

Regulatory Recommendations:

Policy and Regulatory Changes to Address Barriers and Encourage Housing Development

May 6, 2024



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This project is supported in part by a Housing Opportunity Program (HOP) Grant from New Hampshire Housing and the New Hampshire Department of Business & Economic Affairs, Office of Planning and Development.

Recommendations to Address Barriers Identified in the Regulatory Audit

Unit Density Limitations

Recommendation 1.1: *Allow single-family attached dwellings as a by-right use in the Residential Two-family, Residential General, and Downtown Zoning Districts.*

- This recommendation addresses **Barrier 1.1 Inconsistent Allowance of Two-Family and Attached Single-Family Dwellings.**
- Expanding where single-family attached dwellings are allowed by-right will help to increase the housing variety and choice in Berlin.
- The RT, RG and DT Districts already allow similar housing types of equal or greater density that are similar in appearance to single-family attached dwellings. Allowing single-family attached dwellings will eliminate confusion without altering the existing density of these areas.

Recommendation 1.2: *Reduce the minimum lot size in the Residential General Zoning District to 5,000 square feet for up to three units.*

- This recommendation addresses **Barrier 1.2 Minimum Lot Size in the Residential General Zoning District Does Not Align with the Existing Conditions in the District.**
- Reducing the minimum lot size to 5,000 square feet will bring a significant number of residential structures into conformity with the Zoning Ordinance. This will eliminate the barrier of seeking variances and waivers in order to rehabilitate existing buildings or build new housing on existing lots. This change will make the process of rehabilitating existing buildings or building new housing considerably easier in one of the densest areas of the City.
- Reducing the minimum will also bring the RG District into alignment with the existing conditions in the District, and with the RS and RT Districts, which currently allow housing on 5,000 square foot lots.

Limits and Restrictions on Accessory Dwelling Units

Recommendation 2.1: *Allow detached accessory dwelling units (ADUs) by-right in all zoning districts where attached ADUs are already allowed.*

- This recommendation addresses **Barrier 2.1 Exclusion of Detached Accessory Dwelling Units.**
- The maximum allowed area, and setbacks for a detached ADU should be set to match those allowed for an attached ADU. Detached ADUs should not be allowed in front of the primary dwelling on a lot.
- Detached ADUs allow homeowners more options in the creation of an ADU and will appeal to some homeowners who would not create an attached ADU. This will result in more homeowners creating ADUs, and a greater diversity of ADUs to serve different housing needs.



Recommendation 2.2: Remove the Limit of 1,200 square feet for all accessory buildings on a lot in the Residential Single-family, Residential Two-family, and Residential General Zoning Districts.

- This recommendation addresses **Barrier 2.2 Limit of 1,200 square feet for accessory buildings in the RS, RT, and RG Zoning Districts.**
- Berlin already regulates the amount of development allowed on a lot through maximum impervious coverage, which includes all structures on a property. This prevents over development of lots without limiting individual types of uses, allowing property owners more flexibility in their decisions.
- Removing this requirement would eliminate confusion about its applicability to attached ADUs, which are not a separate structure. Additionally, should the City adopt Recommendation 2.1, this restriction would severely limit the usefulness and desirability of Detached ADUs. Homeowners would be forced to choose between an ADU and any other accessory structures (garages, sheds, etc.) to remain in compliance with the Ordinance.

Recommendation 2.3: Remove the requirement that all accessory buildings of over 800 square feet require a special exception.

- This recommendation addresses **Barrier 2.3 All accessory buildings of over 800 square feet require a special exception.**
- Removing this requirement would eliminate confusion about its applicability to attached ADUs. In addition, this requirement would make the creation of detached ADUs significantly more burdensome, should the City adopt Recommendation 2.1. As the maximum allowed area for an ADU in Berlin is 1,000 square feet, a homeowner would have to seek a special exception for an ADU that is up to 200 feet smaller than what would be allowed by-right. Forcing homeowners to seek a Special Exception would discourage many from building ADUs to avoid the cost in time and money, and the public nature of the process.

Restrictions on Development in the Jericho Gateway District

Recommendation 3.1: Allow two-family dwellings as a by-right use in the Jericho Gateway District.

- This recommendation addresses **Barrier 3.1 Exclusion of Two-Family Dwellings.**
- The bulk requirements for two-family dwellings in this Zoning District should match those for single-family detached dwellings.
- Allowing two-family dwellings in the JG District will allow more housing choice and variety in the District. This change will also eliminate any confusion between the allowance of single-family attached dwellings and two-family dwellings.



