| 20080027 | 01/16/2008 | 41 | CURTIS ST | no | | Didn't go to PB, variance granted 09/28/05 | | **BOA** | 4,887 | A | 1/23/2008 |
| 20070832 | 10/17/2007 | 43 | OAKDALE AV | no | no | 1 former lot split btwn abutters, then merged back into same lot. ??? | ADL | | 5,000 | A | 10/26/2007 |
| 20150869 | 10/08/2015 | 43 | WILLARD ST | n/a | | demolished & rebuilt | | | 6,291 | A | 11/5/2015 |
| 20080821 | 10/14/2008 | 47 | BEACH ST | n/a | | demolished & rebuilt | | | 5,000 | A | 10/15/2008 |
| 20080871 | 09/24/2008 | 47 | DAWSON ST | no | | | | | 5,000 | A | 10/20/2008 |
| 20131062 | 12/09/2013 | 48 | CHESTNUT ST | no | | | | | 5,021 | G | 12/17/2013 |
| 20080945 | 03/25/2013 | 49 | ARDSLEY AV | yes | yes | 1 lot & portion of 2 others | | | 5,953 | A | 4/9/2013 |
| 20130189 | 09/10/2009 | 49 | BRIGHAM ST | no | | | | | 9,150 | A | 9/18/2009 |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 20090662 | 11/06/2008 | 49 | OAKDALE AV | no | | | | | 5,000 | A | 11/10/2008 |
| 20090736 | 10/13/2009 | 50 | GRAND VIEW AV | yes | no | 2 - 25' | ADL | | 5,000 | G | 10/21/2009 |
| 20080287 | 04/30/2008 | 53 | BRIGHAM ST | no | no | | | | 9,050 | A | 5/6/2008 |
| 20130566 | 07/11/2013 | 54 | MOSHER ST | no | no | | | **Yes** | 4,974 | G | 7/17/2013 |
| 20140378 | 04/24/2014 | 61 | GEORGE ST | no | no | | | **Yes** | 4,700 | A | 4/28/2014 |
| 20081004 | 12/01/2008 | 63 | CUMBERLAND RD | no | no | | | | 5,872 | A | 12/30/2008 |
| 20090870 | 12/08/2009 | 65 | GRAND VIEW AV | yes | no | 2 - 25' | ADL | | 5,000 | G | 12/14/2009 |
| 20100411 | 05/25/2010 | 68 | GEORGE ST | yes | yes | 3 lots to 2 | ADL | | 5,293 | A | 6/2/2010 |
| 20100327 | 05/03/2010 | 70 | MUSSEY ST | yes | no | Didn't go to the PB, variance granted 03/23/05 | ADL | **BOA** | 4,308 | G | 5/17/2010 |
| 20120271 | 03/26/2012 | 71 | SKILLINGS ST | yes | yes | 5 lots to 2 | ADL | | 5,000 | A | 5/23/2012 |
| 20130782 | 09/09/2013 | 75 | GEORGE ST | yes | no | 2 - 25' | ADL | | 5,000 | A | 9/18/2013 |
| 20100147 | 03/15/2010 | 76 | BURWELL AV | yes | no | 3 lots to 1 | ADL | | 8,588 | A | 4/21/2010 |
| 20140808 | 07/01/2014 | 79 | THIRLMERE | yes | no | 2 - 30' | ADL | | 6,098 | A | 8/5/2014 |
| 20150193 | 04/01/2015 | 80 | KESWICK RD | yes | no | 2 lots | ADL | | 5,280 | A | 4/16/2015 |
| 20090126 | 03/18/2009 | 83 | MARCELLE AV | yes | no | 2 - 30' | ADL | | 6,000 | A | 3/24/2009 |
| 20150772 | 09/14/2015 | 84 | UNION ST | yes | no | 2 - 25' | | | 5,000 | G | 10/6/2015 |
| 20090062 | 02/12/2009 | 87 | BONNYBRIAR RD | no | | | | **Yes** | 3,998 | A | 3/17/2009 |

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|---|---|---|---|---|---|---|---|---|---|---|---|
| 20090339 | 05/18/2009 | 87 | SAWYER ST | no | | | | | 6,505 | G | 6/1/2009 |
| 20080861 | 10/09/2008 | 91 | JORDAN AV | yes | no | 2 - 25' x 120' | | | 6,000 | A | 10/17/2008 |
| 20100090 | 02/24/2010 | 94 | WILLOW ST | no | | | | | 5,191 | VCW | 3/4/2010 |
| 20090144 | 03/23/2009 | 95 | BONNYBRIAR RD | no | | | | **Yes** | 4,000 | A | 3/24/2009 |
| 20090411 | 06/15/2009 | 98 | CUMBERLAND RD | no | | | | **Yes** | 4,033 | A | 7/7/2009 |
| 20100076 | 02/16/2010 | 102 | CUMBERLAND RD | no | | | | **Yes** | 4,896 | A | 2/18/2010 |
| 20080012 | 02/19/2010 | 106 | CUMBERLAND RD | yes | no | Didn't go to the PB, variance granted 04/27/05 | A | **Yes** | 4,879 | A | 3/18/2010 |
| 20100085 | 01/08/2008 | 106 | ROMANO RD | no | | | | **BOA** | 4,500 | A | 1/17/2008 |
| 20090137 | 08/26/2008 | 109 | BRIGHAM ST | no | | | | | 8,112 | A | 9/11/2008 |
| 20080723 | 03/19/2009 | 109 | CUMBERLAND RD | yes | no | 3 lots to 1 | ADL | | 5,031 | A | 4/14/2009 |
| 20090703 | 09/24/2009 | 110 | CUMBERLAND RD | yes | no | 2 - 25' | A | **Yes** | 4,852 | A | 9/30/2009 |
| 20090663 | 09/10/2009 | 110 | PEARL ST | no | | | | | 5,477 | G | 9/18/2009 |
| 20130957 | 10/29/2013 | 111 | SOUTH RICHLAND ST | yes | yes | 2 lots to 1 | ADL | | 8,190 | A | 11/18/2013 |
| 20120254 | 03/21/2012 | 112 | WALNUT ST | no | | | | | 6,255 | A | 4/2/2002 |
| 20100433 | 06/03/2010 | 114 | CUMBERLAND RD | yes | no | 2 - 25' | A | **Yes** | 4,844 | A | 6/14/2010 |
| 20110179 | 03/18/2011 | 115 | PINE ST | yes | yes | 3 lots to 2 | ADL | | 5,000 | G | 8/24/2011 |
| 20100263 | 06/15/2009 | 118 | CUMBERLAND RD | yes | no | 2 - 30' + | A | | 6,470 | A | 7/13/2009 |
| 20090412 | 04/16/2010 | 118 | DAWSON ST | no | | | | | 5,275 | A | 4/22/2010 |

## Additional Information on the 2007 - 2016 New Single-Family Homes Built on Less than 10,000 Sq. Ft. Lots

**NC TYPE: S = Separate Unimproved Lot of Record A = Abutting Unimproved Lot(s) of Record ADL = Unimproved Lot(s) of Record Abutting a Developed Lot**

| APP_REF | APPLICATION DATE | ST # | STREET NAME | MERGED LOTS? | REVISED BOUNDARIES? | NOTES | NC TYPE (see above) | PB REVIEW | LOT SQ FT | ZONE | DATE BLDG PERMIT ISSUED |
|---|---|---|---|---|---|---|---|---|---|---|---|
| 20141106 | 11/13/2014 | 133 | EVANS ST | no | | | | | 8,000 | A | 11/21/2014 |
| 20150955 | 11/02/2015 | 147 | SCHOOL ST | no | | | | **Yes** | 4,095 | G | 11/16/2015 |
| 20150957 | 04/23/2008 | 155 | FORT RD | no | | | | | 5,120 | G | 5/1/2008 |
| 20080264 | 11/02/2015 | 155 | SCHOOL ST | no | | | | **Yes** | 4,095 | G | 11/16/2015 |
| 20150604 | 07/22/2015 | 158 | MUSSEY ST | no | | | | | 5,815 | G | 8/28/2015 |
| 20111013 | 12/14/2011 | 168 | WALNUT ST | no | | | | | 5,117 | A | 12/30/2011 |
| 20130910 | 10/09/2013 | 178 | MARGARET ST | no | | | | | 5,000 | A | 10/24/2013 |
| 20090594 | 08/18/2009 | 271 | PREBLE ST | no | | | | | 5,271 | G | 8/20/2009 |
| 20110444 | 06/10/2011 | 290 | PINE ST | no | | | | | 5,000 | A | 7/14/2011 |
| 20070855 | 10/23/2007 | 307 | PINE ST | no | | | | | 5,436 | A | 10/26/2007 |
| 20080138 | 03/05/2008 | 323 | HIGHLAND AV | no | | | | | 7,425 | A | 4/1/2008 |
| 20090315 | 05/08/2009 | 330 | PREBLE ST | n/a | | demolished & rebuilt | | | 6,324 | A | 5/11/2009 |
| 20090175 | 04/02/2009 | 385 | SAWYER ST | no | | | | **Yes** | 4,749 | A | 4/8/2009 |
| 20090778 | 10/27/2009 | 389 | SAWYER ST | no | | | | **Yes** | 4,845 | A | 10/29/2009 |

# ARTICLE III. Nonconformance

## Sec. 27-301. Nonconformance Generally.

(a) Any lawful use of a building, structure, premises, land, or parts thereof legally existing as April 6, 1975, and made nonconforming by the provisions of this Chapter or any amendments thereto, may be continued subject to the provisions of this Article.

(b) A nonconforming building, structure, premises, use or land may be transferred to a new owner and the new owner may continue the nonconforming activity subject to the provisions of this Article.

## Sec. 27-302. Nonconforming Uses.

(a) *Continuation.*

A nonconforming use may be continued and the building or structure housing the use maintained and improved until:

(1) the nonconforming use is terminated in accordance with (b),
(2) the nonconforming use is converted to a conforming use, or
(3) the nonconforming use is changed to another nonconforming use in accordance with (d).

(b) *Termination.*

A nonconforming use is terminated if the use ceases or is abandoned for any reason for a period of two (2) years or more. If a nonconforming use is terminated, any future or subsequent use of the building and/or premises must be in accordance with the provisions of this Chapter. It is the responsibility of the owner of such premises to notify the Code Enforcement Officer of the date of abandonment or cessation of the nonconforming use of premises within one month from the date of such abandonment or cessation. If the owner fails to provide the notice required by this paragraph, the Code Enforcement Officer shall make a determination of the date of termination or abandonment. In

determining the date, the Code Enforcement Officer should consider permits, licenses, and other public records relative to the pre-existing use. The replacement or reconstruction of a nonconforming building is addressed in Sec. 27-303(g).

(c) *Conversion to a Conforming Use.*

A nonconforming use that is converted to a conforming use for the district in which it is located loses its nonconforming status permanently upon the issuance of a Certificate of Occupancy for the conforming use and may not be subsequently re-converted to or used for a nonconforming use.

(d) *Change to Another Nonconforming Use.*

A nonconforming use may be changed to another nonconforming use of the same or a more restrictive classification with the approval of a miscellaneous appeal by the Board of Appeals. The Board of Appeals shall approve the miscellaneous appeal only if it finds, based upon the evidence provided with the appeal, that the new use will be equal to or in greater conformity with the purposes of the zoning district in which it is located, and will have a similar or reduced adverse impact on properties in the same zoning district within five hundred (500) feet of the property as the existing nonconforming use. In reaching this determination the Board of Appeals must consider the volumes and types of traffic generated by the existing and proposed use, the existing and proposed exterior lighting and signage, the levels of noise, dust, odors, and similar factors, the hours of operation, the potential for adverse impacts on abutting properties, and any other relevant factors.

If the proposed change of use is located within the Shoreland Area Overlay District, the Board of Appeals must also find that the proposed use will have no greater adverse impact on the subject and adjacent properties and resources, including water dependent uses, than the former use. To aid the Board in determining that no greater adverse impact will occur, the applicant must provide written documentation regarding the probable effects of the proposed use on

public health and safety, erosion and sedimentation, water quality, fish and wildlife habitat, vegetative cover, visual and actual points of public access to waters, natural beauty, floodplain management, archeological and historic resources, and commercial fishing and maritime activities and other functionally water-dependent uses in accordance with state shoreland zoning requirements.

The burden of proof is on the applicant to demonstrate compliance with the standards of this subsection.

(e) *Spatial Enlargement.*

A nonconforming use may not be enlarged or expanded except as provided for in this section. Enlargement includes the occupancy of more floor area within a building or structure, expansion of the floor area of the building, or the use of a larger area of the site. In the shoreland area, 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. Outside of the shoreland area, a nonconforming use may be enlarged if one of the following conditions is met:

(1) the enlargement is needed to comply with federal, state, or local building or fire safety codes, or the Americans with Disabilities Act (ADA) and the improvement will not increase the floor area occupied by the nonconforming use by more than the lesser of 10% of the currently occupied floor area or one thousand (1,000) square feet over the lifetime of the building, is the minimum necessary to meet the code requirements, and conforms to the space and bulk regulations for the zoning district in which it is located.

(2) the enlargement is to a nonconforming single-family home and will conform to all of the space and bulk regulations for the zoning district in which it is located.

**Sec. 27-303. Nonconforming Buildings and Structures.**

(a) *Nonconformance with Respect to Setbacks from Property Lines*

(1) Increase in Nonconformity - No portion of an existing building or structure that is located within or encroaches into a required setback may be modified in a way that results in any portion of the building being closer to the property line than the existing building except for improvements to provide a wheelchair ramp or other access improvements for people with disabilities (see Sec. 27-152).

(2) Porches, Stairways, and Other Unenclosed Building Elements - Any unenclosed element of a principal building or structure such as a porch, stoop, or stairway that is wholly or partially located within a required setback may be improved and modified including the installation of a roof but may not be enlarged or fully enclosed to create living space. An unenclosed or partially enclosed stoop or porch may be modified provided that at least forty (40) percent of the wall area of the stoop or porch (not including the wall with the principal building) is open to the outside and not able to be closed by windows or other surfaces.

