

**Town of Cape Elizabeth
Ordinance Committee Minutes**

March 9, 2023

7:00 p.m.

Town Hall

Members Present: Penny Jordan, Chair
Caitlin Jordan
Gretchen Noonan

Staff: Maureen O'Meara, Town Planner
Mary Costigan, Town Attorney

Councilor Penny Jordan called the meeting to order at 7:00 p.m.

Minutes

Councilor Caitlin Jordan made a motion to accept the January 26, 2023 meeting minutes, seconded by Councilor Noonan and the motion passed 3-0.

Public Comment

Tim Reiniger, 40 Belfield Rd – He provided an update on MMA's position on LD 2003, including a bill to provide a time extension to come into compliance and constitutionality issues.

Review of LD 2003 draft amendments

Chair Penny Jordan explained her Town Councilor perspective. She took an oath to adhere to state law and that is the reason the committee is moving forward with LD 2003 Amendments. She has been apprised of legislation in Augusta and if LD 2003 changes, the town will assess its actions. This is not a personal agenda. She asked the town attorney for comments.

Mary Costigan, Town Attorney with Bernstein Shur, noted questions that had been sent to her regarding LD 2003. She advised that the town's current definitions of multiplex and multifamily both fall under the provisions of LD 2003. She responded that the town could increase density to blunt the impact of the affordable housing density bonus, but density changes would apply to all development and would need to be consistent with the Comprehensive Plan. She agrees that the single family home setbacks apply to the affordable housing bonus. She advised that the town may require additional land area for additional units under the small multifamily building provisions, and the land area can be as large as the current land area requirement for a new home.

Councilor Noonan clarified that, in the RA District, this could be 80,000 sq. ft. for the lot, and then 80,000 sq. ft. for each additional multifamily unit, and Ms. Costigan agreed.

The committee began review of the 2-23-2023 LD 2003 Amendments draft.

Ms. O'Meara explained that the draft amendments have been revised since the last meeting to incorporate the information from the draft Rule. To start, the Rule includes several definitions which have been added to the draft. In some cases, the town has existing definitions and she has usually replaced the town definition with the state definition and defers to the town attorney to explain the benefits of that.

Ms. Costigan said that when there is a state mandate, it is best to stick with the definitions provided by the state. Some of the proposed definitions are confusing and the hope is that those are clarified, but the norm is to use the state definitions.

The committee reviewed the revised Accessory Dwelling Unit (ADU) definition. Ms. O'Meara noted the state definition does not require the unit to be subordinate to the primary dwelling, but that is included in the ADU provisions under maximum size, which the state allows towns to regulate. The committee accepted this definition.

The committee reviewed the Affordable Housing and Affordable housing development definitions. Councilor Noonan is concerned the two definitions are setting up the same issue we have with multifamily/multiplex definitions. Ms. O'Meara explained the Affordable Housing definition is there to support the existing Mandatory Affordable Housing provisions and we can streamline if we modernize the Mandatory provisions, which only apply to ownership. The committee agreed to tweak the Mandatory provisions and use the state definition.

The committee agreed to add "or roof" to attached, which slightly broadens the state definition, in order to address the public confusion about multifamily units connected horizontally or vertically.

The base density definition was noted to specifically reference Article VI in the Zoning Ordinance. The Code Enforcement Officer is ok with this. Staff will check the comprehensive plan for density references.

The dwelling unit definition has been augmented with the state definition and habitation incorporated into the definition. Ms. Costigan recommended that Habitation be broken out into a separate definition. In addition, the committee decided to keep the town revised dwelling unit definition, with the support of Ms. Costigan.

The committee discussed the multifamily definitions which need to be reconciled. The committee agreed to keep the revised "multifamily development" definition and replace "development" with "dwelling."

The existing "Principal Building" definition has been replaced with the state "Principal Structure" definition, both of which are very similar. Staff will do a Zoning Ordinance search to update references for principal building and single family dwelling unit.