Recommendation 3.2: Amend the minimum lot size in the Jericho Gateway Zoning District to match the soil and slope based minimums established in Chapter Env-Wq 1000 of the New Hampshire Code of Administrative Rules, Section Env-Wq 1005.03, Table 1005-1.

- This recommendation addresses **Barrier 3.2 Deep Setbacks.**
- A soil and slope-based lot size will ensure that the septic needs of units in the JG Zoning District are met. However, this will allow for smaller lot sizes to encourage proximity of uses, in alignment with the Statement of Purpose for this District.
- Reducing the minimum lot sizes in this district will limit the amount of land that must be purchased with each unit. Reducing minimum lot sizes also reduces infrastructure costs, such as road construction and utility placement. This reduces development costs, which can lead to lower sales and rental costs, as well as lower the long-term maintenance costs born by the City.

Recommendation 3.3: Reduce the front and side setbacks in the Jericho Gateway District to 25 feet in the front and 20 feet on the side and rear for residential uses.

- This recommendation addresses **Barrier 3.2 Deep Setbacks.**
- Reducing minimum setbacks will encourage the proximity of uses identified by the Statement of Purpose for the District. This change will allow development on a setting that feels more residential and less spread apart.
- This recommendation will also support Recommendation 3.2 by aligning the setbacks to better match smaller minimum lot sizes.

Administrative Processes

Recommendation 4.1: Amend the Zoning Ordinance to replace all references to “single-family attached,” “townhouses and condominiums,” and all other variations of single-family attached dwellings with “single-family attached dwelling” in the Permitted Uses Sections of the Zoning Ordinance.

- This recommendation addresses **Barrier 4.1 Inconsistent Use of Townhouse and Single-family Attached Dwelling.**
- The Zoning Ordinance creates confusion by referring to overlapping but separate forms and types of housing in different sections, without providing definitions for each. This creates confusion for developers, homeowners, and the Planning Board on what housing types are allowed where. Aligning the terminology, and using a single term defined in the Ordinance will improve clarity and usability for all parties.
- Single-family attached dwelling is already defined in the ordinance, and explicitly includes townhouses. This term is also less proscriptive than “townhouse” or “condominium.” These terms have implications regarding the ownership style and building design, which should not be handled within the allowed uses section of the Ordinance.

Recommendation 4.2: Change the Planned Development Option to a by-right use in the Rural Residential Two-family and Single-family Residential Zoning Districts.

- This recommendation addresses **Barrier 4.2 Planned Development as a Special Use.**
- Removing the special use permit requirement will reduce the regulatory hurdles and costs of completing four separate approval processes. Streamlining and easing these processes can attract builders who are not willing to participate under the current conditions, increasing the option’s



use and the number of units created. Removing the special use permit will not impede the board's ability to review the proposal. As any Planned Development Option is still subject to site plan and/or subdivision review, and comprehensive plan review, the Planning Board will maintain oversight and review of new developments.

Recommendation 4.3: Allow residential projects to count public parking spots and privately leased off-site parking spots within 600 feet of the site, as is already allowed for non-residential uses.

- This recommendation addresses **Barrier 4.3 Residential Uses Excluded from Counting Privately Leased Off-Site Parking Spaces Towards Parking Requirements.**
- Allowing residential uses to take advantage of the same parking options offered to other uses will encourage residential development. This change will direct development to areas with available parking like the downtown and increase the use of underutilized public and private parking. By removing the need to build on-site parking, the land that would otherwise be occupied by parking can instead be used for open space or additional residential units.

Recommendation 4.4: Create site design standards for multi-family and mixed-use development in the Site Plan Review Regulations.

- This recommendation addresses **Barrier 4.4 Lack of Site Plan Guidance in the Site Plan Review Regulations.**
- The creation of additional guidance will help developers understand what types of development will be approved in Berlin and help the Planning Board be consistent in their rulings. Additional guidance will reduce confusion and uncertainty for developers and reduce the amount of time spent in the review process. This will result in faster administrative processes, and more successful applications before the Board.



Under-Utilization of Tools Allowed Under New Hampshire State Law

Recommendation 5.1: Consider adoption of Transfer of Density and Development Rights in the Innovative Land Use Controls

This recommendation addresses **Barrier 4.4 Use of RSA 674:21 Innovative Land Use Controls**.