(3) Horizontal Enlargements within the Required Setback - A building or structure that is nonconforming with respect to a setback requirement may be modified or enlarged provided that the improvement is not located within required setbacks. In addition, a horizontal enlargement of a residential building may encroach on the required setback where the existing nonconformity exists if all of the following are met:

(a) The closest point on the new construction will be no closer to the property line than the closest point on the existing building and be at least six (6) feet from the property line. If the existing nonconforming portion of a building is located within six (6) feet of the property line, no encroachment on the required setback by new construction is permitted,

(b) The horizontal dimension of the new construction that encroaches on the required setback is less than fifty (50%) of the length of the portion of

the existing building that encroaches on the required setback, and

(c) The vertical dimension or height of the new construction that encroaches on the required setback is the same or less than the existing nonconforming portion of the building and the exterior wall and roof will be treated similarly to the existing building.

(4) Vertical Enlargements within the Required Setback - A building or structure that is nonconforming with respect to a setback requirement may be modified or enlarged vertically provided that no portion of the improvement is located within required setbacks. In addition, a vertical enlargement of a residential building may encroach on the required setback where the existing non-conformity exists under the following conditions:

(a) Dormers may be added to single-family, detached dwellings within a nonconforming yard setback upon a showing by the applicant that the proposed dormer will not substantially reduce or impair the use or view of any abutting property. Applications for this purpose shall proceed as follows:

1. The applicant shall apply to the Code Enforcement Officer, who shall process the application. The Code Enforcement Officer shall send notices of the request to all abutting property owners.
2. The notice shall indicate the nature and purpose of the application and shall state that, unless an abutting property owner contests the application in writing to the Code Enforcement Officer within twenty (20) days of the date of notice, the Code Enforcement Officer will approve the application administratively.
3. If an abutting property owner does contest the application in writing within the twenty (20) days, the application shall be decided by the Board of Appeals as a dimensional variance appeal. All objections must be in writing and state the basis for the objection.

4. Any and all notice and hearing fees shall be borne by the applicant.

(b) *Nonconformance with Respect to Setbacks from Water Bodies or Wetlands*

(1) A building or structure that is nonconforming with respect to the required setback from water bodies, tributary streams, or wetlands including the water setback requirements of the Shoreland Area Overlay District, Shoreland Resource Protection Overlay District, and Stream Protection Overlay Districts may be modified or enlarged provided that no portion of the improvement under this scenario is located within the required water setback. In addition, the portion of the building located within the required setback may be expanded by not more than thirty (30) percent of the floor area or volume, as those terms are defined in Sec. 27-1305 herein, of the portion of the building located within the setback existing as of January 1, 1989 during the lifetime of the building.

(2) Whenever a new, enlarged, or replacement foundation is constructed under a nonconforming structure, the structure and new foundation must be placed such that the setback requirement is met to the greatest practical extent as determined by the Board of Appeals, basing its decision on the criteria specified in subsection (3) below. If the completed foundation does not extend beyond the exterior dimensions of the building except for expansion in conformity with subsection (1) above, and the foundation does not cause the building to be elevated by more than three (3) additional feet as measured on the uphill side of the structure (from the original ground level to the bottom of the first floor sill), it shall not be construed to be an expansion of the structure.

(3) In determining whether the construction or enlargement of a foundation beneath the existing building meets the setback to the greatest practical extent, the Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems,

and the type and amount of vegetation to be removed to accomplish the relocation.

(c) *Nonconformance with Respect to Building Height*

A building that was nonconforming as to height on December 9, 1990, may be enlarged or expanded to the height of the building as of December 9, 1990, or, subject to subsection (g), be rebuilt or reconstructed to the height of the building on that date.

(d) *Nonconformance with Respect to Off-Street Parking and Loading*

A building or structure that is nonconforming with respect to the requirements for off-street parking or off-street loading bays may not be enlarged or altered to create additional dwelling units, or seats as in the case of places of assembly, or floor area as in the case of commercial, industrial, business, institutional or recreational buildings, or accommodations as in the case of hotels, motels and tourist houses, unless off-street parking or loading is provided for such addition, enlargement, or alteration in accordance with Sec. 27-1556. Any existing deficiency does not need to be corrected.

(e) *Nonconformance with Respect to Residential Density Requirements*

A residential building that is nonconforming with respect to the minimum lot area per family or minimum lot area per dwelling unit requirement or other residential density limitation may be improved and/or enlarged provided that the modification does not increase the number of dwellings units in the building or otherwise make the property more nonconforming with the density requirement. The extension or enlargement must conform to all setback requirements. Any extension or enlargement, when added to any other enlargement or extension undertaken after the adoption of this provision, may not exceed four hundred (400) square feet of floor area per building.

(f) *Nonconformance with Respect to Building Coverage or Impervious Surface Limits*

A building or structure that is located on a parcel that is nonconforming with respect to the maximum building coverage

requirement may be modified and the floor area of the building or structure increased as long as the modifications do not increase the amount of building coverage. A modification to the parcel may include removing or reducing the amount of coverage of existing buildings.

A building or structure that is located on a parcel that is nonconforming with respect to a maximum impervious surface limit may be modified and the floor area of the building or structure increased as long as the modifications do not increase the total amount of impervious surface on the parcel. A modification to the parcel may include reducing the area of existing impervious surface to meet this requirement or replacing impervious surfaces with pervious materials.

The Board of Appeals may permit a modification that results in the creation of additional building coverage or impervious surface as a miscellaneous appeal if the Board finds that, in addition to the generally applicable standards, the site will be designed so that the rate and total volume of stormwater runoff after modification will not exceed the pre-modification conditions.

(g) *Reconstruction, Restoration or Damage of a Nonconforming Building or Structure*

The reconstruction or restoration of any nonconforming building or structure which is destroyed or damaged by fire or other accidental cause is permitted, provided that the reconstruction or restored building or structure is not more nonconforming than the damaged or destroyed building or structure, covers no greater land area and has no greater floor area than the pre-existing building, and is substantially completed within two (2) years of the date of the damage/destruction of the property. The Zoning Board of Appeals may extend the deadline for reconstruction/restoration by up to two (2) years for good cause, such as evidence of delayed insurance processing despite demonstrated timely claims submission.

Any nonconforming structure within the shoreland area which is located less than the required setback from a water body, tributary stream, or wetland and which is removed, or damaged or destroyed, regardless of the cause, by more than 50% of the market value of the structure before such

damage, destruction or removal, may be reconstructed or replaced provided that a permit is obtained within eighteen (18) months of the date of said damage, destruction, or removal, and provided that such reconstruction or replacement is in compliance with the water body, tributary stream or wetland setback requirement to the greatest practical extent as determined by the Board of Appeals in accordance with the purposes of this ordinance. If the reconstructed or replacement structure is less than the required setback it shall not be any larger than the original structure, except as allowed pursuant to Sec. 27-303(b) above, as determined by the nonconforming floor area and volume, as those terms are defined in Sec. 27-1305 herein, of the reconstructed or replaced structure at its new location. If the total amount of floor area and volume of the original structure can be relocated or reconstructed beyond the required setback area, no portion of the relocated or reconstructed structure shall be replaced or constructed at less than the setback requirement for a new structure. When it is necessary to remove vegetation in order to replace or reconstruct a structure, vegetation shall be replanted in accordance with Sec. 27-303(i) below. In no case may the reconstructed or restored building or structure be located any closer to the normal high-water line of the water body or tributary stream or upland edge of the wetland than was the building or structure that was destroyed or damaged. The reconstructed, replaced or restored building or structure shall not be any greater in height than was the building or structure that was destroyed or damaged.

(h) *Replacement of a Nonconforming Residential Building or Structure*

If a nonconforming building is voluntarily removed and replaced, the replacement building shall conform to the following:

(1) In the Residential A and Residential AA Districts, no portion of the replacement building shall be located within the required side yard even if the pre-existing nonconforming building encroached on the required side yard.

(2) Except for side yards in the A and AA Districts addressed in (1), no portion of the replacement building shall encroach on any required setback more

than the pre-existing building nor increase any other non-conformity. The floor area and total volume of the portion of the replacement building located within each required setback may not be greater than the floor area and total volume of the portion of the pre-existing building located within the same required setback.

(3) The height of the portion of the replacement building located within any required setback shall not be greater than the height of the pre-existing nonconforming building within that yard unless permitted by the Zoning Board of Appeals as a variance appeal based upon a finding that the additional height will not substantially reduce or impair the use of any abutting property.

If the replacement building is located within the Shoreland Overlay District, the replacement shall be treated as a relocation and shall be subject to the requirements of (i).

(i) *Relocation of a Nonconforming Building or Structure within Shoreland Areas*

A nonconforming building located within the Shoreland Area Overlay District, Shoreland Resource Protection Overlay District, or Stream Protection Overlay Districts may be relocated within the boundaries of the parcel on which the building is located provided that the site of relocation conforms to all setback requirements to the greatest practical extent as determined by the Board of Appeals, and if the building is not served by a public sewer system, provided that the applicant demonstrates that the present subsurface sewage disposal system meets the requirements of State law and the State of Maine Subsurface Water Disposal Rules (Rules), or that a new system can be installed in compliance with the law and said Rules. In no case shall a building be relocated in a manner that causes the building to be more nonconforming.

In determining whether the building relocation meets the setback to the greatest practical extent, the Board of Appeals shall consider the size of the lot, the slope of the land, the potential for soil erosion, the location of other buildings on the property and on adjacent properties, the location of the septic system and other on-site soils suitable for septic systems, and the type and amount of vegetation to be removed to accomplish the relocation. When

it is necessary to remove vegetation within the required water setback in order to relocate the structure, native vegetation must be replanted to compensate for the destroyed or removed vegetation. Replanting is required as follows:

(1) Trees removed in order to relocate the building or structure must be replanted with at least one (1) native tree, at least five (5) feet in height, for every tree removed. If more than five (5) trees are planted, no species shall make up more than fifty percent (50%) of the number of trees planted. Replaced trees must be planted no further from the water body or wetland than the trees that were removed.
(2) Other woody and herbaceous vegetation and ground cover that is removed or destroyed must be re-established. An area at least the same size as the area where the vegetation and/or ground cover was disturbed, damaged, or removed must be re-established within the required setback area. The vegetation and/or ground cover must consist of similar native vegetation and/or ground cover to what was disturbed, damaged, or removed.
(3) Where feasible, the original location of the relocated structure must be replanted with vegetation consisting of grasses, shrubs, trees, or a combination thereof.

**Sec. 27-304. Nonconforming Residential Lots.**

The following provisions govern the treatment of nonconforming residential lots of record that are described in a deed or subdivision plan recorded in the Cumberland County Registry of Deeds prior to October 21, 2007. These provisions allow for nonconforming lots to be treated as separate lots under certain conditions and to be sold or developed. The provisions allow the development of unimproved nonconforming lots in accordance with the provisions of (f) and (g).

(a) *Separate unimproved nonconforming lots of record.*

An unimproved nonconforming lot of record that is in separate ownership, or is not in common ownership with any abutting lot that has street frontage on the same street, may be developed in accordance with the provisions of (f) without a variance from the Board of Appeals. If the lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City

accepted street, development of the lot must also conform to (g).

Development of the lot must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area and minimum street frontage requirements unless otherwise specifically provided for in (f) or (g) or a variance is granted by the Board of Appeals.

(b) *Separate developed nonconforming lots of record*

A nonconforming lot of record that is in separate ownership or is not in common ownership with any abutting lot that has street frontage on the same street and that is developed with a principal building may be further developed or redeveloped in accordance with the space and bulk regulations of the zoning district in which it is located except for the minimum lot area and minimum street frontage requirements.

(c) *Contiguous developed lots of record.*

Two or more contiguous lots of record in common ownership each of which is improved with a principal building shall be considered to be separate lots and may be sold as separate lots even if one or more of the lots is nonconforming. The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which it is located. The division of such lots does not require a variance from the Board of Appeals.

(d) *Abutting unimproved lots of record.*

Two or more unimproved abutting lots of record in common ownership each of which has frontage on a City accepted street and is not improved with a principal building may be built on and/or sold as separate lots without a variance from the Board of Appeals, even if one or more of the lots is nonconforming, subject to the provisions of (f) and (g). The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots

less nonconforming with respect to the space and bulk regulations for the zoning district in which it is located.

Each lot may be developed in accordance with the provisions of (f). If a lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City accepted street, development of the lot must also conform to (g). Development of the lot must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area and minimum street frontage requirements unless otherwise specifically provided for in (f) or (g). The Board of Appeals may not grant variances from the space and bulk requirements.

(e) *Unimproved lot(s) of record abutting a developed lot.*

An unimproved nonconforming lot of record that abuts and is in common ownership with a developed lot of record and that has frontage on a City accepted street may be developed and/or sold as a separate lot without a variance from the Board of Appeals subject to the provisions of (f) and (g). The division of the lots shall conform to the original lot boundaries as described in a recorded deed or subdivision plan unless revised boundaries will make all of the lots less nonconforming with respect to the space and bulk regulations for the zoning district in which they are located.

Each unimproved lot may be developed in accordance with the provisions of (f). If a lot has less than five thousand (5,000) square feet of lot area or less than fifty (50) feet of street frontage on a City accepted street, development of the lot must also conform to (g). Development of the lot must conform to the space and bulk regulations for the zoning district in which it is located except for the minimum lot area and minimum street frontage unless otherwise specifically provided for in (f) or (g). The Board of Appeals may not grant variances from the space and bulk requirements.

