

**Town of Cape Elizabeth  
Ordinance Committee Minutes**

January 26, 2023

7:00 p.m.

Town Hall

Members Present: Penny Jordan, Chair  
Caitlin Jordan  
Gretchen Noonan

Staff: Maureen O'Meara, Town Planner

Councilor Penny Jordan called the meeting to order at 7:00 p.m. She announced that due to earlier items on the agenda, the committee will not be taking up item 4, Home Business amendments, tonight.

Minutes

Councilor Noonan moved to approve the November 28, 2022 meeting minutes, seconded by Councilor Caitlin Jordan and the motion passed 3-0.

Public comment

Cynthia Dill, 1227 Shore Rd – The draft amendments go overboard and do not just comply with LD 2003. They allow apartment buildings in residential zones. Across from her house, where she lives in the Town Center District, is a good place for an apartment building. What do we want affordable housing to look like? Put affordable housing at Gull Crest so it looks like Colonial Village.

Chair Penny Jordan asked if Ms. Dill considers Colonial Village multiplex? Ms. Dill explained her opinion that multifamily is in a building while multiplex is attached with separate front doors. Ms. Dill wants 2-dwelling unit buildings to be allowed with just a permit and this draft does not do that.

Ms. O'Meara said allowing 1-2 unit in the RA and 1-4 units in the growth areas is already in the draft and no site plan review is required or intended. Because LD 2003 requires that these be treated like single family homes, which do not require site plan review, the draft also does not require site plan review.

Councilor Noonan asked where the 1-2 unit attached with a door is required in the ordinance? Ms. Dill said that attached means each unit has a separate front door and we need front doors for democracy and trick or treating.

The committee reviewed the existing multiplex requirements, Sec. 19-7-2 (E) regarding Entrance and windows. Councilor Caitlin Jordan noted that the current ordinance does not

require individual front doors. Councilor Noonan noted that the illustration included in the ordinance requirement shows one front door for a multiplex dwelling.

Greg Jordan, 359 Ocean House Rd – He compared the draft amendments with the law and the amendments generally mirror the law. He noted that the law allows a municipality to prohibit a single family home to be torn down and replaced with the multifamily and supports adding this prohibition to the draft. He is concerned that the ADU amendments would allow an ADU (Accessory Dwelling Unit) addition that would be larger than the existing home. He does not support prohibiting ADUs from being used as STRs (Short Term Rentals). He does not want to delete the existing ADU rules.

Chair Jordan explained that the town's current ADU rules do not allow an ADU to be used as a STR and this is in line with the town's policy to protect housing and increase affordability. LD 2003 allows the town to choose and we choose to not allow ADUs to be used at STRs.

Mr. Jordan said that LD 2003 is an unfunded mandate. There are constitutional issues and the amendments place a burden on local planning and code enforcement. Instead of voluntarily meeting the deadline, the town should wait for other municipalities to adopt amendments.

Polly Wilcox, 17 Cape Woods Drive – She is confused and is a social worker by training. The definitions should be clear, not complicated and she would like to not have community conflict. Now we have multiple front doors and there is one front door. She has lived outside of Maine.

Chair Jordan agreed that the definitions should be clear and that is the intent of the committee.

Councilor Tim Reiniger, 40 Belfield Rd – He provided an MMA (Maine Municipal Association) update. MMA is pushing for a 2-year extension on LD 2003 deadlines as many towns do not have a planner. From the MMA legal review, some terms are not defined, such as multifamily dwelling and we need to do right by the process. Residents are doing research on the town's ordinance in 1968, the multiplex definition in 1982, and 2003. The draft amendments are "carefully stitched together."

Tim Dew, 56 Stonegate Rd – Why is the density in LD 2003 the same as what was proposed for Dunham Court? Was this targeted at Cape Elizabeth?

Ms. O'Meara referenced statements made by Eric Jorgensen, Maine State Housing Government Affairs Director, that most of the affordable housing projects across the state are in the 40 unit/building range. This is driven by the subsidies used to make the projects affordable, which have caps on the amount that can be funded per unit. The origin of LD 2003 is to implement the recommendations of the Commission to Increase Housing Opportunities in Maine by Studying Zoning and Land Use Restrictions. MMA was a member of the commission, along with many others, and about 30% of the commission recommendations are included in LD 2003.

## Committee review

The committee began review of the text of the amendments.