- Transfer of Density and Development Rights (TDR) would benefit Berlin by encouraging infill development, reducing sprawl, and encouraging the preservation of existing open space. Under TDR systems, the owners of an undeveloped parcel may sell the right to develop their property to a second (buyer) party, permanently preserving the original property. The Seller may then use these newly acquired rights to build above the maximum density or scale normally allowed on another parcel they own.
 - For Berlin, this should take the form of designating a “Selling Zone,” a collection of parcels where the rights to development may be sold, and a “Receiving Zone,” where the rights may be transferred to. For Berlin, the Selling Zone should be in the western and northern sections of the RR Zone, and the receiving zone should include the DT, RG, RT, and BG Zones. This will preserve the rural nature of the outlying portions of Berlin, while directing development to already developed areas.

Recommendation 5.2: Consider adoption of inclusionary zoning from the Innovative Land Use Controls.

- This recommendation addresses **Barrier 4.4 Use of RSA 674:21 Innovative Land Use Controls**.
- Inclusionary Zoning (IZ) would encourage the development of affordable and workforce housing in Berlin. IZ allows for the creation of a Zoning Overlay where developers have the option of setting aside units in a project for workforce or affordable housing in exchange for an incentive. The incentive typically takes the form of additional building height or more units allowed on a single parcel.
 - In Berlin this should be located at or near the downtown, and could take the form of allowing additional units, or building above the height limits of the underlying district.

Recommendation 5.3: Expand the current 79-E District.

- This recommendation addresses **Barrier 5.2 Use of RSA 79-E Tax Relief**.
- Expanding the current 79-E Zone will allow more eligible properties to take advantage of this program, increasing its use for the rehabilitation of existing structures in town. Additionally, expanding the Zone into more areas with mixed and residential uses will increase the likelihood that a project with residential units will be able to use this program.

Recommendation 5.4: Consider the implementation of a 79-E4.b Residential Property Revitalization Zone in parts of the DT, RT and RS Districts.

- This recommendation addresses **Barrier 5.2 Use of RSA 79-E Tax Relief**.
- RSA 79-E:4-b of the RSA allows for municipalities to create a tax relief zone wherein owners of residential buildings which are at least 40 years old and contain four or fewer units may receive a pause on the tax increase caused by rehabilitating their property. In Berlin, this could help to make repairing and rehabilitating small-scale multifamily properties located in and near the downtown more economically feasible. Given the high cost of construction in Berlin, this relief



could help to spur the redevelopment of unoccupied structures and units, bringing currently uninhabitable units back on to the market.

Recommendation 5.5: Consider the implementation of a 79-E4.c Housing Opportunity Zone in the RS, JG and BG Districts.

- This recommendation addresses **Barrier 5.2 Use of RSA-79-E Tax Relief.**
- RSA 79-E:4-c allows municipalities to create a tax relief zone for the creation of new housing units, in exchange for setting aside some units for households earning 80% of the median income or below. In Berlin this could benefit areas where the City would like to see new housing development, rather than the infill and rehabilitation of existing units.
- This tool will help Berlin create more Work Force Housing units to meet the needs of Berlin's low and moderate income communities.

Recommendation 5.6: Work toward implementing the Berlin Master Plan's housing-related recommendations.

- This recommendation addresses **Barrier 5.3 Progress Toward Berlin's Master Plan actions related to housing.**
- Berlin has identified several strategies related to housing in the City's 2022 Master Plan. The Master Plan's goals of creating a Housing Trust in Berlin; working to allow small units, co-housing and other alternative housing options in Berlin; investigating the creation of a 79-E:4-c Housing Opportunity Zone; and the development of a form-based code in the Downtown Zoning District all would help in the creation of housing in the City. The City should continue to work towards implementing these goals.



Recommendations to Encourage Housing Rehabilitation and Development

Encourage residential uses and limit excessive parking in Downtown Berlin

Recommendation 6.1: *Consider reducing the parking requirement in the Downtown Zoning District to only require parking for developments of four or more units.*

- As the downtown is already built out, on-site parking requirements can prove burdensome and unnecessary due to the walkability of Berlin's downtown and existing public and private parking. Eliminating the parking requirement for small multi-family dwellings will help encourage housing in downtown, and the limited number of parking spots needed can be met by existing parking. This will also reduce costs as builders will not need to buy land in downtown to use for parking or construct costly structured parking which will be passed onto the households occupying the units through higher sale or rent costs.

Recommendation 6.2: *Require a Special Exception for commercial uses that seek to build over 125% of the minimum parking requirement in the Downtown and Business General Zoning Districts.*

- As the downtown is intended to be dense and walkable, the construction of excessive on-site parking for commercial uses should be discouraged, as that land could be used for other purposes. Requiring a special exception will ensure that those projects which do require additional parking may do so, while discouraging over production. This will protect the walkable and dense nature of the Downtown, while still allowing flexibility where necessary.