(f) *Standards for the development of all nonconforming lots of record.*

The development of any unimproved nonconforming lot of record including lots with less than five thousand (5,000)

square feet of area must comply with the following unless otherwise specifically provided for in this section:

(1) The principal building must be a single-family detached dwelling used solely for residential purposes including home occupations;

(2) Each building on the lot shall not exceed twenty-eight (28) feet in height, the height to be measured, notwithstanding the definition of building height in Sec. 27-201, from the peak or highest point on the roof line;

(3) Total building coverage shall not exceed twenty-five (25) per cent of the lot;

(4) Each building on the lot shall comply with the side setback requirements of the district in which the lot is located, except that in the Residential G District the principal building shall comply with the side yard setback requirements of the Residential A District or shall be a minimum of twelve (12) feet from any existing principal building on an abutting lot, whichever produces the greater side yard setback on the lot;

(5) The principal building shall be connected to the public sewer system either directly or via a private sewer which is connected to the public sewer system; and

(6) Building site plans submitted pursuant to Sec. 5-58 of the Code shall include a Drainage Plan meeting the requirements of Sec. 27-1536(e), Standards for a Drainage Plan.

(7) If the nonconforming lot of record is located within the Shoreland Area Overlay District, including the Shoreland Resource Protection Overlay Subdistrict and the Stream Protection Overlay Subdistricts, the lot must be developed, and all buildings and structures located, in full compliance with the water setback requirements and performance standards of those districts.

(8) If the nonconforming lot of record is located within a special flood hazard zone, the lot must be developed, and all buildings and structures located, in full

compliance with the requirements of Article IV of Chapter 5 of the Code of Ordinances.

(g) *Additional requirements for the development of lots of record with less than 5,000 square feet of lot area or less than fifty (50) feet of street frontage.*

If an unimproved, nonconforming lot of record has a lot area of less than five thousand (5,000) square feet or less than fifty (50) feet of street frontage, development of the lot must conform to the following in addition to the requirements of (f):

(1) Planning Board Approval Required - Development of a lot of record with less than 5,000 square feet of lot area or fifty (50) feet of street frontage may occur only after the proposed development plans are approved by the Planning Board.

(2) Approval Standards - The Planning Board shall approve the development of a lot of record with less than 5,000 square feet of lot area or fifty (50) feet of street frontage only if it finds that the proposed design and development of the lot and the buildings and structures on the lot are consistent with the established character of the neighborhood. In determining if the proposed development meets this criterion, the Planning Board must find that the following are met if they are applicable to the location:

(i) If there is a predominate pattern of development in the immediate neighborhood with respect to the relationship of the principal building to the street, the principal building must be located on the lot so that it has a similar relationship to the street as other neighboring principal buildings on the same side of the street. If this requires the building to be closer to the front lot line than the required front yard setback, the building may encroach on the required yard and no variance is required.

(ii) If there is a predominate pattern in the width of buildings in relationship to the width of lots in the immediate neighborhood, the width of the front of the building must be similar to the relationship of neighboring lots on the same side of the street.

(iii) If there is a predominate pattern in the style of the roof and its orientation with respect to the street in the immediate neighborhood, the roof of the building must be similar to the relationship of buildings on neighboring lots on the same side of the street. If the predominant pattern is for the ridgeline of the roof to be perpendicular to the front property line, the portion of the proposed building facing the street must maintain this relationship.

(iv) If there is a predominate pattern in the height of buildings in the immediate neighborhood, the height of the building based upon existing grade must be consistent with the height of the buildings on neighboring lots on the same side of the street. If the predominant pattern is for buildings to have more than one story, the proposed building must have more than one story for the portion of the building facing the street.

(v) The appearance of the wall of the building facing the street must be consistent with buildings on neighboring lots on the same side of the street. If there is a predominant pattern in the immediate neighborhood for these walls to be treated as the front of the building with a front door and windows, the front wall of the proposed building must be treated as the front of the building. If there is a predominant pattern for neighboring buildings to have a front porch, the design of the proposed building must be consistent with this pattern.

(vi) The exterior materials must be visually compatible with adjacent and nearby buildings where a predominate pattern in the exterior materials exists, except where unacceptable materials predominate. This provision shall not be used to exclude materials that are visually similar to existing materials but are made differently. The determination shall be based upon Sec. 27-1568.H. Materials and Colors.

(vii) At least twenty-five percent (25%) of the area of the lot must be landscaped open space.

(3) Application - The owner of the lot of record or the owner's agent, or other person with right, title, or interest in the property including a valid purchase and sale agreement must make a written application to the

Planning Board requesting approval to develop on a lot with less than 5,000 square feet of lot area or less than fifty (50) feet of street frontage. The application must be made on forms provided by the City. The application must be accompanied by the following documentation:

(i) An existing conditions plan prepared by a land surveyor or other qualified professional licensed in the State of Maine and drawn to scale showing the boundaries of the lot of record, any improvements on the lot including buildings, structures, or paving, the location of buildings and other improvements on the abutting lots, the topography and direction of drainage of the parcel, any existing easements, and the location of all utilities on the lot or in adjacent streets.

(ii) A site plan prepared by a land surveyor or other qualified professional licensed in the State of Maine at the same scale as the existing conditions plan showing the proposed improvements to the lot including buildings, structures, paving, landscaping, easements, and utilities.

(iii) Building plans for the principal building and any accessory buildings including, at a minimum, the first floor plan, and elevations for all sides of the building showing the architectural treatment of the property.

(iv) Perspective drawings or photo simulations showing how the proposed building will appear when seen from the street and how it will fit into the streetscape.

(v) A written and visual analysis of the existing character of the immediate neighborhood within five hundred (500) feet of the parcel that is within the same zone focusing on the factors identified in (2). This should include aerial photos and pictures of the existing lots in the neighborhood.

(vi) A written and visual analysis demonstrating how the proposed development of the lot meets the standards of (2).

(vii) A Drainage Plan meeting the requirements of Sec. 27-1536(e), Standards for a Drainage Plan.

(4) Review Process - The review of an application for the development of a lot with less than 5,000 square feet of lot area or fifty (50) feet of street frontage shall occur as follows:

(i) Prior to submitting an application, the applicant must have a pre-application conference with the Planning and Development Department. No application shall be considered by the Planning Board unless a conference has been held. This meeting is intended to provide the applicant with an understanding of the City's standards and procedures and to allow the applicant to familiarize the staff with the proposed development.

(ii) Upon submission and acceptance of an application, the Planning Staff shall place the item on the Planning Board's agenda for consideration.

(iii) The Planning Director or the Planning Board may request a peer review of the design of the development from an architect or other design professional. This shall occur in accordance with Sec. 27-138.

(iv) The Planning Board must hold a public hearing on the application. The hearing shall be noticed and conducted in accordance with Sec. 27-1425.

(v) In acting on the application, the Planning Board may impose conditions of approval on the development. These conditions must relate to the standards of (2). In all cases the Planning Board shall include a condition requiring that the Certificate of Approval and the Findings of Fact for the development are recorded at the Cumberland County Registry of Deeds.

(vi) The development of the property must comply with the approved application including any conditions of approval. If it is necessary to make modifications to the approved plan prior to or during development, the Planning Director may approve such modifications provided they do not amount to a waiver or substantial alteration of the approved plan including any conditions or requirements set by the Planning Board. Any subsequent modifications to the building or site layout or use may occur only with the approval of an amended application by the Planning Board.

(5) Performance Guarantee - The applicant shall comply with the performance guarantee requirements of Secs. 27-1429, 27-1430 and 27-1431, as appropriate.

**Secs. 27-305 – 27-400. Reserved.**

# Analysis of South Portland's Mini Site Plan Review Provision for Small-Lot Residential Development

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## SUMMARY

In 2007, South Portland adopted a new policy governing proposed development of residential properties smaller than 5,000 square feet in area. The change requires that such proposals undergo Planning Board review, in order to ensure, in part, that small-lot infill homes are consistent with the look of the surrounding neighborhood. This report gauges whether the new provision is in fact meeting that goal. The analysis is based on case studies of the 10 homes built to date under the provision, surveys of homeowners and neighbors, interviews with City staff, and comparisons with small-lot infill development not covered by the ordinance.

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# Introduction

## Report Purpose and Methodology

This report analyzes South Portland's policy governing the development of nonconforming residential lots of record smaller than 5,000 square feet in area. The ordinance,[1] adopted in 2007, requires that proposed development of such lots undergo site plan review by the Planning Board, with the aim of ensuring that new homes are compatible with the existing neighborhood.

To assess the provision's success at meeting that goal, this report analyzes the 10 properties[2] developed to date under the ordinance. The analysis is based on:

- Assessment of the homes' compatibility with other homes in the neighborhood according to compatibility standards outlined in the ordinance (see Table 1, below). Information for this assessment came from site plan applications as well as site visits.
- Comparison of the properties' assessed values at three points:
    - Original state, as part of the adjoining parcel
    - After the Planning Board approved the site plan (before construction of house)
    - Current total assessed value
- Examples of homes constructed on similar small-lot properties not covered by the ordinance, including both properties at or just above the 5,000 SF threshold for undergoing site plan review, as well as nonconforming lots developed *before* the new provision took effect
- Interviews with homeowners, neighbors, and builders of the new homes to gauge satisfaction with the approval process and with properties developed
- Interviews with City staff and Planning Board members

## Background

In 2007, South Portland adopted a new policy for the treatment of nonconforming residential lots of record that are described in a deed or subdivision plan recorded prior to October 21, 2007. This change to the South Portland Code[3] provides that, if an unimproved nonconforming lot of record has less than 5,000 square feet of lot area or less than 50 feet of street frontage, proposed development plans must be approved by the Planning Board. The Planning Board is to approve such proposals only if they are consistent with the established character of the neighborhood, based on the standards presented in Table 1, below.

**Table 1. Standards for Determining Compatibility of New Home, from South Portland Code 27-304 (g).**

| Category | Standard |
|---|---|
| Setback/ relationship to the street | If there is a predominant pattern of development in the immediate neighborhood with respect to the relationship of the principal building to the street, the principal building must be located on the lot so that it has a similar relationship to the street as other neighboring principal buildings on the same side of the street. |
| Building width | If there is a predominant pattern in the width of buildings in relationship to the width of the lots in the immediate neighborhood, the width of the front of the building must be similar to the relationship of neighboring lots on the same side of the street. |
| Roof ridgeline | If there is a predominant pattern in style of the roof and its orientation with respect to the street in the immediate neighborhood, the roof of the building must be similar to the relationship of buildings on neighboring lots on the same side of the street |
| Building height | If there is a predominant pattern in the height of buildings in the immediate neighborhood, the new building must be consistent with the height of building on neighboring lots on the same side of the street. If the predominant pattern is for buildings to have more than one story, the new building must |

[1] City of South Portland Code of Ordinance Section 27-304.
[2] In addition to the 10 properties included in the Case Study section of this report, two parcels have been approved for development under the new ordinance: 28 Edgewood Street and 53 McLean Street.
[3] Ibid.

| | |
|---|---|
| | have more than one story for the portion facing the street. |
| Roadside façade | The appearance of the wall of the building facing the street must be consistent with buildings on neighboring lots on the same side of the street, in terms of front door, windows, and front porch. |
| Exterior building materials | The exterior materials must be visually compatible with adjacent and nearby buildings where a predominant pattern in the exterior materials exists, except where unacceptable materials predominate. |

In addition to meeting these compatibility standards, development of sub-5,000 SF lots must adhere to criteria for the development of any nonconforming residential lot, as stipulated in section 27-304 (f) of the Code:

- The principal building must be a single-family detached dwelling
- Each building on the lot must not exceed 28 feet in height
- The building must not cover more than 25% of the lot
- Each building must comply with the side setback requirements of the district in which the lot is located
- The principal building shall be connected to public sewer
- The site plan must include a drainage plan

***The new provision represents a significant improvement over the old policy.*** Prior to 2007, an owner of a nonconforming lot wishing to develop it was required to request a dimensional variance from the Board of Zoning Appeals. This process was criticized for being arbitrary and for resulting in the construction of structures that were incompatible with the character and look of the neighborhood (see Comparison Sites section of this report). The new ordinance provides more certainty in the development approval process and it ensures that owners of legally recorded lots are able to build on these lots, as long as they comply with the ordinance's compatibility standards.

***The new ordinance encourages infill development***

The new ordinance also represents a proactive approach to encouraging residential development where it is most appropriate: in established neighborhoods. Infill development on side lots or skipped over parcels saves costs by directing population growth where City services like water and sewer already exist, thus saving the City money. It can also add vitality to residential neighborhoods and to the City's neighborhood activity centers. It is consistent with South Portland's Comprehensive Plan, which stresses the need for infill development in the City, especially integrating affordable housing into existing neighborhoods.[4]

For these reasons, South Portland's mini site plan provision has good potential to encourage small-lot development in the City, and to improve the quality of such development. This report considers whether the provision is delivering on that promise.

[4] City of South Portland. 1992. Ch. III: Housing. *South Portland Comprehensive Plan*. Available: http://www.southportland.org/index.asp?Type=B_BASIC&SEC=%7BAF3BA03F-B2C0-4F73-8F70-42DA45D8CFBC%7D

# Key Findings

## Visual Compatibility

***Homes built under mini site plan review provisions are visually compatible with neighborhood.*** On the whole, case study homes are visually compatible with other houses on the street. Their bulk, setback, and design are similar to those of other structures, with no eccentric elements or nontraditional designs that would make them stand out. On streets where there is not a clear predominant pattern in terms of architectural styles, setbacks, or other elements,[5] the new homes typically have been designed to match their closest abutter(s) on the same side of the street, making for visual cohesion in that section.

Not only are the homes compatible, in many cases they improve the look of the neighborhood. On Cumberland, Sawyer, and Bonnybriar, for example, at least two homes were constructed at once under the mini site plan review provision, and their consistency with one another and with abutting existing homes helps to strengthen a style and setback line that was present but weak. Attractive design, landscaping, and building materials make the homes nice additions to the streets.

The visual compatibility of the case study homes is underscored by comparisons with other small-lot infill homes that did not go through site plan review. As the Comparison Sites section of this report shows, many of these houses are conspicuously different from neighboring homes in terms of height, width, orientation to the street, and/or architectural design.