Chair Jordan noted that emails from the public had been received and the definitions are a concern. The angst is that the definitions dramatically change the essence and fabric of Cape neighborhoods. Most of the issues raised cannot happen. Existing height and setback requirements still apply. If we retain 2 definitions, the law applies to both definitions. We are changing to one definition to avoid confusion. The real problem is how will our neighborhoods change? Our draft adheres to standards and Cape Elizabeth character.

Councilor Noonan agreed. We have confusion with the current definitions, and now we really need to clean up the language. Councilor Caitlin Jordan agreed.

The committee discussed potentially changing the proposed “multifamily development” defined term to “multi-unit” so that folks don’t read more into “attached.” The committee noted that multifamily is a generic term and some have separate entrances. The committee shared how they had searched online for more information on definitions and that multifamily is an umbrella term for different types and configurations. The committee kept the same term and expanded the proposed definition of multifamily development to include an illustrative list that includes but is not limited to 2-family, triplex, quadriplex, multiplex, townhouses and others referenced in the Camoin study.

The committee decided to host an informational public forum to share information about LD 2003, the proposed draft amendments and examples of what type of construction would be allowed.

Councilor Noonan responded to questions about why the town was working on amendments now? The state law requires it, but we have also heard from residents that want these changes for their family. She wants to address the tear down provision.

The committee agreed to hold a public forum on Thursday, February 9<sup>th</sup>, beginning at 6:00 p.m. The forum will start with a 20-30 minute informational presentation that includes graphics, and reserving the bulk of the forum for questions from the public.

The committee then reviewed the draft findings. Ms. O’Meara provided background that findings are always used by the Planning Board and Zoning Board, and sometimes used by the Town Council, such as when the STR regulations were adopted.

Chair Jordan wants each finding to have a heading. The draft findings will be available as a hand-out at the forum. The committee confirmed that the amendments would not be moved forward to the February 6<sup>th</sup> Town Council workshop. Forum materials will be sent to the committee chair for approval prior to the forum.

The committee reviewed the January 25, 2023 supplemental information memo. The committee discussed establishing a maximum size for ADUs, which LD 2003 allows, in addition to the definition that requires the ADU to be smaller than the principal dwelling. The committee noted that 2 people may occupy an ADU. Chair Jordan noted that she had lived in a 750 sq. ft. house, and it was nice, but 1,000 sq. ft. would have been nice. Councilor Caitlin Jordan proposed that the maximum ADU size be 1,000 sq. ft and, after discussion, the committee agreed. They also agreed that an *existing* accessory structure could be exempt from the maximum size requirement.

The committee discussed how much added land should be required for additional multifamily units, which is allowed by LD 2003. They reviewed a chart with three scenarios and chose the scenario that is closest to the current zoning requirements. The committee would like the Housing Diversity Study Committee to look at densities, acknowledging that there is not much land available to support the proposed density requirements. Based on the committee decision, staff will add to the draft the density requirements for all zones.

#### Public comment

Greg Jordan – He asked about the density of units and Ms. O’Meara said the current densities would be carried into the amendments. He asked if the planner had concerns about the preemption of local authority by the state?

Ms. O’Meara said that the LD 2003 provisions are not that complicated, especially compared to Shoreland Zoning. Shoreland Zoning is much more complicated and is a significant state mandatory requirement imposed on municipalities. State shoreland zoning requirements are adopted to protect water quality and natural resources, which is a valid public policy purpose, not something that can be effectively managed independently town by town, and needed state leadership. LD 2003 is a state requirement intended to increase affordable housing opportunities, which is also a valid public purpose and not something that Cape can do on its own. All towns have to do their part.

Tim Dew – He asked if we can require parking for ADUs? Ms. O’Meara said LD 2003 explicitly does not allow a requirement for additional parking for an ADU.

Mr. Dew said that larger ADUs will require parking. We should find out how many couples own 1 car. Committee members gave examples of couples with one car. Councilor Noonan observed that couples that live in an ADU are more likely to own only 1 car.

Tim Reiniger – He noted that the state rules have not been sent to the AGs (Attorney General) office yet for review won’t be available for a few months. Ms. O’Meara updated that the rules have been sent to the AGs office, based on information from someone who was part of the internal review.

### Adjourn

The committee agreed to schedule a meeting in March, to be determined after the public forum. With a motion from Councilor Caitlin Jordan, seconded by Councilor Noonan, and a vote of 3-0, the meeting adjourned at 9:55 p.m.