

**Town of Cape Elizabeth
Ordinance Committee Minutes**

September 13, 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;
Tom Bell, GPCOG

Minutes

The August 8, 2023 meeting minutes were approved by a vote of 3-0.

Public Comment

No one present wished to speak at this time.

LD 2003 Amendments

Chair Jordan described the meeting organization, starting with documenting all the outstanding questions about the amendments that should be covered, receiving a presentation from Mary Costigan, town attorney, on her review of the draft amendments, a discussion of how the amendments align with state requirements, and a discussion on how to handle tear downs. The committee agreed to this approach.

Ms. O'Meara wrote down on flipchart sheets all suggested questions from the committee and members of the public, as follows:

1. How many 4-unit buildings will pop up in neighborhoods?
2. How does the definition of multiplex control what is allowed as a new building?
3. Will ADUs create parking issues and overflow?
4. How does LD 2003 regulate the size of ADUs?
5. How many ADUs will be built and will it be too many?
6. Do the proposed amendments exceed what is required for minimum LD 2003 compliance?
7. What is already allowed and what additional uses will be allowed by LD 2003 amendments?
8. What is the difference between multiplex and multifamily, noting that Maine State Housing finds the term multiplex confusing and the industry standard is multifamily?

9. What are the requirements for the number of doors, individual doors, central corridor and a multifamily or multiplex building?
10. Is multifamily an updated term?
11. Is multiplex different?
12. What are the differences between the ADU size and attached ADUs allowed by the current zoning and detached ADUs allowed by LD 2003?
13. How do the amendments relate to the comprehensive plan recommending conversion of large homes into multifamily units?
14. Can we require an ADU owner to be in residence, in the primary unit? (non-investor)
15. Should we allow/prohibit a single family home to be torn down and replaced with a multifamily building?
16. Can we explain the existing single family home parking requirement and typical usage?
17. Can we satisfy parking that is an ordinance requirement with on-street parking?
18. Where is the town attorney review of the amendments?
19. Can we be clear that the number of ADUs to be allowed is ONE?
20. Are the ADU setbacks the same setbacks for a single family home?
21. Are we clear that the option to add an ADU remains subject to HOA, deed restrictions, etc?
22. Should the amendments allow a property owner to tear down a single family home and build a 2-unit for their family?
23. Are we clear what the relationship is between ADUs and STRs (Short Term Rentals)?

Ms. Costigan then presented her review of the draft amendments. She recommends the multifamily/multiplex word change for clarity and is needed for the amendments. She noted the state definition references 3 or more units and the town definition is currently 2 or more units. The town has retained its definition, which is consistent with LD 2003, however another option is to add duplex as a use and use the 3 unit definition. The committee agreed to keep the draft with the 2+ unit definition.

Ms. Costigan explained that LD 2003 defines whether a lot is vacant or built by the presence of a building on the lot *at the time a permit is submitted*. Restricting tear downs would involve a lot where the single family home is already demolished, and then a permit is applied for. In this instance, the town could set a minimum period that the lot could be rebuilt.

The committee reviewed the small multifamily building requirements. Councilor Caitlin Jordan asked if we know how many lots would be eligible for a 4-unit building. Referencing the lot analysis, of a total 4083 lots, 1773 lots in the RC District, there are 68 built lots and 22 vacant lots that are at least 65,000 sq. ft. in size. About 71% of lots in the RA and RC Districts are below the minimum lot size of 80,000 sq. ft. and 20,000 sq. ft, respectively. The committee concluded that there are not many lots that are large enough to qualify for the small multifamily provisions because of the proposed lot sizes, which were guided by a conservation interpretation of the LD 2003 lot size allowed.

Tim Dew, 56 Stonegate – He suggested the committee talk to the neighbors abutting those lots. Councilor Caitlin Jordan suggested you ask the same neighbors if they would like 3 houses instead? The committee discussed how the larger lots had redevelopment opportunities currently allowed by ordinance. They also estimated how many existing lots would need to be purchased to assemble a lot big enough for a multifamily building and that it did not appear financially attractive.

Kevin Justh, 9 Spruce Lane – He said the early results from the HDSC survey show support for adding density.

Councilor Noonan noted that surveys are very important data, but the surveys are not random and the respondents are self-selected.

Mr. Dew referenced that Cumberland is prohibiting tear-downs. The committee responded that people have private property rights that allow tear downs now.

Ms. Costigan cautioned against automatic importing of provisions from other communities. Every community's zoning regulations are different and the context for why Cumberland restricted tear downs might not apply in Cape.

Ms. Costigan reviewed the ADU option on maximum size.

Chair Penny Jordan asked if the town could require parking for ADUs if the size is greater than the 190 sq. ft. minimum. Ms. Costigan said LD 2003 specifies no parking for ADUs can be required.

Councilor Caitlin Jordan noted that the amendments regulate ADUs more than the state minimum because a maximum size is established.

The committee discussed the relationship between ADUs and STRs (Short Term Rentals). Ms. O'Meara summarized the current restriction of an ADU being used as a STR. Renting an ADU for 30 or more days is not a STR. She mentioned a suggestion by a member of the public that the minimum rental period for ADUs be 6 months, and Ms. Costigan responded that restriction would be inconsistent with LD 2003. Requiring the owner be in residence also would not comply.

Councilor Noonan stated that ADUs not only provide smaller, more affordable housing, but also provide a revenue opportunity for the property owner that can also support making housing affordable.

Mr. Dew asked if the small multifamily building provision is a requirement. Ms. Costigan said the small multifamily opportunity is a requirement. Councilor Noonan added that, during her term on the Ordinance Committee, she has learned that any ordinance amendment has

downstream impacts that require other ordinance provisions to be updated and made conforming.

The committee discussed what they want to do at the public forum.

Mr. Justh suggested taking time to frame the issue and include perspectives from the legal side, practical side, etc..

Councilor Caitlin Jordan wants a chart prepared that depicts how teardowns would be regulated with dates.

The committee discussed future scheduling:

September 19 th , 5:00 p.m.	meeting to discuss public forum logistics
October 5 th , 12:30	podcast with GPCOG to promote public forum (use 10 question format)
October 16 th , 7:00 p.m.	public forum
October 25 th , 7:00 p.m.	Ordinance Committee meeting

Councilor Caitlin Jordan wants pictures of multiplex/multifamily in Cape (can reuse pictures from February forum) and pictures of what would not be allowed.

The committee agreed to add clarity on the teardown issue. Ms. Costigan explained that the state law determines vacancy based on what exists when the permit is issued. Chair Jordan noted that if there is an ownership transfer, then a property can be vacant for some time. The consensus was to add a provision to the amendment draft, in the Small multifamily section. This will be highlighted for the public forum and can be revised.

The committee hopes to have the amendments on the November 13th Town Council agenda, and have the Town Council hold a workshop prior to the 13th.

Next meeting

The next meeting will be on September 19th at 5:00 p.m. The meeting adjourned at 9:33 p.m.