## Stakeholder Opinions

***Neighbors initially opposed developments but are now generally happy with the homes.*** Surveys conducted in each of the case study neighborhoods revealed that, on the whole, neighbors feel that these are attractive homes that look like they belong. Among respondents who initially opposed the projects (a sizable majority), sentiment has generally improved with the passage of time. Respondents commented that the end product was not as bad as they had envisioned and that the homes are well designed. Nevertheless, most neighbors expressed a preference for more space between the infill homes and neighboring homes. More findings can be found in the Survey and Interview Results section.

***Homeowners feel that their homes fit in, and they feel accepted by neighbors.*** Homeowners of case study homes feel that their homes visually fit in with the neighborhood, and that neighbors approve of the new homes. Most feel that both their property and their house are about the same size as others in the neighborhood, and they are satisfied with the size of their house and lot.

***City staff and Planning Board members think the ordinance is achieving goals.*** Four City staff members and two Planning Board members were interviewed. Overall, interviewees feel that the ordinance is accomplishing the original goals of ensuring compatible small lot homes and encouraging infill development. Some changes and improvements were suggested; see Survey and Interview Results section.

***Developers want clear estimates and the elimination of unnecessary costs.*** Two of the four developers of the case study sites were reached for an interview. Their overall level of satisfaction with the approval process differed significantly: one has developed multiple parcels over several years and felt quite positively; the other respondent very recently completed the process and had generally negative feelings. However, they both expressed a desire for clear estimates and for the elimination of unnecessary steps and costs.

## Stormwater Management

Conversations with staff, developers, and abutters revealed that stormwater management is an important consideration for small lot infill development. While such development does not produce a great volume of additional runoff, stormwater management on these sites can be challenging, due to several factors:

- Neighbors are sensitive to changes in runoff volume and patterns due to the close proximity of the new structure

[5] As in the case of Augusta and McLean, which have an eclectic mix of styles, as well as Cumberland, which has one pattern in the older section of the street and another in the newer section.

- Small lots have limited space for stormwater facilities
- Soil conditions do not always accommodate complete on-site treatment and infiltration of stormwater, as is the goal of the City's Department of Water Resource Protection
- Adequate stormwater management systems can be costly to the developer

Because of these challenges, well designed stormwater management approaches will be important for small lot development. South Portland's Stormwater Manual[6] provides guidance on low-impact development strategies that are suitable for small sites (see Figure 1 below). The site plan review process provides an opportunity to encourage such best management practices. Properly designed, stormwater management systems can not only treat stormwater on the subject site; it can even improve drainage in the surrounding neighborhood.[7]

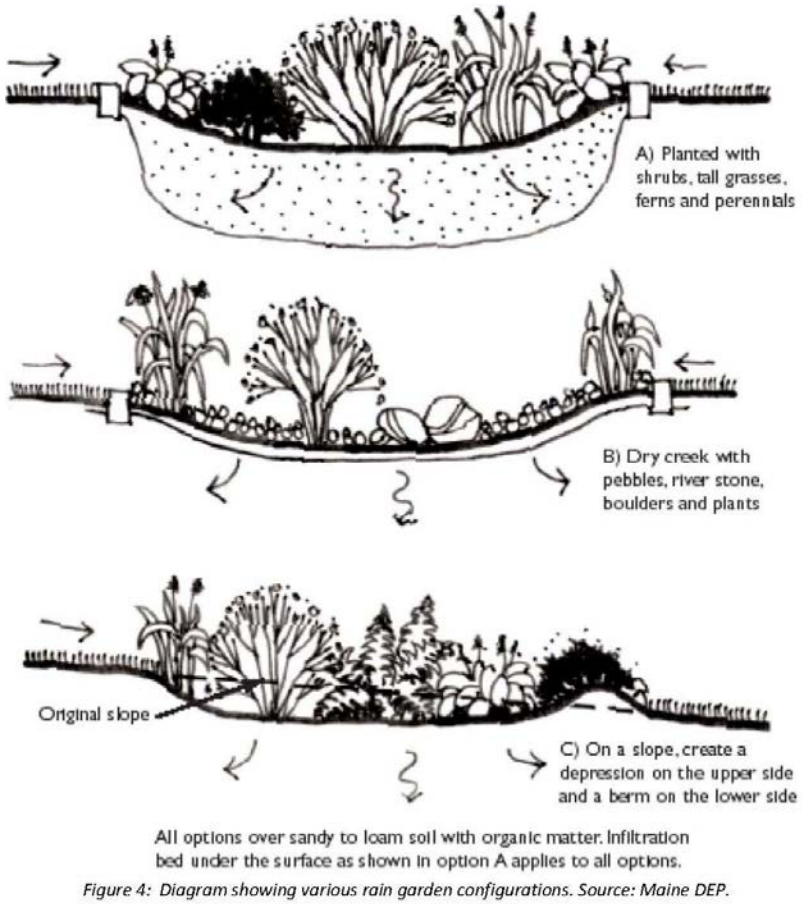


**Figure 1. Various rain garden configurations. Rain gardens constitute low-impact development. *Source: Maine DEP.***

## Economic and Housing

***Property values of case study homes significantly increased following development.*** Allowing compatible infill development has economic benefits for the City. Development of the case study parcels significantly increased their assessed value (see Figure 2, below). A notable increase in value - $63,890 on average - occurred after Planning Board site plan approval, before any structures were built. Mean present assessed value for the developed parcels is $209,110, an overall increase of nearly 4,000%. **The total increase for all 10 properties is $2,091,100.**

[6] South Portland's Stormwater Manual is available at: http://www.southportland.org/index.asp?Type=B_BASIC&SEC=%7BE501E22E-1BCF-46FD-8F60-8416D63D67E5%7D

[7] This was the case with 385 Sawyer, where long-standing drainage issues on Beverly and Sawyer were improved following construction of the case study home.

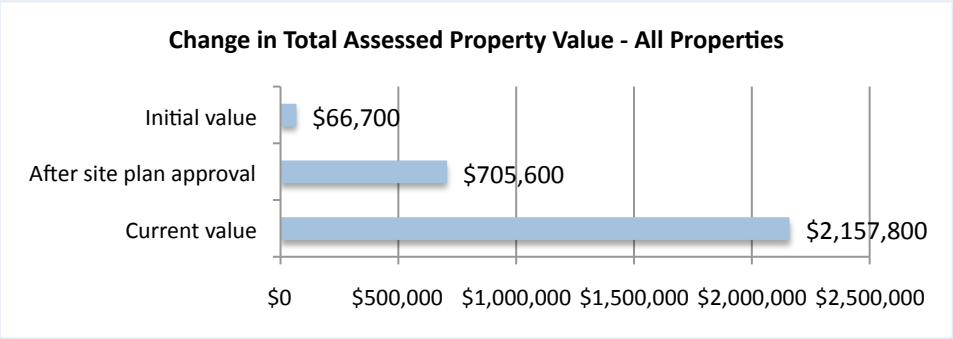


**Figure 2**

Increased property value means more tax revenue for the City. In 2012, the total anticipated property tax bill for these parcels is $34,740 – significantly more than the $1,073 which would have been raised were the parcels in their original state as part of the larger adjoining lot.

### *Case study homes are attracting younger buyers*

The mean age of principal homeowners of case study properties is 32.[8] Providing relatively small houses that appeal to younger residents is consistent with South Portland's Comprehensive Plan,[9] which expresses the need for a mix of housing types that accommodate a good balance of age groups. Younger families can help rejuvenate aging neighborhoods and stabilize the City's school system.

### *Small-lot homes provide housing for moderate-income families*

South Portland's Comprehensive Plan[10] identifies as a key goal the provision of affordable housing opportunities and a mix of housing types and prices. The generally accepted definition of affordable housing, according to the U.S. Department of Housing and Urban Development, is for a household to pay no more than 30 percent of its annual income on housing. In 1999, median household income in South Portland was $42,373. Based on the HUD definition, households with median income could afford to spend $12,712 per year on housing. Average yearly housing costs for the case study homes is $16,584,[11] meaning that median, low, or very low households would have been unlikely to purchase one of the case study homes. Median annual household income of case study homeowners is $100,000.

These are small homes - 1,354 square feet on average - which limits their selling price. Mean sale price for the case study homes is $227,728. Several developers interviewed for this report stressed that there is great demand in South Portland for homes at this price point. Importantly, developers also said they would not have priced these homes lower if they had not been required to go through the site plan review process; rather the added expense caused them to pay less for the land.

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[8] One value missing; two values for co-owner rather than principal owner.
[9] City of South Portland. 1992. Ch. III: Housing. *South Portland Comprehensive Plan*. Available: http://www.southportland.org/index.asp?Type=B_BASIC&SEC=%7BAF3BA03F-B2C0-4F73-8F70-42DA45D8CFBC%7D
[10] Ibid.
[11] Assuming a 30-year mortgage, 5% interest rate, 20% down, and annual taxes of $3,474 (mean for case study homes).

# Case Studies

## 18 McLean Street

Lot size: 4,500 SF

Site plan approved by Planning Board 6-0 (Schreiber absent) on 4/8/2008 with standard conditions. This was the first project approved under the new ordinance. According to Community Planner Steve Puleo, the project encountered significant opposition from abutters at the time, but neighbors now seem more accepting of the home (survey results confirm this).

The Planning Board Findings of Fact and Decision notes that the applicant will install a window on home's east elevation where practical. A letter in the file from Judy Carpenter dated Sept 24, 2008 to Joseph Frustaci of Star Homes (developer of the property) indicates that the front porch is less than the six feet wide approved by the Planning Board. The letter notes that the City does not intend to take action regarding the situation.

**Value**

- Sale price: $236,750 on 8/14/2008
- Property taxes
  - FY 2012: $3,375
  - If lot were still unimproved: $137
  - Increase: $3,238
- Increase in assessed value: $201,100

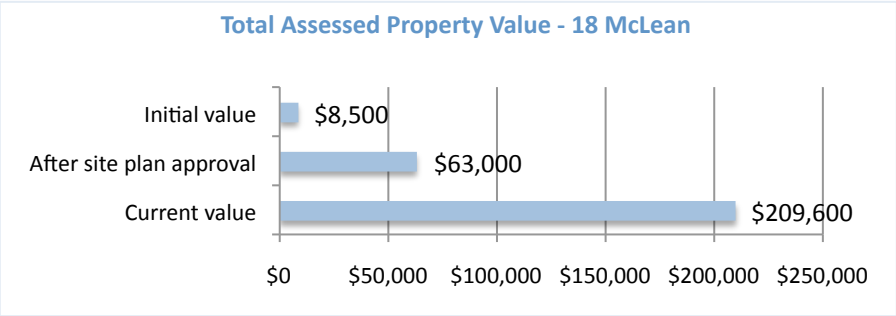



Figure 3

**Neighborhood Compatibility**
There is considerable variation on this portion of McLean in terms of houses' orientation to the street and architectural style. Some houses on the end of McLean further from Main Street have slightly larger yards (especially side yards) than does the subject property, but it is in keeping with its closest neighbors. Overall, the home appears compatible with the neighborhood.

### Neighborhood Compatibility – 18 McLean

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | 20 ft from fronts of porches to street | Front porch aligned with front porch of abutting lot | ✓ |
| Building width | 28-30 ft. Buildings located to one side of lot | 26 ft | Slightly narrower (but on smaller lot) |
| Roof ridgeline | Parallel | Parallel* | ✓ |
| Building height | 28 – 30 ft; two stories | 27 ft; two stories | ✓ |
| Roadside façade | Roofed front porch, front door, windows on first and second floors | Covered porch with railings, front entrance, multiple windows with shutters | ✓ |
| Exterior building materials | Asphalt shingles, vinyl or wood clapboard siding, shutters | Asphalt shingles, vinyl siding, shutters | ✓ |

*This was changed during the site plan application process.

## 26 Augusta Street

Lot size: 4,725 SF

Site plan approved by Planning Board 5-0 (one member absent, one seat vacant) on 1/11/2011 with standard conditions as well as: "Prior to the issuance of the certificate of occupancy, the applicant shall provide the Planning & Development Director with evidence satisfactory to the Corporation Counsel that a drainage easement over and across the southeasterly corner of the property has been accepted by the City of South Portland and executed and recorded at the Cumberland County Registry of Deeds (CCRD)" (Findings of Fact and Decision).

**Value**

- Sale price: $231,000 on 5/26/2011
- Property taxes
  - FY 2012: $2,910.88

- If lot were still unimproved: $101
- Increase: $2,809

- Increase in assessed value: $174,500

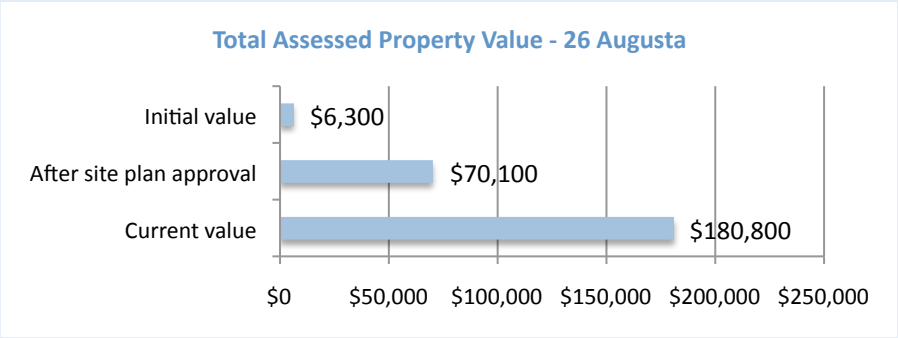



Figure 4

**Neighborhood Compatibility**

Augusta is a small street with few homes, each of which looks quite different from the others. On this end of the street, there are two additional new homes (immediately abutting 26 Augusta and across the street). This home appears most compatible with its immediate abutter.