The committee advanced to review of Article VI. Ms. O'Meara noted that under minimum lot area for multifamily development, LD 2003 only applies to multifamily development of up to 3 units in the RA, which means that the town can keep the 10 acre minimum for multifamily development of more than 3 units. The committee agreed to retain the 10 acres. Councilor Noonan noted that the intent of the Ordinance Committee was to limit amendments to those required by LD 2003 and Councilor Caitlin Jordan agreed. The committee agreed to use the same principles for the Maximum number of dwelling units per area, splitting density for multifamily into two categories, one for multifamily up to 3 or 4 units, and a separate requirement for larger multifamily developments where LD 2003 is not applicable. This distinction is also represented in changes to Sec. 19-7-2 E, Multifamily Development Standards.

The committee reviewed the ADU provisions, Sec. 19-7-5. Councilor Noonan confirmed that the changes would allow conversion of an existing accessory structure to an ADU.

The committee discussed the maximum ADU size restrictions. The committee confirmed that the ADU must be a size subordinate to the primary dwelling. Ms. O'Meara noted that existing accessory structures are exempt from this, as suggested by the Town Council Chair. The committee discussed establishing a percentage of the primary structure limitation or using a square footage as currently proposed. Chair Penny Jordan noted that people will want a nice ADU for a family member and detached ADUs are expensive to build. The Town has many large single family homes and she suggested a maximum ADU size of 1,800 to 2,200 sq. ft., given that the ADU will still need to be smaller than the primary dwelling. After committee discussion, Chair Jordan and Councilor Caitlin Jordan agreed to limit the size to 1,800 sq. ft.

The committee noted public comment concerns with ADUs and parking. Chair Jordan asked for information about the average size of single family homes in Cape Elizabeth? Ms. O'Meara said she has calculated the size of new single family homes built between 2020-2022 and the average size is 3,500 sq. ft. Chair Jordan estimated that the same number of people will live in a 1,000 sq. ft. ADU as in a 1,800 sq. ft. ADU. Councilor Noonan said parking is a self-limiting problem and most homes have enough space for 1, 2, or 3 cars and will not build an ADU if they don't have a parking space.

Members of the public asked to be recognized.

Tim Thompson – He wants more public comment because people are concerned with ADUs and parking.

Kevin Justh – He said the Zoning Board has approved about 12 ADUs and only 1 required a parking space.

Tim Thompson – He said the Housing Diversity Study Committee received a presentation suggesting that allowing ADUs to be operated as a Short Term Rental (STR) can help with financing construction.

Chair Penny Jordan noted the challenge of an 18 month process to create the current STR provisions, which have a lot of impact on neighborhoods. A lot of time and effort was invested into the current rules.

The committee reviewed the changes to the Off-Street Parking requirements with no changes.

The committee began review of proposed Sec. 19-7-17 and want the section title to be changed.

The committee discussed the density requirements for Small Multifamily development, where the proposed densities require additional land for each multifamily unit. The draft requires the same additional land area as is currently required for multifamily development, however LD 2003 allows the additional land area to be the same as for a single family home. Ms. O'Meara noted that the proposed land areas are already not conducive to multifamily development and that LD 2003 also includes a provision that towns must not discriminate on housing. The committee discussed the densities and agreed to keep the density based on multifamily units because the size will not impact neighborhoods and is within the spirit of the requirements.

The committee completed review of the draft and discussed next steps. The draft amendments will be revised to capture this meeting's discussion and the town attorney will be asked to review the draft.

The committee also reviewed the staff memo and noted that additional affordable housing production actions may be recommended.

Public Comment

Tim Thompson, 6 Pine Ridge Rd – Is this meeting recorded? Is the technology not available because important decisions have been made and no one knows about them.

Answer: The meeting has not been recorded.

Chair Penny Jordan thanked him for his support to expand technology options. We need a technology person to operate recording for meetings.

Kevin Justh, 9 Spruce Ln – You may want to relate habitation to household. He would like all densities expressed in square footage or acres, as the ordinance moves back and forth between the two. He supports clarity and simplicity and prefers acres. Keep the Mandatory Affordable Housing provisions as is for now as we are not yet ready to catch up.

Tim Reiniger, 40 Belfield Rd – He noted MMA's opposition and questioned how the town would know if a multifamily unit was an ADU? For example, what happens if Mrs. Smith converts a barn to an ADU, rents it, and dies?

Answer: A building permit is required.

Next meeting

The next meeting will be held on Wednesday, April 5th, beginning at 7:00 p.m. The meeting adjourned at 9:20 p.m.