Aligning bulk requirements with the city's built environment and to encourage infill development

Recommendation 7.1: *Reduce the minimum setback in the Residential General, Residential Single-family and Residential Two-family Zoning Districts.*

- The Zoning Ordinance in Berlin already allows the reduction of side setbacks in the RS, RT, and RG Districts to six feet by Special Exception. As many existing structures are already within six feet of lot lines, and the City sees a significant number of special exceptions for this relief, altering the by-right minimum will reduce the burden on owners, ease the responsibilities of the Planning Board, align the Zoning Ordinance with the existing conditions of Berlin, and bring more lots into conformity.

Recommendation 7.2: *Amend the minimum area for the Residential General and Business General to a single minimum, and instead utilize a maximum number of units per acre to regulate density.*

- Under Berlin's Zoning Ordinance, one acre of land in the RG or BG District may support up to twenty-six units. However, as the minimum lot size of 10,000 square feet can only support one unit, and an additional 1,500 square feet is required for each additional unit, a multi-family dwelling of three units must be on a 13,000 square foot lot.



- As much of these Districts are already built out into small lots, many of which are below 11,500 square feet (the minimum to build two units under the current zoning), much of this District could only support single-family dwellings or duplexes by-right without acquiring additional lots. Converting to a units per acre formula would allow these lots to develop up to 3 units without a variance.
- Conversion to a units per acre formula in these districts would also ease the use of Inclusionary Zoning or Transfer of Development Rights, which can most easily be sold as an additional number of units per acre.

Recommendation 7.3: Consider the creation of an overlay district along Route 16 and Cates Hill Road which would allow developers to use soil and slope based minimum lot sizes for the construction of single family and two-family dwellings.

- These areas, which offer easy access to the downtown, significant employers such as the Hospitals, Prisons and the Community College, and are located along major routes into and out of Berlin can only support low density, single family housing. Allowing this overlay would give additional options for builders and would incentivize housing development along existing roads with access to services and employment opportunities.

Recommendation 7.4: Allow buildings of up to three stories in the Residential General Zoning District.

- Much of the existing housing stock in the RG District is over the 35 foot (approximately 2.5 story) height allowed under the Zoning Ordinance, making these structures nonconforming. This makes the rehabilitation of existing structures, and the creation of new housing more difficult, as a variance must be sought or waived. Allowing a third story by right will ease the burden for property owners, bring more lots into conformity, and bring the Zoning Ordinance in line with the existing conditions of Berlin.

Zoning to Encourage Alternative Housing

Recommendation 8.1: Consider allowing employer housing as a by right use in some or all Zoning Districts, or the creation of an employer housing overlay district.

- Creating employer-built housing would involve the designation of an area where it would be specifically allowed, as well as the creation of a definition for the use, and potentially the creation of guidance in the Zoning Ordinance or Site Plan Review Regulations.
- While there is no regulation against the creation of employer-sponsored housing under Berlin's current Zoning Ordinance, the explicit allowance can help employers understand that this is an option, and the development of regulations for this housing type can help to spur development by creating more specific and direct guidance. This can help the City better encourage this use, and work with employers seeking to build housing for their workers.



Recommendation 8.2: Provide definitions for homeless shelters, single-occupancy housing and transitional housing and make these by-right uses in the Downtown, Residential General, and Business General Zoning Districts.

- The creation of definitions and specifically stating these uses are allowed in certain areas of Berlin can help the city better facilitate these types of housing, which could help address and meet the needs of Berlin’s homeless population.

Recommendation 8.3: Consider the creation of an ordinance within the Site Plan Review or Zoning Ordinance which would allow the creation of cottage-style developments or subdivisions.

- The creation of a cottage-style option could help address a need that has seen some interest in the City. The creation of guidelines for what this housing could be in Berlin can not only help the City administration work with developers looking to construct cottage-style developments, but the creation of an Ordinance specifically addressing this topic could help direct those interested in building this development type to Berlin, in order to take advantage of its regulations and guidance allowing for a more streamlined and clear process to get the approvals needed for this non-conventional housing type.

Raising Public Awareness and Knowledge

Recommendation 9.1: Creation of education sheets for ADUs, manufactured homes and other alternative home types allowed in Berlin.

- Interviews and discussions with community members and City staff revealed that many in the public do not understand the requirements, or even the options available for the production of alternative housing types. The creation of guides for ADUs and Manufactured Housing in particular can help raise the number and quality of applications, by helping homeowners understand their rights, and the requirements to build an ADU or manufactured housing.