Neighborhood Compatibility – 26 Augusta

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | Wide variation | Front porch aligned with that of abutting house | ✓ |
| Building width | Wide variation, 24 – 46 ft. Homes located in center of lot | 26 ft | ✓ |
| Roof ridgeline | Mix, but predominant pattern is parallel | Parallel | ✓ |
| Building height | Mix of 1 ½ and 2 stories, 28 – 30 ft | Two stories, 26 ft | ✓ |
| Roadside façade | Front doors with added metal roofs or wooden enclosures, front porch, windows on first and second floors | Covered porch, front entrance, multiple windows with shutters | ✓ |
| Exterior building materials | Asphalt singles, vinyl clapboard siding | Asphalt shingles, vinyl clapboard siding, shutters defining windows | ✓ |

## 87 Bonnybriar Road

Lot size: 3,998 SF

Site plan approved by Planning Board 4-1 (four members absent) on 5/27/2008 with standard conditions as well as "Prior to issuing building permits, applicant shall provide evidence that the Certificate of Approval and Findings of Facts, the signed Level One Contractor's Erosion and Sediment Control Certificate, and the two (2) drainage easements and one (1) utility easement and deeds for all three (3) lots have been properly recorded in the Cumberland County Registry of Deeds and provide a stormwater and sanitary flow allocation letter from the Director of Water Resource Protection Division" (Findings of Fact and Decision).

**Value**

- Sale price: $218,800 on 6/29/2009
- Property taxes
  - FY 2012: $3,461.50
  - If lot were still unimproved: $130
  - Increase: $3,331
- Increase in assessed value: $206,900

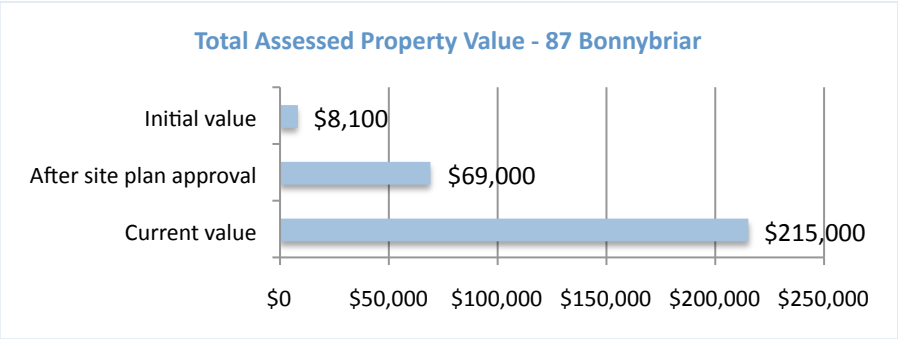



Figure 5

**Neighborhood Compatibility**
There is a wide variety of architectural styles on Bonnybriar Road, although many of the older homes are Capes with one or one and a half stories. This home is aligned with – and most similar in style to – its immediate abutter. 95 Bonnybriar, constructed at the same time under the mini site plan review provision – is on the other side of that abutter, creating a pattern along that stretch of the street.

### Neighborhood Compatibility – 87 Bonnybriar

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | Approx. 20 ft | Front porch aligned with front porch of immediate abutter | ✓ |
| Building width | 23 – 36 ft. Buildings located in center of lot | 20 ft. | Slightly narrower (but smaller lot) |
| Roof ridgeline | Both present in neighborhood, immediate abutters differ | Perpendicular | ✓ |
| Building height | 1 ½ stories with some one and some two story buildings | Two stories | Taller than many on street but same as immediate abutter |
| Roadside façade | Front-facing houses, covered and uncovered landings or porches, front door, windows facing road | Front entrance, covered porch, multiple windows | ✓ |
| Exterior building materials | Asphalt shingles, vinyl and wood clapboard siding, shutters | Asphalt shingles and vinyl siding, earth tones | No shutters |

## 95 Bonnybriar Road

Lot size: 4,000 SF

Site plan approved by Planning Board 4-1 (four members absent) on 5/27/2008 with standard conditions as well as:

- "Prior to issuing building permits, applicant shall provide evidence that the Certificate of Approval and Findings of Facts, the signed Level One Contractor's Erosion and Sediment Control Certificate, and the two (2) drainage easements and one (1) utility easement and deeds for all three (3) lots have been properly recorded in the Cumberland County Registry of Deeds and provide a stormwater and sanitary flow allocation letter from the Director of Water Resource Protection Division." (Findings of Fact and Decision)
- "If feasible, the applicant shall provide a window on the gable-end of the home located at 95 Bonnybriar Road, in lieu of a gable-end vent." (Findings of Fact and Decision)

**Value**

- Sale price: $223,000 on 7/24/2009
- Property taxes
  - FY 2012: $3,477.60
  - If lot were still unimproved: $130
  - Increase: $3,347
- Increase in assessed value: $207,900

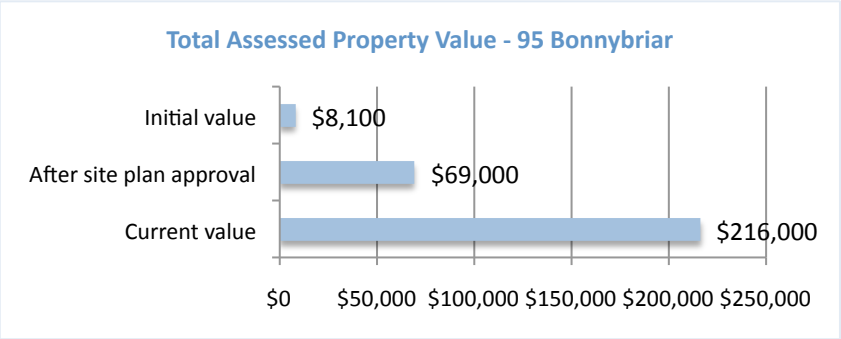



Figure 6

**Neighborhood Compatibility**

As with 87 Bonnybriar, this home is aligned with and compatible in style to its immediate abutter, though not necessarily with other homes in the neighborhood, where significant variation exists.

Neighborhood Compatibility – 95 Bonnybriar

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | Approx. 20 ft | Front porch aligned with front porch of abutting lot | ✓ |
| Building width | 23 – 36 ft. Buildings located in center of lot | 24 ft | ✓ |
| Roof ridgeline | Both present in neighborhood, immediate abutters differ | Perpendicular | ✓ |
| Building height | 1 ½ stories with some one and some two story buildings | Two stories | Taller than most but similar to immediate abutter |
| Roadside façade | Front-facing houses, covered and uncovered landings or porches, front door, windows facing road | Front entrance, covered porch, multiple windows | ✓ |
| Exterior building materials | Asphalt shingles, vinyl and wood clapboard siding, shutters | Asphalt shingles and vinyl siding, earth tones | No shutters |

## 98 Cumberland Road

Lot size: 4,033 SF

Site plan approved by Planning Board 6-0 (Schreiber absent) on 4/14/2009 with standard conditions, as well as a requirement to provide a copy of the executed and recorded drainage easements for Lots 79 to 90.

**Value**

- Sale price: $220,000 on 10/5/2009
- Property taxes
  - FY 2012: $3,393.88
  - If lot were still unimproved: $126
  - Increase: $3,268
- Increase in assessed value: $203,000

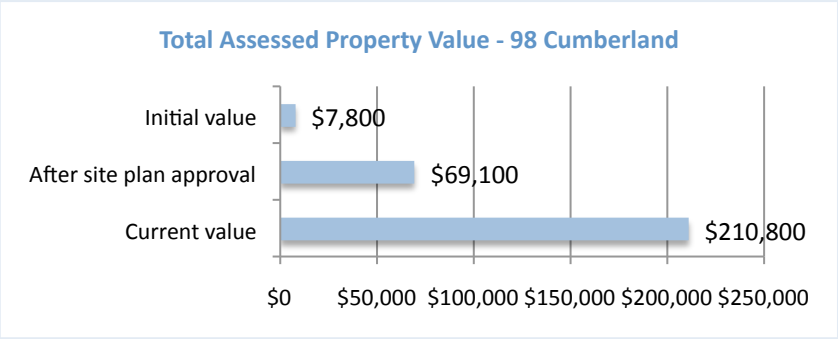



Figure 7

**Neighborhood Compatibility**

This home is one of four on Cumberland Road approved under the mini site plan review provision. It is located at the far end of the street, where a number of new structures have been built recently, both on conforming and non-conforming lots. The compatibility of the new structures with each other helps to establish a neighborhood pattern in style and

setback along that portion of Cumberland, where the eclectic nature of the few pre-existing homes made such a pattern hard to discern. The older end of Cumberland – closer to Evans Street – has a significantly different look than this newer portion, with many smaller Capes.

### Neighborhood Compatibility – 98 Cumberland

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | No predominant pattern on street; some porches 16 - 20 ft from road | 19 feet | ✓ |
| Building width | Wide variation, 24 – 40 ft | 24 feet | ✓ |
| Roof ridgeline | Both perpendicular and parallel to street | Hip roof | ✓ |
| Building height | Two stories | 27.65 ft; two stories | ✓ |
| Roadside façade | Roofed front porch, front door, windows on the first and second floors | Covered porch, tapered columns, multiple windows | ✓ |
| Exterior building materials | Asphalt shingles, vinyl or wood clapboard siding, shutters | Asphalt shingles, vinyl siding | No shutters |

## 106 Cumberland Road

Lot size: 4,879 SF

Site plan approved by Planning Board 6-0 (Schreiber absent) on 4/14/2009 with standard conditions, as well as a requirement to provide a copy of the executed and recorded drainage easements for Lots 79 to 90.

**Value**

- Sale price: $232,000 on 9/24/2010
- Property taxes
  - FY 2012: $3,762.57
  - If lot were still unimproved: $50

- Increase: $3,713
- Increase in assessed value: $230,600

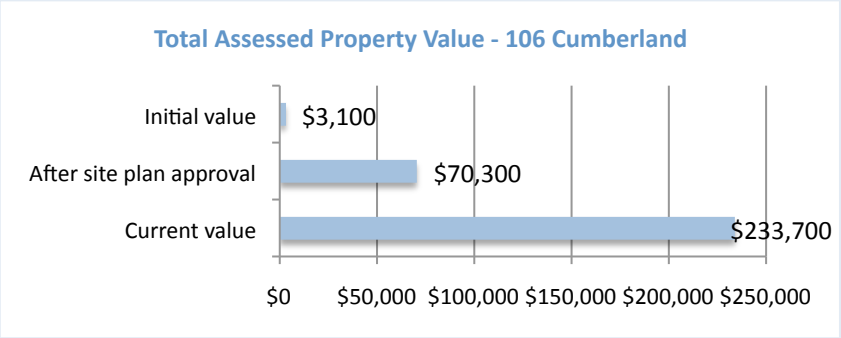



**Figure 8**

**Neighborhood Compatibility**

This home is one of four on Cumberland Road approved under the mini site plan review provision. It is located at the far end of the street, where a number of new structures have been built recently, both on conforming and non-conforming lots. The compatibility of the new structures with each other helps to establish a neighborhood pattern in style and setback along that portion of Cumberland, where the eclectic nature of the few pre-existing homes made such a pattern hard to discern. The older end of Cumberland – closer to Evans Street – has a significantly different look than this newer portion, with many smaller Capes.

**Neighborhood Compatibility – 106 Cumberland**

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | No predominant pattern on street; some porches 16 - 20 ft from road | 19 ft | ✓ |
| Building width | Wide variation, 24 – 40 ft | 28 ft | ✓ |
| Roof ridgeline | Both | Parallel | ✓ |
| Building height | Two stories | 27.10 ft, two stories | ✓ |
| Roadside façade | Front porch, front door, windows | Covered porch, tapered columns, multiple windows | ✓ |
| Exterior building materials | Asphalt shingles and vinyl or wood clapboard siding | Asphalt shingles, vinyl siding | ✓ |

## 110 Cumberland Road

Lot size: 4,852 SF

Site plan approved by Planning Board 6-0 (Schreiber absent) on 4/14/2009 with standard conditions, as well as a requirement to provide a copy of the executed and recorded drainage easements for Lots 79 to 90.

**Value**

- Sale price: $223,000 on 6/14/2010
- Property taxes
  - FY 2012: $3,627.33
  - If lot were still unimproved: $50
  - Increase: $3,577
- Increase in assessed value: $222,200

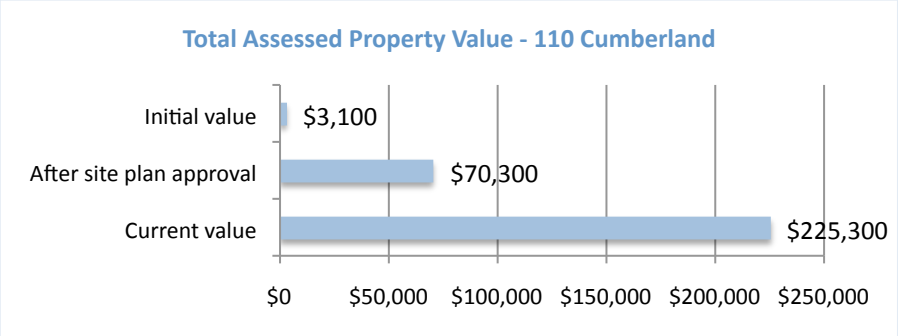



Figure 9

**Neighborhood Compatibility**

This home is one of four on Cumberland Road approved under the mini site plan review provision. It is located at the far end of the street, where a number of new structures have been built recently, both on conforming and non-conforming lots. The compatibility of the new structures with each other helps to establish a neighborhood pattern in style and setback along that portion of Cumberland, where the eclectic nature of the few pre-existing homes made such a pattern hard to discern. The older end of Cumberland – closer to Evans Street – has a significantly different look than this newer portion, with many smaller Capes.

### Neighborhood Compatibility – 110 Cumberland

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | No predominant pattern on street; some porches 16 - 20 ft from road | 18 ft | ✓ |
| Building width | Wide variation, 24 – 40 ft | 28 ft | ✓ |
| Roof ridgeline | Both | Parallel | ✓ |
| Building height | Two stories | 27.3 ft, two stories | ✓ |
| Roadside façade | Front porch, front door, windows | Covered porch, windows | ✓ |
| Exterior building materials | Asphalt shingles and vinyl or wood clapboard siding | Asphalt shingles, vinyl siding | ✓ |

## 114 Cumberland Road

Lot size: 4,844 SF

Site plan approved by Planning Board 6-0 (Schreiber absent) on 4/14/2009 with standard conditions, as well as a requirement to provide a copy of the executed and recorded drainage easements for Lots 79 to 90.

**Value**

- Sale price: $229,000 on 3/10/2011
- Property taxes
  - FY 2012: $3,409.98
  - If lot were still unimproved: $50
  - Increase: $3,360
- Increase in assessed value: $208,700

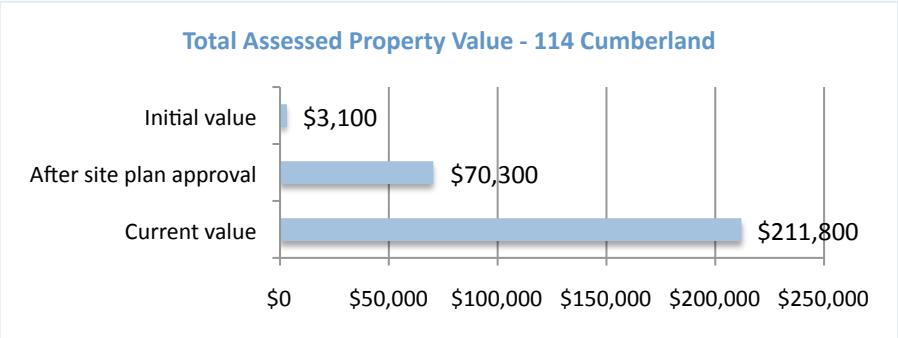



Figure 10

**Neighborhood Compatibility**

This home is one of four on Cumberland Road approved under the mini site plan review provision. It is located at the far end of the street, where a number of new structures have been built recently, both on conforming and non-conforming lots. The compatibility of the new structures with each other helps to establish a neighborhood pattern in style and setback along that portion of Cumberland, where the eclectic nature of the few pre-existing homes made such a pattern hard to discern. The older end of Cumberland – closer to Evans Street – has a significantly different look than this newer portion, with many smaller Capes.

### Neighborhood Compatibility – 114 Cumberland

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | No predominant pattern on street; some porches 16 - 20 ft from road | 19 ft | ✓ |
| Building width | Wide variation, 24 – 40 ft | 32 ft | ✓ |
| Roof ridgeline | Both | Parallel | ✓ |
| Building height | Two stories | 27.3 ft, two stories | ✓ |
| Roadside façade | Front porch, front door, windows | Front porch and door, windows | ✓ |
| Exterior building materials | Asphalt shingles and vinyl or wood clapboard siding | Asphalt shingles, vinyl siding | ✓ |

## 385 Sawyer Street

Lot size: 4,749 SF

Site plan approved by Planning Board 7-0 on 11/12/2008 with standard conditions as well as "Prior to obtaining building permits, the applicant shall revise the site plan to add the text of Planning Board Regulation #5." (Findings of Fact and Decision).

**Value**

- Sale price: $236,000 on 9/4/2009
- Property taxes
  - FY 2012: $3,588.69
  - If lot were still unimproved: $148
  - Increase: $3,441
- Increase in assessed value: $213,700

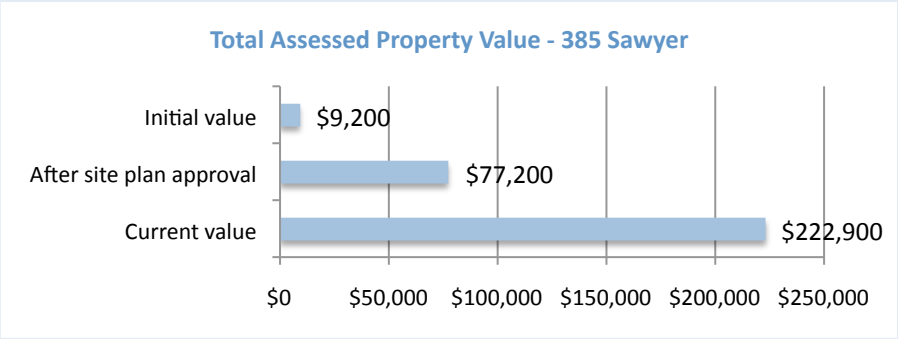



Figure 11

**Neighborhood Compatibility**

This site is on a small block of Sawyer Street between Beverly and Barstow Streets. It is one of two homes constructed on this block under the mini site plan provision, both of which are very compatible in setback, style and bulk with the existing home that they both abut, as well as with others on Sawyer Street. While 385 Sawyer appears similar in style to the homes behind it on Barstow Street, the slope of the land makes the house appear much taller and more massive from the perspective of Barstow Street than from Sawyer.

Neighborhood Compatibility – 385 Sawyer

| Compatibility Factor | Predominant Neighborhood Pattern | New Structure | Compatible? |
|---|---|---|---|
| Setback | No predominant pattern | 15 ft | Appears similar to immediate abutter |
| Building width | 28 – 30 ft. Buildings to side of lot | 24 ft | Narrower but appears compatible |
| Roof ridgeline | Both | Perpendicular | ✓ |
| Building height | 28 – 30 ft, two stories | 28 ft, two stories | ✓ Looks taller from Barstow |
| Roadside façade | No predominant pattern | Roofed porch, front entrance, multiple windows and shutters | Appears compatible with block |
| Exterior building materials | Asphalt shingles, wood or vinyl clapboard, shutters | Asphalt shingles, vinyl clapboard siding | No shutters but appears compatible* |

*Site plan included shutters but they are not present on structure as-built.

## 389 Sawyer Street

Lot size: 4,845 SF

Site plan approved by Planning Board 7-0 on 11/12/2008 with standard conditions as well as "Prior to obtaining building permits, the applicant shall revise the site plan to add the text of Planning Board Regulation #5." (Findings of Fact and Decision).

**Value**

- Sale price: $229,000 on 9/15/2010
- Property taxes
  - FY 2012: $3,733.59
  - If lot were still unimproved: $151
  - Increase: $3,582
- Increase in assessed value: $222,500

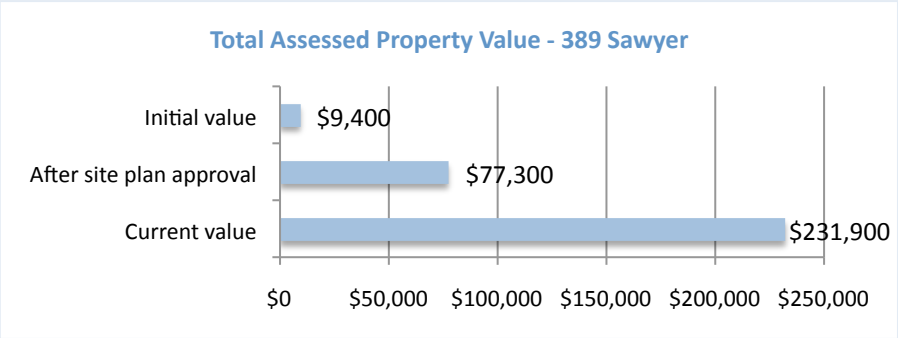



Figure 12

**Neighborhood Compatibility**

This site is on a small block of Sawyer Street between Beverly and Barstow Streets. It is one of two homes constructed on this block under the mini site plan provision, both of which are very compatible in setback, style and bulk with the existing home that they both abut, as well as with others on Sawyer Street. 389's other immediate abutter faces Beverly Street, breaking the pattern.

### Neighborhood Compatibility – 389 Sawyer

| Compatibility Factor | Predominant Neighborhood Pattern | New Home | Compatible? |
|---|---|---|---|
| Setback | No predominant pattern | 15 ft | With abutter on Sawyer St but not Beverly St |
| Building width | 28 – 30 ft. Buildings to side of lot | 24 ft | Narrower but appears compatible |
| Roof ridgeline | Both | Perpendicular | ✓ |
| Building height | Two stories | 28 ft, two stories | ✓ |
| Roadside façade | No predominant pattern | Covered porch, front entrance, multiple windows | Appears compatible |
| Exterior building materials | Asphalt shingles, wood or vinyl clapboard, shutters | Asphalt shingles, vinyl clapboard siding | No shutters but appears compatible* |

*Site plan included shutters but they are not present on structure as-built.

# Comparison Sites

To assess the effectiveness of the mini site plan review provision, similarly sized parcels that did not go through this process were selected for comparison. These sites fall into two categories:

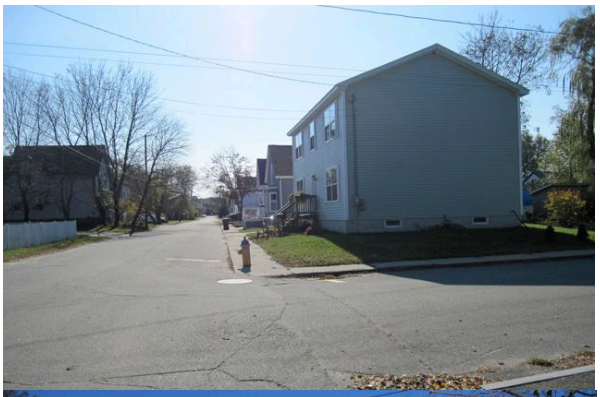
- Category 1: Nonconforming small lots with less than 5,000 square feet in area and/or less than 50 feet of street frontage that received a dimensional variance from Board of Zoning Appeals before new ordinance went into effect
- Category 2: Conforming lots of 5,000 square feet or slightly more that were not required to receive a dimensional variance or to undergo site plan review

As the following photographs indicate, homes that did not undergo site plan review are less in keeping with neighborhood character than those that did. Many of the structures pictured below are not appropriately sized for the lot, have a greater bulk than neighboring homes, are not oriented toward the street, and/or lack attractive architectural details common to existing homes in the neighborhood.

## Category 1: Small lots granted a dimensional variance

**Stanford Street** (variance granted January 2007)

- Mass and width considerably greater than others on street
- Atypical roofline
- Two blank walls
- Lacking architectural detail of other homes on street



**C Street** (variance granted June 2001)

- Does not maintain established setback line
- Shorter than others on street (one story instead of two)
- Asphalt front yard with no landscaping
- Fence all the way to the curb – atypical for street

**Fisherman's Lane** (variance granted June 2001)

- Towers over abutters
- Garage on front of house

**Beverly Street** (variance granted February 2004)

- Much taller than neighboring houses
- Large front garage out of character with other homes on street
- Roofline and architectural style out of character

**Chase Street** (variance granted May 2005)
Wide ranch style house atypical of street with many small bungalows

**E Street** (variance granted January 2005)
Oriented sideways – "front" of house does not face street

**Henry Street** (variance granted March 2006)

- Greater bulk than most houses on street (with exception of immediate abutter, also a newer home)
- Front garage atypical for street

## Category 2: Lots at or just above the 5,000 square foot threshold for review

**Richland Street** (lot size 5,000 SF)

- Does not maintain setback line
- Greater bulk than most homes on street
- Front "yard" is asphalt driveway
- Lacks design detail of other homes

**Froswick Avenue** (lot size 5,000 SF)

- Large garage dominates front façade – atypical for street
- Greater mass than abutters

**George Street** (lot size 6,790± SF)

Oriented sideways to the street, front door on side of house

**Romano Road** (lot size 5,227± SF)

- Scale out of character with street – massive compared to neighbors
- Architectural style not in keeping with street

# Survey and Interview Results

## Objectives and Administration

The following table shows groups surveyed, number of respondents, key research questions for each sample group, and the way in which the survey or interviews were conducted. Survey instruments for homeowners, neighbors, and builders can be found in Appendix B.

| Sample group | Sample size | Key questions | Method | Administration |
|---|---|---|---|---|
| Homeowners of the 10 case study properties | 6 | • Satisfaction with size of property and proximity to neighbors<br>• Does home fit in with neighborhood?<br>• Do you feel that neighbors approve of your home? | Survey (see Appendix B for survey instrument) | In person on three days: one weekday, one weekend morning, and one weekend afternoon. By phone on three weekday evenings |
| Neighbors (within about 10 parcels of subject home) | 14 | • Satisfaction with overall look of home?<br>• Does home fit in with neighborhood?<br>• Size of lot and proximity to neighbors?<br>• Have feelings changed since project was first proposed? | Survey (see Appendix B for survey instrument) | In person on two days: one weekday morning and one weekend morning |
| Builders | 2 | • Satisfaction with approval process? Ways to improve it?<br>• Worth the investment? Have feelings changed since beginning? | Survey, though in both cases the conversation turned into an interview | By phone |
| City staff and Planning Board members | 6 | • Overall, is the ordinance achieving original goal(s)?<br>• Concerns with the provision, either the review process or the final outcome?<br>• Ways to improve the process? | One-on-one interviews | In person (staff) and by phone (Planning Board members) |

## Findings

Below are findings from the survey and interview efforts described above. It is important to note that sample size for all groups was too small to support statistical analysis, and it is not possible to establish significant correlations between factors, such as a respondent's opinion and her income level or tenure, for example. Further, results should be considered representative of sampled individuals only; they cannot be generalized to a wider population. Finally, while percentages are given, please note that in some cases they can be somewhat misleading due to the low sample sizes. For example, in the neighbors category, one respondent represents 7% of the total.

### *Homeowners*

**Homeowners feel that their houses fit in with the neighborhood.** Every respondent agreed or strongly agreed with the statement "visually, my home fits in with the neighborhood." The majority – 4 of 6 – feel that that their home and lot are about the same size as others in the neighborhood, with 2 respondents saying their home and lot felt slightly smaller than average.

**Homeowners feel accepted by neighbors.** When presented with the statement "I feel that my neighbors approve of my home," 3 respondents agreed and 3 strongly agreed.

**Homeowners are satisfied with the size of their property and proximity to neighbors.** 5 of 6 respondents are satisfied or very satisfied with the size of their property, with the remaining respondent neutral. 4 of 6 are satisfied with the proximity of their house to neighbors, with 2 respondents neutral.

**Economic and demographic information**:

- Owners of case study homes are relatively young. Mean age of survey respondents is 34. According to publically available records, mean age of homeowners for all 10 case study homes is 32.
- Owners represent a range of occupations: Survey respondents included a nurse, police officer, chef, physical therapist, pharmacist, and a commercial fisherman/ science educator.
- Median annual household income (pre-tax) is $100,000. Mean is $109,000.
- Mean household size is 2.8

### *Neighbors*

Neighbors generally feel positively about the look of the homes and their visual compatibility with other houses in the neighborhood. They are a little more mixed regarding the size of the parcels; while most feel that the homes are sized appropriately for their lots, a slight majority feel that the homes are too close to their neighbors. Of the residents who initially opposed the proposed development, a little more than half say that they now feel more supportive of the home.

**Neighbors like the look of the homes and feel that the homes fit in with the neighborhood.** When asked how satisfied they are with the overall look of the case study home(s) on their street, 57% of respondents said they were satisfied or very satisfied, while only one individual was dissatisfied or very dissatisfied (see Figure 13). When asked whether they agreed or disagreed with the statement "Visually, the home fits in with the neighborhood," the majority (64%) agreed (see Figure 14).

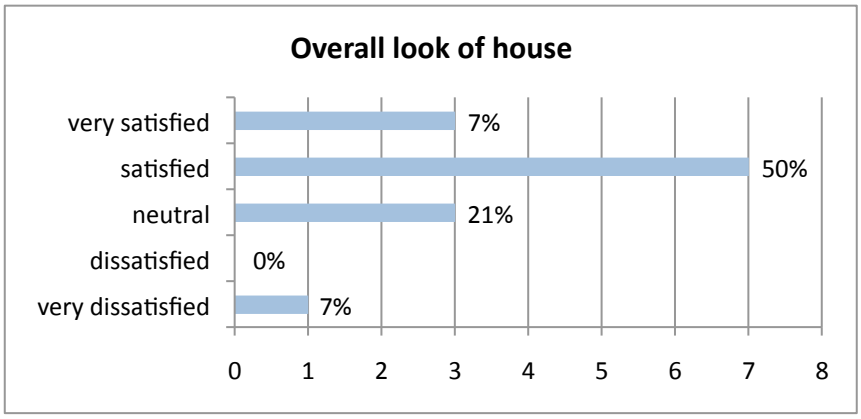



Figure 13

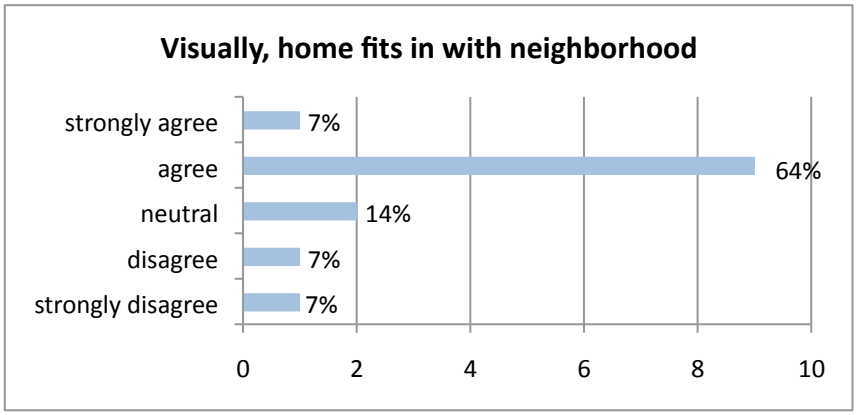



Figure 14

There is one notable exception. Residents of Sawyer Streets tended to feel that the #385 (as well as #389) fit with the street, but residents of Barstow Street, which is perpendicular to Sawyer and behind #385, feel differently. Two factors

are likely responsible for their negative feelings: Barstow is at a significantly lower elevation, making 385 appear more massive than it does from Saywer. Second, residents of Barstow face the *back* of 385; making for a less attractive view.

**Neighbors are less enthusiastic about home's proximity to neighbors.** While 50% of respondents are satisfied with the size of the house compared to the lot, only 38% were satisfied with the homes' proximity to neighbors (see Figure 15). Several respondents commented that while the houses don't take up an inordinate amount of the lot, it's always preferable to have more yard space.

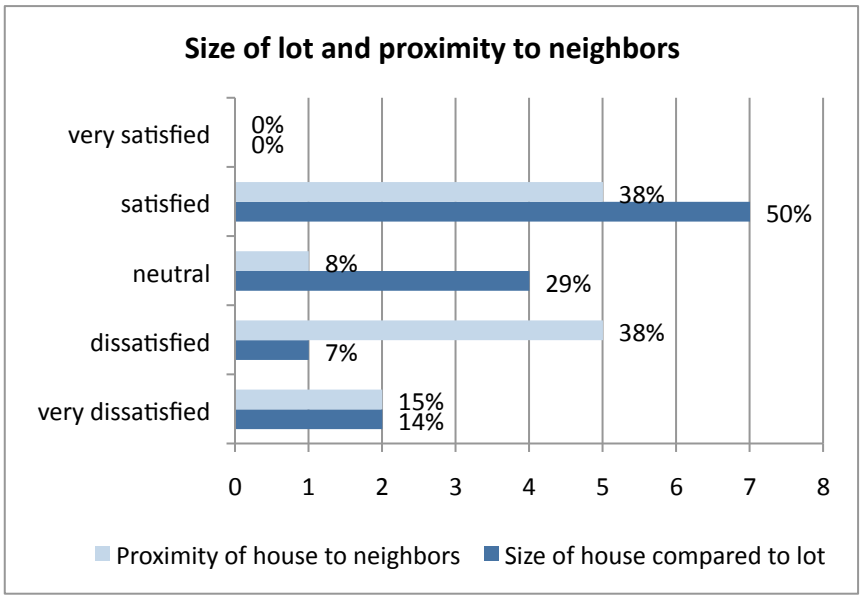



Figure 15

**Neighbors are divided about whether homes are an overall improvement.** When presented with the statement "Overall, the home is an improvement in the neighborhood," 43% of respondents disagreed, and 43% agreed or strongly agreed. 14% were neutral.

**Feelings have improved slightly.** Of those who were aware of the development when it was first proposed, the majority of respondents (8) were initially opposed; 2 were undecided and 1 was supportive. Of those initially opposed, 4 are more supportive, 3 feel about the same, and 1 is less supportive (see Figure 16, next page). Despite these numbers, almost all respondents made comments to the effect that things aren't as bad as they thought they would be, in terms of the look of the house itself, its size compared to the lot, and the experience of having new neighbors close by. See Appendix A for a full record of respondent comments.

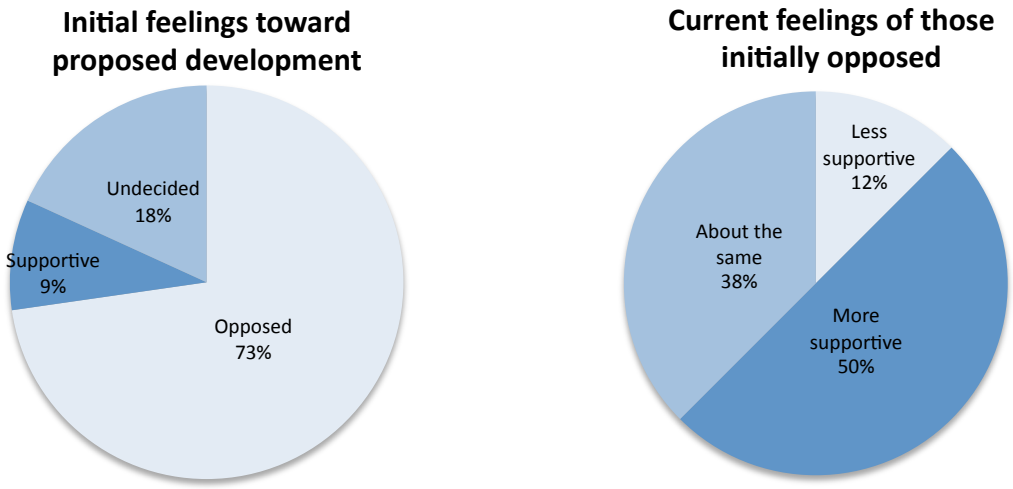



Figure 16. Initial and current feelings toward development

**Sentiment varies by neighborhood.** Overall level of satisfaction varied from neighborhood to neighborhood, with notable consistency within each one. To generalize:

- Cumberland Road: Residents of homes on the newer end of the street seemed very happy with the new houses and especially with the neighbors; they described a very close-knit community. As an example, one resident had recently gotten married and said that all the residents of that end of the street came to her wedding. On the older end of street, there did not seem to be much familiarity with or opinions about the new homes; one respondent said she didn't even know what they looked like.
- Bonnybriar Road: There was strong initial resistance by a coordinated group of neighbors, but on the whole residents seem quite accepting of the homes, responding that they look nice and are occupied by good people.
- Sawyer Street residents don't have strong opinions on the new homes but seem generally accepting. As described above, residents of Barstow and Beverly do not approve. Each of the three households surveyed on these streets also referenced dissatisfaction with other new homes built on relatively small lots in the neighborhood (not governed by the mini site plan review provision).
- McLean Street: This was another street with very strong initial opposition; while the two neighbors surveyed still feel that the house is too large for the lot, their comments indicated that they have generally come to accept the house. They both commented that the house is better than what would have gone in under the old system.
- Augusta Street: Despite multiple attempts, no residents could be contacted. This is a small street with few homes, and the subject property is at the end of the street bordered by woods.

### *Builders*

Attempts were made to interview 4 developers of the case study properties; two responded. Below are their responses to questions asked during phone interviews. Their level of satisfaction with the approval process differed considerably, with one respondent (who has developed multiple parcels over several years) quite pleased with the process and the other respondent (who very recently completed the process for the first time) generally quite dissatisfied. They both felt that the process would be improved by the elimination of unnecessary steps and costs, such as architectural peer review, and by receiving clearer cost estimates. They also agreed that buildable lots like these are very valuable in South Portland.

**On a scale of 1 to 5, with 1 being very dissatisfied and 5 being very satisfied, how satisfied were you with:**
**The overall approval process**

- 4 – satisfied

- 1 – very dissatisfied : It was a long and costly process. The water retention system we had to put in is ridiculous. Our stormwater tests showed that there would be less rainwater, but we still had to put in this absurd system. The way the rule is written you have to build a house that's like the others. Planning Board said they didn't like the design of the house, when there's one across the street that looks just like it. Everyone told us "These guys [South Portland] are ridiculous to work with because you have to jump through all these hoops. Bill is astronomical."

**The timeliness of the process**

- 5 – very satisfied : Our most recent one didn't take us any time. If you go through the process enough, you know how to do it to perfection. We did our homework and presented it and it was done. It does depend on the neighborhood; two have been very costly for us. I know the Planning Board is very sensitive to neighbors and their concerns. But if you do a good job with your application, it shouldn't take any time at all.
- 2 – dissatisfied

**The clarity of information you got from Planning Dept staff**

- 4 – satisfied : Steve was helpful. He admitted on the first one that it was a learning process for them. The second one was much better. It's improved tremendously from the first time. Steve was much more knowledgeable about what the Board was looking for. Maybe it was because the Board had reviewed a few and knew what they were looking for. Give high marks on that one.
- 1 – very dissatisfied : Steve Puleo was great – I love that guy. I kind of took a back seat; was given names of 2 companies that could do the engineering work. Engineering costs were very high; they said it's because the City made them change plans 7 times. Engineer is blaming South Portland and South Portland is blaming engineer.

**The degree to which the process went as you expected**

- 4 – satisfied : On this last one, the only surprise was that they didn't give us a hard time! Again that was location of the property and the expertise we brought. Went favorably.
- 1 – very dissatisfied

**The ultimate product**

- 5 – very satisfied : I like to build entry level housing and for South Portland to allow us to do that with these grandfathered lots, that's great. I can understand the rationale they used to put this into place -- some builders don't know what they're doing. I've been building for 40 years, am sensitive to the neighborhood and with working with the town. Pleased with result.
- Not completed yet but I'll have no problem with the house at all

**The attractiveness of the home to potential buyers**

- 5 – very satisfied : Price it around $200,000 you'll never have a problem finding a buyer – you have multiple buyers interested. Just the size of the lot makes it affordable. There are always buyers for homes in South Portland in this price range. Everybody who has bought one of these is so happy and pleased to get into a house. One woman told me "this is cheaper than rent for me."
- Not on the market yet but I won't have a problem with it. It will sell quickly – great location, nice attractive house. There aren't many buildable lots in South Portland. It's a supply and demand issue, especially on this street; there hasn't been new construction in year.

**Your ability to find a ready buyer for the home?**

- 5 – very satisfied : No trouble at all.
- See above

**Are you likely to bring another project through this process if the opportunity arises?**

- Very likely : Would do it again. Shawn Frank makes it easy – he knows the ropes, the process, what the Planning Board wants, how to present it.
- Unlikely : I would have to think really long and hard before doing it again. I know developers who own these lots who say "No way am I doing this; it's not worth it." Maybe if market goes crazy, they'd do it. Really the market dictates what you can charge, no matter what it costs, especially in a down-turn.

**Overall, do you feel that the project was worth the investment?**

- Yes!
- No. It took $20,000 and 9 months to get the thing approved. Ridiculous amount of site work for the size of the lot.

**In your opinion, how different would the selling price for these homes have been if you hadn't been required to go through this process?**

- The people you should ask are the ones selling the lots. Price of the land has been affected, not the price of the house. We would have paid more for these lots if we hadn't had to go through the review process; sellers know this.
- We were lucky that we owned the lot free and clear. You really can't price the house differently in this market.

**Have your feelings about the process changed since the beginning, and if so, how?**

- I felt negative about the process before, because of the hoops we had to jump through, but in the last one it was relatively simple so I'm encouraged to pursue this knowing we can get through it without a lot of difficulty.
- N/A (first time through the process)

**Do you have any suggestions for improving the process?**

- I don't like the architect to design it. I think Pat Doucette and Steve Poulier could look at the house and figure out whether it fits into the neighborhood. The ordinance says a peer review MAY be used, not MUST be used – but too much is farmed out. You're basically giving the architect a blank check to look at it – they could pad the bill to be $1,500. Leave it in the ordinance but allow in-house staff to review it. Houses are attractive, not sticking out like a sore thumb. Eliminate the peer review step and save the applicant $1,000.
- Planning Board needs to be reasonable – one member wanted a window on the 3rd floor which just wasn't possible.
- We need more accurate estimates. Part of our condition for approval was adding shutters. So I had to pay my draftsman to draft up new plans and I had to pay the City's architect (3rd party fees); I get a bill for $929 for architect review – three times higher than what they estimated. The problem is there are so many variables.
- It needs to cost less and go faster. We're talking about a single family house lot!

**General thoughts and comments**

- If you do it with some pride, any house in the neighborhood would fit in. We're pleased with the houses. Some neighbors don't want the homes but we're providing very valuable housing for people that normally couldn't afford to buy in South Portland. Program is good in allowing us to do it. Last one was easy because it was a dead-end street; easiness depends on the location of the property.
- It's just human nature – don't want somebody to move in, but then like them after they're in. On Bonnybriar, a pharmacist moved into one and a police officer into another; makes the older people in the neighborhood feel secure.
- Encouraged that we're doing this survey. There was some worry at the beginning about whether this would work. It's important to relieve the Planning Board, to let them know how excited people are to get into these homes. Let them know they've done something good!
- This property is 300 square feet shy of 5,000. Feels like a huge tax on 300 square feet.
- I just went through this process, so I'm still bitter. Talk to me a year from now, might be different. But I've been in the trenches.

### *City staff*

**General thoughts and comments**

- Planning Director: In general, ordinance is very good. Reduced guesswork and arbitrariness about which properties are allowed to be developed and which aren't. A major goal was respecting private property rights and it's doing that. Seems that neighborhoods are being strengthened by nice, new compatible homes and good neighbors. Providing relatively small, relatively affordable homes. Lower on the list of objectives, perhaps, but still important – infill development is preserving rural areas on the fringes, a positive regional impact. We are getting better at handling stormwater issues on these small parcels.

- Community Planner: Does meet intent and purpose; allows development on these sub-5,000 square foot lots.
- Code Enforcement Director: Ordinance is achieving its goal. Overall the process of going before the Planning Board is a good system. A potential downside is that the relatively high engineering costs could make these grandfathered lots not as valuable to potential developers. If the City wants to encourage infill, we might think about this.
- Water Resources: Infill, small lot development is compatible with the City's stormwater management goals, namely to treat as much stormwater as possible on site, through low-impact development techniques. Further, from a regional stormwater management perspective, increased density is a good thing. Compact development produces less stormwater than sprawling development. However there are constraints to making this work; namely, the soils present on the site must be suitable for on-site treatment (i.e. well-draining).

**Concerns / ways to improve process**

- Planning Director: More of a caution than a concern: both staff and Planning Board need to be sure we don't become complacent about the design of these structures. The whole concept depends on attractive buildings, so we need to continue to do a thorough review. Review process should continue to focus on good design.
- Community Planner: Recommended changes:
    - Require a two-stage approval process: (1) site walk or public workshop at which applicant presents proposal to Planning Board and citizens can raise issues that staff might not be away of, and then (2) after the applicant has had a chance to modify proposal, then it should be taken to Planning Board/ public hearing for approval
    - Set minimum performance guarantees as a requirement of approval
    - Require a report that stormwater facilities are working prior to issuing the Certificate of Occupancy
    - Require as a condition of approval that the record drawing be recorded in the County Registry of Deeds
    - Require stormwater to be attenuated to a certain amount and allow the rest to be picked up by the combined stormwater system. At the same time, require developer to pay into a combined sewer impact fee that would go into a sewer separation account
    - Reduce visual compatibility analysis area to a smaller area – perhaps 50 feet or 10 properties on either side. Current study area is costly and possibly not that effective as design can't match all properties.
    - Create a small-lot parking standard, reducing stall size from 9'x18' to 8'x16'
- Code Enforcement Director: Applicants/ developers need some reasonable leeway with design recommendations made by Planning Board. Perhaps provide a little more flexibility in meeting Planning Board's design specifications. For example, allow staff to approve changes without requiring applicant to go back before Planning Board.
- Water Resources: Suggestions include:
    - Make use of Water Resources staff to review stormwater portion of proposals
    - Promote the use of the City's stormwater manual (companion to City's stormwater performance standards) – encourage small-lot developers to consult this and implement its recommendations
    - A worthwhile GIS project would be to overlay soil conditions layer with map of developable parcels to identify infill sites with good potential for on-site stormwater treatment
    - Clarify for developers the requirements they will have to meet to get stormwater management plans approved (during informal meetings with City staff), so they know what to expect

### *Planning board members*

**General thoughts and comments**

- Interviewee #1: Was on Planning Board when the ordinance was passed and was very much in favor of it then (before that, you could put up any kind of house and some weren't fitting in to the scheme of the neighborhood). Overall, the ordinance has really worked well and is achieving its goal. The couple of houses I've seen seem to fit very well with the neighborhood. I heard from one gentleman (abutter) who was very much against it but now he has become friends with the people who live there.

- Interviewee #2: Overall, it is working. It's going slower than expected (just 12 properties so far), but that's likely because of economic factors. One of the goals of the ordinance was infill development, which we haven't done a lot of as a City. Twelve properties isn't a lot, but if every community in the region had an infill plan, it would make a big difference in limiting sprawl and reducing the number of miles people had to commute to work. South Portland's "de-merger clause" makes more property available without having to extend infrastructure. Design is important for any development but especially infill. People had been putting in McMansion style homes – a huge house on a small lot is never going to fit in.

**Concerns/ ways to improve the process**

- Interviewee #1
    - Just a personal opinion, but sometimes design review stifles creativity in home design. I think houses today should reflect the past but not necessarily mimic it. Theoretically, an architect could design that kind of house for one of these lots, but in most cases these homes aren't being designed by architects.
    - Would like to see storage sheds reflect the same style as the house
    - Development of these small lots is always controversial with the neighbors; a lot come out to meetings. I can understand what they're feeling (you get used to things the way they are), but it's the Planning Board's job to determine if the applicant has met the burden of proof.
    - As much as possible, we should make sure driveways aren't put in the front of the houses (sometimes happens when lot is really small)
- Interviewee #2: It's a small piece, but perhaps make the landscaping requirement a little more defined/ expansive. A really nice landscaping plan might help quell neighborhood complaint.

# Appendix A

## Survey Comments – Homeowners

Following are comments made in response to the open-ended question "Any thoughts/ feelings/ concerns about your property?" Street names have not been included in order to ensure respondent anonymity.

- I love the property. I moved here because I'm a single mom – I wanted a yard but one that was small enough so that I could maintain it as a working mom.
- Houses are close together on this street – mine is, but so are all the others. That's the look.
- I know the neighbors were mad about the development but they love us [interviewee named residents of each surrounding house, saying that they all like them]. It helps that we maintain the property and aren't trashy or loud.
- It's a great neighborhood. We love it!

## Survey Comments – Neighbors

Comments have been edited to ensure respondent anonymity.

**McLean Street**

- Didn't like the idea at first – fought the proposal
    - No one likes a change – you just get used to the way things are
- Not strongly opposed to it now
    - They're good neighbors but I think a house should have a *yard*
    - The house really fits in appearance-wise
    - Ordinance definitely improved things over the old way, which was horrible: houses were going in sideways, with the whole front yard a driveway, houses way too big
    - Can live with it now

**McLean Street**

- Very involved and opposed initially – went to Planning Board meetings
- Aesthetically a nice house
- But the yard is too small – houses are pancaked together
- Biggest concern is that it took away open space for the kids

**Bonnybriar Road**

Like the look of the homes – seem to be nice homes

**Bonnybriar**

- Initially *very* opposed to the proposals, mainly because:
    - Worried about the construction process and the safety of small kids in the street with lots of construction vehicles going back and forth
    - It was hard to visualize what the houses would look like on such seemingly small lots
- But now:
    - Once I saw the houses, it was okay
    - Houses look fine
    - Look like they should be there -- they fit
    - The homes appear to have just as much land as the others
    - Like the people

**Bonnybriar**

- Very opposed initially – organized the neighborhood in opposition
    - Feel that it's unfair – we're the only part of the city to which this applies; makes it seem like the City is saying they care less about us than other areas
    - Houses are too close, lots too small
- But really I haven't minded it
    - Very nice people – no problem with the people
    - Close-knit neighborhood
    - These are better than another new house on the street which is way too big for its lot

**Bonnybriar Road**

- Bought our house knowing that lots were going to be developed – we were a little hesitant at first, not knowing what it was going to look like
    - Proposals were controversial with other neighbors
- Really happy with both houses
    - They improve the look of the street
    - The houses *definitely* fit in and actually look nicer than some of the houses

**Bonnybriar Road**

- Initially opposed to the proposal, but only because we didn't realize the ordinance had changed – thought the developer was getting in good with the City
- All the neighbors went to the Planning Board meeting to oppose it, but we learned that the ordinance had changed
- Happy with the homes
- Glad people can sell the lot instead of dead property sitting around

**Cumberland Road**

- Initially opposed-to-undecided, because the proposed houses looked like they'd be much bigger compared to the lot than they actually ended up being
- But now we're ecstatic
    - Really like the neighbors – we're all good friends, like family
    - We like to say we've used up our neighbor karma and can never move, or will have to move someplace far from other people

**Cumberland Road**

- Initially opposed
    - People who live in those homes think they're too close and the lots too small, but they love the neighborhood so it's okay
    - My lot is bigger than those and I still feel like I could use more room – so I can imagine how they feel
- But now that the neighborhood is finished, it's nice
    - Love the neighbors
    - Great community/ neighborhood

**Sawyer Street**

- Bought my house after the others were built
- Know some neighbors were really upset but I think they're fine

**Sawyer Street**

- Bought our house after the new ones were already developed, so no strong opinions on how they changed the neighborhood
- Generally think they're nice homes
- City could benefit from more architectural peer review like that

**Barstow Street**

- Bought our house when the projects had already been approved but ground not yet broken
- Were really disappointed to see the open lot (with a nice big tree) turned into a house
- Houses look like they're on top of each other
- But they're good neighbors

**Barstow Street**

- Looks like houses are crammed in with small yards – wouldn't like it if I lived there but okay from my perspective

**Beverly Street**

- Very opposed to the proposal from start to finish
- Feel that the developer (and real estate/ construction industry in general) have undue influence in board and council
- Feel that the look, feel and size of the houses do not match the neighborhood – the issue isn't the absolute size of the houses; it's the land to house ratio
- The only positive thing about the developments was that it caused some stormwater improvements to be made on Beverly Street, fixing some water flow problems including basement leaks

# Appendix B

## Survey Instrument – Homeowners

**On a scale of 1-5** *[SHOW SCALE CARD #1]*, **please indicate how satisfied you are with**

**The size of your property**
1 2 3 4 5 Don't know No answer

**The proximity of your house to your neighbors**
1 2 3 4 5 Don't know No answer

**On a scale of 1 to 5** *[SHOW SCALE CARD #2]*, **please indicate the extent to which you agree or disagree with the following statements**

**Visually, my house fits in with the neighborhood**
1 2 3 4 5 Don't know No answer

**I feel that my neighbors approve of my home**
1 2 3 4 5 Don't know No answer

**My home looks about the same as other homes on the street**
1 2 3 4 5 Don't know No answer

**Compared to other properties on the street, does your property feel**
smaller larger about the same

**Compared to other homes on the street, does your home feel**
smaller larger about the same

**Now, I have a couple demographic and economic questions.**

**Gender: M F**

**In what year were you born? _____**

**What is your occupation? _____**

**Including yourself, how many people live in your household? _____**

**Please estimate your household's annual income, before taxes: _____**

**Finally, any other thoughts / feelings / concerns about your property?**

## Survey Instrument – Neighbors

**On a scale of 1 to 5** *[SHOW SCALE CARD #1]*, **how satisfied or dissatisfied are you with**

**The overall look of the home**
1 2 3 4 5 Don't know No answer

**The size of the house compared to the lot**
1 2 3 4 5 Don't know No answer

**The proximity of the house to neighboring houses**
1 2 3 4 5 Don't know No answer

**On a scale of 1 to 5** *[SHOW SCALE CARD #2]*, **please indicate the extent to which you agree or disagree with the following statements**

**Visually, the home fits in with other homes in the neighborhood**
1 2 3 4 5 Don't know No answer

**The home appears to be about the right size for the lot**
1 2 3 4 5 Don't know No answer

**Overall, the home is an improvement in the neighborhood**
1 2 3 4 5 Don't know No answer

**Were you aware of the development when it was originally proposed?**
Y N DK

**IF YES:**
**When the project was first proposed, were you generally**
supportive of it opposed to it undecided Don't know No answer

**Compared to your feelings then, do you now feel**
more supportive less supportive about the same Don't know No answer

**How/ why have your feelings changed?** *[RECORD ON BACK]*

**Demographic and economic questions** *[REITERATE THAT THESE ARE OPTIONAL]*
*[OBSERVE]* **Gender: M F**
**In what year were you born? _____**
**What is your occupation? _____**
**Including yourself, how many people live in your household? _____**
**Please indicate the range that best describes your household's annual income, before taxes:**
- ❑ less than 15,000
- ❑ 15,000 – 29,999
- ❑ 30,000 – 44,999
- ❑ 45,000 – 59,999
- ❑ 60,000 or above
- ❑ don't know

**Finally, do you have any other thoughts/ feelings about the property?** *[RECORD ON BACK]*

## SCALE #1

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| very dissatisfied | dissatisfied | neutral | satisfied | very satisfied |

## SCALE #2

| 1 | 2 | 3 | 4 | 5 |
|---|---|---|---|---|
| strongly disagree | disagree | neutral | agree | strongly agree |